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Food Hygiene Rating (Northern Ireland) Bill

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This Bill paper provides information on the Food Hygiene Rating (NI) Bill, the aim of which is to reduce the incidence of foodborne illness. The paper highlights: differences between the Bill and the Food Hygiene Rating (Wales) Act 2013; issues for further consideration raised through the consultation process on the Bill; and issues highlighted during the passage of the Food Hygiene Rating (Wales) Act 2013. The paper also describes the voluntary Food Hygiene Rating Schemes in place presently in England, Scotland and NI and the statutory scheme in place in Wales. Some international examples are also cited.

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Executive Summary

The aim of the Minister for Health, Social Services and Public Safety (with the Food Standards Agency (FSA)) in introducing this Food Hygiene Rating Bill is to reduce the incidence of foodborne illness in Northern Ireland (NI), which cost around £83million annually.

The Bill contains 20 Clauses and one Schedule.

In England and NI a *voluntary* Food Hygiene Ratings Scheme (FHRS) is already in operation by local authorities, in partnership with the FSA. Each food business covered by the scheme is given a 'hygiene rating' from '0' to '5' and a rating sticker to display, after inspection by a food safety officer.

In Wales, from 28th November 2013, it has been *mandatory* for businesses which receive a rating sticker to display it in a prominent place for consumers to see and provide the rating verbally if requested. Those businesses that do not comply can be fined. From November 2014, the Welsh scheme has been extended to 'business to business' trade.

In Scotland a slightly different scheme is in operation called the Food Hygiene Information Scheme. Each food business is given one of two 'inspection results', either 'Pass' or 'Improvement Required'.

The Republic of Ireland, although having its own Food Safety Authority, does not have a Food Hygiene Ratings Scheme in place.

In 2013, under the voluntary scheme, the percentage of FHRS ratings on display in NI was 57% (up from 50% in 2012), but display is highly correlated with rating, with display rates as high as 73% in NI among '5' rated businesses but as low as 13% among those rated '0' to '2'.

To progress the FHRS, the preferred option for the FSA in NI is to build on the current voluntary scheme by introducing a *statutory scheme with mandatory display of ratings* at food business premises, plus the cost recovery from businesses where they choose to request a re-rating.

Overall, the majority of respondents to the public consultation were in favour of mandatory district council (DC) participation within a statutory scheme to ensure consistency of approach for consumers and food businesses. Three DCs and one trade association favoured a statutory scheme being delivered through voluntary participation. As at the time of the consultation, 25 of the 26 DCs were already participating in the voluntary scheme.

The Explanatory and Financial Memorandum states that the Bill will not have *significant* financial implications.

Clause 1 sets the overall direction of travel for the statutory scheme and:

- *Requires* district councils (DCs) to carry out inspections of relevant food businesses in their districts;
- *Rates* food hygiene standards using a “food hygiene rating”;
- *Defines* the businesses that the Bill covers as those required to be registered with a DC under EU law - Article 6 of Regulation (EC) 852/2004¹ or to be approved by a DC under Article 4 of Regulation (EC) 853/2004, and which supplies food direct to consumers; and
- Provides powers to make regulations to:
 - *Exempt* categories of establishment that would not be required to be rated;
 - To *amend* the definition of ‘food business establishment’; and
 - To *extend* the reach of the scheme by enabling other categories of establishment to be rated, for example, trade to trade supply.

The Bill also:

- Provides for a *duty* on the business to display the rating provided and a *duty* to verbally inform customers of the rating on request;
- *Creates* a number of *offences* (with fines) relating to a failure in the duties, regarding the rating, to display and inform;
- Covers mobile food businesses;
- Provides a number of *safeguards* for food businesses, including:
 - A *right of reply* concerning the rating;
 - *Appeal* process against the rating; and
 - A *right* to request a *re-rating* (a fixed fee is proposed for this).

The Bill provides for a substantial amount of subordinate legislation (outlined in Table 1), including six orders² and eight sets of regulations, which are to be subject to negative resolution.

Orders are to be subject to negative resolution, except the following which are to be approved by a resolution of the Assembly:

- Power to amend the definition of “food business establishment”;
- Power to provide for a person other than a DC to hear appeals;
- Power to amend the Act in light of review by the FSA; and
- Power to specify level of fixed penalty.

¹ EC 852/2004 and EC 853/2004, http://ec.europa.eu/food/food/biosafety/hygienelegislation/comm_rules_en.htm

² Including the commencement order

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1 Overview of Current Food Hygiene Ratings Schemes in the UK

1.1 Introduction to the Food Hygiene Ratings Schemes in England, Wales, Northern Ireland, Scotland and Other Countries

The overarching aim of the Food Standards Agency, in introducing the Food Hygiene Ratings Bill in Northern Ireland (NI), is to reduce the incidence of foodborne illness. In NI there are approximately 48,300 cases of foodborne illness, 450 hospitalisations and 24 deaths annually with an equivalent total cost of £83 million.³

The **Food Hygiene Rating Schemes (FHRS)** across the UK are aimed at helping consumers choose where to eat out or shop for food by providing information about the hygiene standards in restaurants, pubs, cafes, takeaways, hotels and other places you eat out of home. Supermarkets and a range of other food shops are included in the scheme.⁴

In England, Wales and NI the scheme is run by local authorities in partnership with the Food Standards Agency (FSA). Each business is given a 'hygiene rating' when it is inspected by a food safety officer from the business's local authority. Presently in England and NI, when a consumer eats out or shops for food, they may see a FHRS sticker in the window or on the door of the premises.⁵



In Wales, from 28th November 2013, it has been *mandatory* for businesses who receive a new FHRS sticker (which shows the Welsh Government logo) to display it in a prominent place (front door or window at every customer entrance) and provide its rating verbally if requested. The new law builds on the original voluntary scheme and is enforced by local councils. Those businesses that do not comply can be fined.⁶ From November 2014, the rating scheme in Wales has been extended to business to

³ Impact of Mandatory Display of Food Hygiene Ratings in Northern Ireland, Food Standards Agency in NI, Consultation, February 2013, <http://food.gov.uk/news-updates/consultations/consultations-northern-ireland/2013/mandfhrs-consult-ni>

⁴ Find out more about food hygiene ratings, Food Standards Agency, <http://www.food.gov.uk/multimedia/hygiene-rating-schemes/ratings-find-out-more-en>

⁵ As above

⁶ Food outlets will be forced to display hygiene ratings, BBC News, Wales Politics, 28th November 2013, <http://www.bbc.co.uk/news/uk-wales-politics-25119724>

business trade which means that almost everyone from small producers to factories will be included.⁷



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The hygiene rating shows how closely the business is meeting the requirements of food hygiene laws. The food safety officer inspecting the business checks how well the business is meeting the law by looking at:

- How hygienically the food is handled in terms of preparation, cooking, cooling, storing and re-heating;
- The condition of the structure of the buildings including cleanliness, layout, lighting and ventilation; and
- How the business manages and records what it does to ensure food is safe.

Following the inspection, the business is given one of six ratings (0 to 5), with '5' being the top rating and any business is capable of reaching a five.⁹ If the business does not achieve a '5', the food safety officer will tell them what improvements they need to make to achieve a higher rating and is able to give practical advice. Businesses given ratings of '0' or '1' must make urgent improvements and will be told how quickly the improvements must be made, depending on the issue(s) that need to be addressed.¹⁰

In Scotland a slightly different scheme is in operation called the **Food Hygiene Information Scheme** and is run by local authorities in partnership with the FSA. Each relevant food business is given one of two 'inspection results' when it is inspected by an enforcement officer from the business's local authority, either a 'Pass' or 'Improvement Required'¹¹:

⁷ More food businesses to come within scope of food hygiene ratings in Wales, FSA (Wales), 4th April 2014, News, <http://www.food.gov.uk/wales/news-updates/news/2014/6016/fhrs-scope>

⁸ <http://www.food.gov.uk/sites/default/files/multimedia/pdfs/stickers-fhrs-wales.pdf>

⁹ Find out more about food hygiene ratings, Food Standards Agency, <http://www.food.gov.uk/multimedia/hygiene-rating-schemes/ratings-find-out-more-en>

¹⁰ Food hygiene rating schemes, www.food.gov.uk/business-industry/caterers/hygieneratings/

¹¹ Find out more about food hygiene ratings, Food Standards Agency, <http://www.food.gov.uk/multimedia/hygiene-rating-schemes/ratings-find-out-more-en>

- 'Pass' means that the business has achieved an acceptable level of compliance with the requirements of food hygiene law; and
- 'Improvement Required' means that the business has not achieved an acceptable level of compliance with the requirements of food hygiene law.



The enforcement officer will explain to the owner/manager of the business what improvements are needed to meet the requirements of food hygiene law and the local authority will then check that these improvements are made.

In Scotland, the **Eat Safe Award** is an addition to the **Food Hygiene Information Scheme**. Food businesses can apply for the award and will only receive it if hygiene standards are better than those required by law, in accordance with the award criteria.



Businesses are currently encouraged to display their 'Pass', 'Improvement Required' and 'Pass – Eat Safe' (if the business has that award) stickers in a place where they can be easily seen at the premises.

Although the scheme in Scotland is presently voluntary, this could be set to change with The Scottish Government's Food (Scotland) Bill, which was introduced to the Scottish Parliament on 13 March 2014. It seeks to create a new body (Food Standards Scotland) to take over the work of the UK-wide Food Standards Agency in Scotland, and establish new food law provisions. The food law provisions relate to food which does not comply with food information law (for example, mislabelled food); an offence of failure to report breaches of food information law; a *statutory requirement for the mandatory display by food businesses of inspection outcomes*; and new administrative sanctions for non-compliance with food law.¹⁴

¹² <http://www.food.gov.uk/multimedia/hygiene-rating-schemes/ratings-find-out-more-en>

¹³ As above

¹⁴ Kenyon, W. and Erasmus, I (May 2014), Food (Scotland) Bill, SPICe Briefing SB 14/35, Executive Summary, <http://www.scottish.parliament.uk/parliamentarybusiness/76724.aspx>

1.2 Business Display Rates of Food Hygiene Ratings in England, Wales and Northern Ireland

In January 2013, GfK NOP¹⁵ was commissioned by the FSA to undertake research in relation to premises in England, Wales and NI that had been given a food hygiene rating. By means of a covert audit, the research recorded the proportion of businesses displaying FHSR stickers/certificates and via a phone survey investigated the rationale and impact of display and non-display of FHSR ratings by businesses¹⁶. The key findings are summarised below from the Executive Summary of the Report¹⁷.

In 2013, the proportion of FHSR ratings overall on display somewhere on the premises (sticker, certificate or both) among audited businesses was:

- 57% in Northern Ireland (up from 50% in 2012);
- 52% in England (up from 43% in 2012); and
- 47% in Wales (up from 31% in 2011)

Nearly all of those displaying an FHSR rating were doing so somewhere which was deemed “clearly visible” by the auditor.

Display was highly correlated with rating, with display rates as high as 73% in NI, 69% in England and 77% in Wales and among ‘5’ rated businesses. By contrast, among lower rated (0 to 2) businesses, display rates were 13% in NI, 10% in England, 17% in Wales. As at January 2013, 800 businesses in NI had a rating of 0, 1 or 2.¹⁸

The increase in overall display rates in England and NI since 2012 was largely driven by the increase in display among the higher rated (4 and 5) businesses. In Wales, however, both the high rated (4 or 5) and low rated (0 to 2) businesses showed a significant increase in display of FHSR. There were lower levels of display among businesses for which food preparation was not their primary activity, such as hotels/guest houses/pubs/clubs (46% in NI, 48% in England and 41% Wales, and also in retail outlets (49% Northern Ireland, 45% England and 42% Wales).

The report concluded that increased awareness and encouragement to display was unlikely to bring about universal display. It was proposed that tracking the effect of mandatory display on display rates in Wales would be useful, particularly amongst 0-2 rated businesses. The Report questioned whether businesses will risk the penalty that may arise from non-display rather than show customers that their business requires urgent/major improvement in hygiene standards? It also concluded that unless non-

¹⁵ GfK NOP - One of the top 5 largest market research organisations in the world, <http://www.gfk.com/uk/about-us/company-history/Pages/default.aspx>

¹⁶ Gibbens S and Spencer S (June 2013) Business Display of Food Hygiene Ratings in England, Wales & Northern Ireland, Report prepared for Food Standards Agency, <http://www.food.gov.uk/sites/default/files/multimedia/pdfs/fhrs-display-research-report.pdf>

¹⁷ As above, Executive Summary

¹⁸ Impact of mandatory display of food hygiene ratings in Northern Ireland, Consultation Document, Food Standards Agency, February 2013, page 4, <https://www.food.gov.uk/sites/default/files/multimedia/pdfs/consultation/mandfhr-ni-consult.pdf>

display results in a direct loss of business or heavy fines (or some other penalty) there is likely to remain some businesses that may refuse to display.¹⁹

More recently, in August 2014, the scheme in Wales was acclaimed as a “national success” by the Wales Heads of Environmental Health Group. Councillor Bob Derbyshire, Cabinet member with responsibility for Environmental Health Policy said²⁰,

The success of this scheme is the simple format which instantly allows consumers to make a judgement about whether or not to give the business their custom. People can have faith in the fact that the premises have been fully inspected and that the rating is a fair reflection of the hygiene standards being practiced.

A news release from Cardiff Council highlighted that since the scheme was adopted nationally in Wales, the number of businesses given the maximum rating of 5 has increased by almost 20% and many of these have reported that the good rating has significantly increased their takings. Conversely, the number of businesses rated 0-2 have declined by a third since the introduction of the mandatory scheme.²¹

1.3 Examples of Food Hygiene Rating Schemes Operating in Other Countries

A number of similar food hygiene information schemes, to those in the UK, operate in other countries. Included at Appendix 1 is a brief overview of four of these in Toronto (Canada), Denmark and Los Angeles and New York (US) as directly extracted from the NI Bill Regulatory Impact Assessment.²²

The Republic of Ireland, although having its own Food Safety Authority, does not have a Food Hygiene Ratings Scheme in place. The disclosure of results (other than in anonymised format) from inspection or other official controls is not permitted under current legislation.²³ Any change to this legislation would be a policy matter for the Department of Health to consider.²⁴

¹⁹ Gibbens S and Spencer S (June 2013) Business Display of Food Hygiene Ratings in England, Wales & Northern Ireland , Report prepared for Food Standards Agency, Summary and Conclusions
<http://www.food.gov.uk/sites/default/files/multimedia/pdfs/fhrs-display-research-report.pdf>

²⁰ Food hygiene rating scheme celebrated , Cardiff Council, 4th August 2014, News Release,
<https://www.cardiff.gov.uk/ENG/Your-Council/News/Latest-releases/Archive/Pages/Hygiene-rating.aspx>

²¹ As above

²² Mandatory display of food hygiene ratings in Northern Ireland , Regulatory Impact Assessment, Summary Intervention and Options, 10, 28/01/13, Food Standards Agency,
<http://www.food.gov.uk/sites/default/files/multimedia/pdfs/consultation/mandfhrs-ni-impact.pdf>

²³ The EC (Official Control of Foodstuffs) Regulations 2010 (SI No 117 of 2010) specifies that information on control activities may only be released in anonymous format, except in certain defined cases (e.g. in cases where a closure order has been served), Personal Communication via email with Information Assistant, Food Safety Authority of Ireland, 7/11/14

²⁴ Personal Communication via email with Information Assistant, Food Safety Authority of Ireland, 7/11/14

2 Policy Options Considered for Northern Ireland

Reducing foodborne illness is a strategic priority for the FSA and the objective behind the policy direction of the Bill is to,

provide increased and more integrated accessibility to FHRS ratings for consumers. This will strengthen the scheme by increasing the incentive for businesses to improve and maintain standards and will drive market competition more quickly and maintain this more effectively over time...Improved standards and sustained compliance, in turn, increase the scheme's potential to improve public health and contribute to reducing the public health burden of foodborne illness.²⁵

Four possible options for NI were appraised by the FSA prior to the development of the Bill and are extracted and summarised from the FSA Regulatory Impact Assessment as follows²⁶:

Option 1: 'Do nothing', and continue with the current voluntary scheme where ratings would continue to be displayed on the FHRS website. It would be optional for local authorities to operate the scheme and for food businesses to display these at their premises.

Option 2: Strengthen market forces by promotion of the current voluntary scheme to increase consumer awareness so that consumers will look for hygiene ratings on the FSA website and/or challenge businesses that fail to display their rating.

Option 3: Introduce a statutory scheme with mandatory display of food hygiene ratings at food business premises included in the scope of the scheme. This would increase consumer's ability to make informed choices. Such a scheme could still be operated voluntarily by local authorities (as is the case currently) or local authorities could be required to participate on a mandatory basis.

Option 4: Introduce a statutory scheme with mandatory display of ratings at food business premises plus the cost recovery from businesses where they choose to request a re-rating inspection. This option is similar to Option 3 but requires businesses to pay for the expected likely increase in re-rating inspections, allowing local authorities to use the costs recovered to maintain their programmed inspections and other statutory duties. As for Option 3, such a scheme could be operated local voluntarily (as is the case currently) or be required to participate on a mandatory basis.

Option 4 was the preferred option of the FSA and the Bill is based on this option with local authorities participating on mandatory basis. The FSA believes it:

²⁵ Mandatory display of food hygiene ratings in Northern Ireland , Regulatory Impact Assessment, Summary Intervention and Options, page 1, 28/01/13, Food Standards Agency,

²⁶ As above pages 13-14

- Provides the most economically viable solution for achieving the policy objective as it ensures that local authority resources for inspecting high risk businesses are not diverted to delivering requested re-rating inspections to lower risk operations;
- It will increase accessibility of ratings to consumers; and
- Increase the incentive to businesses to improve and maintain standards.²⁷

The Regulatory Impact Assessment by the FSA indicates that the following groups will be affected by the Bill²⁸:

- *Consumers* - Providing information to consumers on the standards of hygiene at food establishments, enabling them to make informed choices;
- *Food businesses* - Will potentially affect all those businesses (approximately 16,000 in NI) supplying food direct to consumers;
- *Local authorities* - In NI, district councils (DCs) are responsible for monitoring compliance of food businesses with food hygiene legislation and are, therefore, responsible for the inspections under the FHRS;
- *FSA* - Responsible for the administration of the FHRS and providing resources and operational support to local authorities;
- *Wider economy* - Reducing the instances of foodborne illnesses reduce the burden on the health sector and reduce personal costs to patients (including costs of pain/suffering and possibly death, and lost economic output due to absence from work).

The Explanatory and Financial Memorandum highlights that the Bill will not have *significant* financial implications. The Regulatory Impact Assessment (RIA) outlines in more detail what the actual costs are likely to be for businesses, local authorities and the FSA, and also the benefits to businesses, local authorities and consumers. A summary of the issues in the RIA are included at Appendix 2.

3 Food Hygiene Rating (Northern Ireland) Bill

This section provides a summary of the 20 Clauses and one Schedule of the Bill, taken from a combination of the information in the Bill and the Explanatory Memorandum. Also highlighted are:

- Specific differences between the proposed legislation for NI and the Food Hygiene Rating (Wales) Act 2013;
- Issues for further consideration raised through the consultation process in NI to date; and

²⁷ Mandatory display of food hygiene ratings in Northern Ireland , Regulatory Impact Assessment, Summary Intervention and Options, pages 13, 28/01/13, Food Standards Agency,

²⁸ Summarised from Mandatory display of food hygiene ratings in Northern Ireland , Regulatory Impact Assessment, Summary Intervention and Options, page 15, 28/01/13, Food Standards Agency,

- Selected issues highlighted during the passage of the Food Hygiene Rating (Wales) Act 2013.

The provisions of the Bill are, in the Department's view, compatible with the provisions of the Human Rights Act 1998 and a preliminary screening exercise on the policy proposals giving effect to the Bill concluded that there would be no adverse impact on equality of opportunity. A full Equality Impact Assessment was therefore considered unnecessary by the DHSSPS.

In relation to equality matters, the following points were made during the public consultation process²⁹:

- With regard to consumers requiring verbal information, for example those with a visual impairment, there was a lack of detail as to how this would be monitored and enforced; and
- Consideration needs to be given to ethnic food premises where a core clientele may not have English as a first language.

With regard to the Welsh Act, the majority of witnesses to the Health and Social Care Committee in the National Assembly for Wales agreed with the need for legislation to make it compulsory for relevant food businesses to display food hygiene ratings and verbally inform customers, if requested.³⁰

Some witnesses did not support the need for legislation, for example, the Federation of Small Business (FSB) Wales and the Welsh Retail Consortium. Their opposition centred around a potential increased burden on business, remaining unconvinced of the problem with the voluntary scheme and that a statutory scheme was disproportionate in regulatory terms and "*would only be justified if there was clear evidence of its role in reducing food borne illness*".³¹ The Committee, however, were convinced of the need for legislation as it recognised that many low scoring businesses were not displaying their ratings.³²

3.1 Clause 1: Food hygiene rating

Clause 1 requires district councils (DCs) to carry out inspections of food business establishments in their districts, which supply food direct to consumers and then rate the food hygiene standards with a "food hygiene rating". Clause 1(4) describes such an establishment as that which is required to be registered with a DC under Article 6 of Regulation (EC) 852/2004³³ or to be approved by a DC under Article 4 of Regulation (EC) 853/2004, and which supplies food direct to consumers.ⁱ

²⁹ Mandatory Display of Food Hygiene Ratings in Northern Ireland, Consultation Report 2013, FSA, page 47

³⁰ Food Hygiene Rating (Wales) Bill Stage 1 Committee Report, October 2012, paragraph 13, <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=3812&Opt=0&AIID=8966>

³¹ As above, paragraphs 20-23

³² As above, paragraph 25

³³ EC 852/2004 and EC 853/2004, http://ec.europa.eu/food/food/biosafety/hygienelegislation/comm_rules_en.htm

The DC need not prepare a rating if it considers that it is not necessary, bearing in mind how long it is since it last did so (Clause 1(2)).

Clause 1 also allows the Department of Health, Social Services and Public Safety (DHSSPS) to make regulations to:

- Specify categories of establishment that would not be required to be rated;
- To amend the definition of 'food business establishment'; and
- To enable other categories of establishment to be rated, for example, trade to trade supply (as per the Welsh Act, from November 2014).

Section 2 of the Welsh Act includes an additional requirement for local authorities in Wales to prepare a *programme of inspections* of food businesses in their areas and inspect according to that programme. Section 2 (4) states that the programme must have regard to the matters specified by the FSA, which must include an assessment of the levels of risk to public health associated with the type of food handled by the food business, the method of handling the food and the record of compliance with food hygiene law at the particular business.³⁴

Section 4 of the Welsh Act specifies that the scoring system for awarding the rating must be based on the food handling practices, physical environment (layout, cleanliness and condition), management and control procedures.³⁵ This is the same process as is carried out under the current voluntary scheme in NI (as described in 1.1 above) but it is not included on the face of the proposed NI Bill.

Some concerns were expressed in Wales regarding the potential for inconsistencies in the application of the scheme, for example difference in the interpretation of regulations and aspects of practice. The Committee was convinced that sufficient safeguards were in place to ensure consistency and that a degree of flexibility was needed to exempt a certain few food businesses such as child minders and low-risk establishments where food is only available in vending machines etc.³⁶

3.2 Clause 2: Notification and publication

Clause 2 requires DCs to notify (in writing) the operator of the food business establishment of the rating within 14 days of carrying out an inspection. (Clause 2(3)) states that the notification must be accompanied by other information:

- An official sticker showing the rating (form of sticker to be provided for in regulations);
- A written statement of the reasons for the rating;
- Explanations of:
 - The right of appeal (Clause 3);

³⁴ Food Hygiene Rating (Wales) Act 2013, Section 2, <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

³⁵ Food Hygiene Rating (Wales) Act 2013, Section 4, <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

³⁶ Food Hygiene Rating (Wales) Bill Stage 1 Committee Report, October 2012, paragraphs 35-58, <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=3812&Opt=0&AIID=8966>

- The right to request a re-rating (Clause 4);
- The right of reply of the operator of the food business (Clause 5);
- The validity of the rating (Clause 6);
- The duty to display the rating (Clause 7); and
- The duty of relevant employees to provide information about the rating orally, if requested (Clause 8).

Clause 2 also requires DCs to inform the Food Standards Agency of the awarded ratings, who in turn must publish them on its website (the Welsh Act specifies in Section 6(3)³⁷ that this must happen within seven days of being informed of the rating).

In Wales, there were opposing views on whether full inspection reports should also be made available on the FSA website. The Committee supported the view that they should be published. Norwich City Council was highlighted as an example of a council that publishes the full inspection report in accessible language.³⁸

Section 10 of the Welsh Act provides for Welsh Ministers, by regulations, to make provision about the promotion of a food business establishment's food hygiene rating by the operator (or by someone acting on the operator's behalf), for example electronic publishing of the rating or publicising the rating in material promoting the food provided by the establishment.³⁹

3.3 Clause 3: Appeal

Clause 3 provides operators of food business establishments with a right of appeal against the rating provided by the DC but only on the grounds that that the rating does not reflect the food hygiene standards at the time of the inspection.

The appeal must be made within 21 days to the DC that produced the rating. An officer of the DC who was involved in the production of the rating cannot be involved in determining the appeal and the DC may inspect the premises as far as it considers necessary to determine the appeal (and as far as the operator allows it to do so) (Clause 3(7)).

The DC must determine the appeal within a further 21 days and notify the outcome in writing (with reasons for the determination) along with additional information including:

- A new food hygiene rating sticker where the rating has changed;
- The right to request a re-rating (Clause 4);
- The right of reply (Clause 5);
- The validity of the rating (Clause 6);

³⁷ Food Hygiene Rating (Wales) Act 2013, Section 6, <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

³⁸ Food Hygiene Rating (Wales) Bill Stage 1 Committee Report, October 2012, paragraphs 87 - 117, <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=3812&Opt=0&AllID=8966>

³⁹ Food Hygiene Rating (Wales) Act 2013, Section 10, <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

- The duty to display the rating (Clause 7);
- The duty of relevant employees to provide information about the rating orally, if requested (Clause 8); and
- Under this Clause, the DHSSPS can make an order to provide for an appeal to be determined by another person other than the DC that produced the original rating.

The Welsh Act provides for two reasons for appeal in Section 5(2) – (a) that the “*rating criteria were not applied correctly when producing the food hygiene rating*” and (b) “*that the rating criteria were not properly applied at the time of the inspection*”.⁴⁰

In relation to the Welsh Act some witnesses called for an independent appeals process, perhaps undertaken by a different local authority and this was supported by the Committee at the time but the Act now allows for the appeal to be carried out in the same manner as proposed for NI, by an officer not involved in the original assessment.⁴¹

3.4 Clause 4: Request for re-rating

Clause 4 provides operators of food business establishments with a right to request a re-rating after the appeal period and after the appeal is ‘determined or abandoned’ (Clause 4(6)). The request for a re-rating must (Clause 4(5)):

- Be made in writing to the DC that produced the rating;
- Include an explanation of the steps taken to improve compliance⁴² since the inspection was carried out;
- Be accompanied by a fee (which the DHSSPS may specify by order).

Within three months of receiving a request for a re-rating, the DC must either:

- Inspect and review the rating (Clause 4(2a)); or
- If it does not propose to act under Clause 4(2)a, it must inform the operator along with an explanation.

The outcome of any such re-rating must be notified to the operator in writing (with reasons) within 14 days of the inspection and be accompanied by (Clause 4(4)):

- A new food hygiene rating sticker if the rating has changed;
- Information about compliance with Regulations (EC) 852/2004 and 853/2004;⁴³
- An explanation of the right:
 - of appeal under Clause 3;
 - to make a further request under this Clause 4;
 - of reply under Clause 5;

⁴⁰ Food Hygiene Rating (Wales) Act 2013, Section 5(2), <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

⁴¹ Food Hygiene Rating (Wales) Bill Stage 1 Committee Report, October 2012, paragraphs 70-86, <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=3812&Opt=0&AIID=8966>

⁴² Compliance with Regulations (EC) 852/2004 and 853/2004

⁴³ http://ec.europa.eu/food/food/biosafety/hygienelegislation/comm_rules_en.htm

- To an explanation of the validity of the rating (Clause 6) and the duty to display the rating (Clause 7); and
- Other information as the DHSSPS may specify in regulations.

In deciding whether or not to consider a re-rating under Clause 4(2a), the DC may take into account the extent to which the operator is complying with the provisions of the Bill.

The Welsh Act does not set the fee for re-rating but does state that the food authority must calculate the costs of the re-rating, inform the operator of the cost and how it has been calculated. In Wales, the food authority may require payment in advance for the re-rating.⁴⁴ As stated above the NI Bill proposes that the DHSSPS may specify the fee for re-rating by subsequent order.

3.5 Clause 5: Right of reply

Clause 5(1) allows operators of food business establishments to make a written reply about the establishment's rating to the DC, to be published alongside the rating on the FSA's website (regardless of any appeal against the rating). This allows operators to explain to potential customers actions that have been taken to improve hygiene standards since the rating was awarded or any circumstances at the time of inspection that might have affected the rating.

When the DC receives a written reply it may (Clause 5(2)):

- a. Send it to the FSA as received;
- b. Edit it to remove any inaccurate or defamatory remarks before sending to the FSA;
or
- c. Refuse to send it to the FSA in any form.

If the DC acts under (b) or (c) above, it must provide the operator with a written explanation.

Having received a written reply from a DC, the FSA must publish it in the form in which it receives the reply, alongside the rating to which it relates (Clause 5(3)).

The Welsh Act allows for a similar right of reply but states that any such comments from a food operator '*must*' be forwarded to the FSA (unlike the proposals for NI) who '*may*' publish the comments⁴⁵ (unlike the proposals for NI where the FSA '*must*' publish what it receives from the DC. It is the DC who can refuse to send it to the FSA).

3.6 Clause 6: Validity of rating

Clause 6 sets out when a food hygiene rating is valid. A food hygiene rating becomes valid when an operator is notified of their rating following an inspection, appeal or re-rating request (Clause 6 (1)).

⁴⁴ Food Hygiene Rating (Wales) Act 2013, Section 13, <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

⁴⁵ Food Hygiene Rating (Wales) Act 2013, Section 11, <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

A rating ceases to be valid (Clause 6 (2)) where there is a change of ownership of an establishment or where the establishment ceases to trade, either voluntarily or due to the service of particular enforcement notices⁴⁶.

3.7 Clause 7: Duty to display a rating

Clause 7(1) provides for a duty on the operator of a food business to ensure that a valid food hygiene ratings sticker is displayed in the location and manner specified by the DHSSPS in regulations.

Clause 7(2) states that a food hygiene rating continues to be valid during a period in which a new food hygiene rating for the establishment is also valid and the operator may choose which sticker to display during that period.

3.8 Clause 8: Duty to provide information about rating

Clause 8(1) requires the operator of a food business or a 'relevant employee' to orally inform a person of the food hygiene rating when requested.⁴⁷ Clause 8(2) extends this duty to an employee, who in the opinion of the food business operator would be likely to be asked for the information, for example personnel in customer services or persons taking telephone orders (a 'relevant employee').

3.9 Clause 9: Enforcement and powers of entry

Clause 9(1) requires district councils to enforce the provisions of the Bill within their districts. Clause 9(2) provides authorised officers with a power of entry, at any reasonable hour⁴⁸, to ascertain if the duties to display the rating (Clause 7) and provide information orally where requested (Clause 8), are being complied with and if not, to enforce the duty.

3.10 Clause 10: Offences

Clause 10 creates a number of offences⁴⁹ and fines relating to the failure to comply with the duties in Clauses 7 and 8:

- An operator of a food business establishment commits an offence if they fail to display a valid rating sticker or display an invalid rating sticker (Clause 10(2));
- It is also an offence to fail to orally inform a person of the rating (or provide false/misleading information) when requested (Clause 10(3));

⁴⁶ A hygiene prohibition order or a hygiene emergency prohibition order under the Food Hygiene Regulations (Northern Ireland) 2006 (2006 No. 3)

⁴⁷ The purpose is to provide the information to persons who would not see the rating sticker displayed. For example, blind or partially sighted people or people making a telephone order.

⁴⁸ Clause 9(3) states that the authorised officer of the DC must provide at least 24 hours of notice of this intention to enter the premises if the premises are also used as a private residence.

- Where a failure under 10(3) relates to the conduct of an employee, it would be a defence for the operator to prove they had taken all reasonable precautions and exercised all due diligence to avoid the offence occurring (Clause 10(4));
- A person commits an offence where they intentionally alter, deface or tamper with a valid rating sticker or if they obstruct (without reasonable excuse) an authorised officer in exercising their functions (Clause 10(5) and (6)); and
- A person guilty of an offence under Clause 10 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Clause 10(8) and (9) cover the issues of corporate liability for offences, including when the affairs of a body corporate are managed by its members and also with offences committed by a partnership.

There was concern in Wales around how the failure to comply with the request for a verbal rating would be enforced as it would be reliant on consumers informing authorities that they had not been given it on request. The Committee for Health and Social Care in Wales were satisfied the local authorities would be able to adequately 'police' all the offences created by the Welsh Bill.⁵⁰

3.11 Clause 11: Fixed Penalty

An authorised officer of the relevant DC may give the operator of a food business a fixed penalty notice⁵¹, when there is reason to believe that an offence has been committed under Clause 10. The Schedule makes further provision about fixed penalties.

3.12 Clause 12: Provision of information for a new business

Clause 12 requires DCs to provide new food business establishments with information (to be specified by the DHSSPS in regulations) concerning the requirements of this Bill. This is to be provided within 14 days of the DC making the registration or receiving an application.

3.13 Clause 13: Mobile establishments

Clause 13 provides a regulation making power for the DHSSPS to enable transfer of the inspection and rating functions of a DC to another DC in relation to 'mobile establishments'. A mobile establishment may be registered with a council⁵² but may, for example, trade exclusively in another DC area.

⁵⁰ Food Hygiene Rating (Wales) Bill Stage 1 Committee Report, October 2012, paragraphs 142-153, <http://www.senedd.assembly.wales/mglssueHistoryHome.aspx?lId=3812&Opt=0&AllID=8966>

⁵¹ A notice offering the operator the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

⁵² Registered under Article 6 of Regulation (EC) 852/2004

The Welsh Government's guidance (paragraph 2.3) for food authorities on the Food Hygiene Rating (Wales) Act 2013 and the Food Hygiene Rating (Wales) Regulations 2013 provides advice in this area⁵³:

2.3 Mobile traders

Mobile food units (both retail and catering units), market stalls and occasional markets that are registered or approved by a FA in Wales are included and should, therefore, be rated unless they meet the criteria making them exempt. It is the responsibility of the 'registering authority' to determine the food hygiene ratings of these establishments and publish them at food.gov.uk/ratings, to deal with appeals against ratings, to deal with requests for re-rating inspections and to deal with requests to publish a 'right to reply'. There will be a need for FAs to liaise closely on these issues. In cases where the establishment operates only within the area in which it is registered this is straightforward. In other cases, the 'registering authority' must take account of information supplied to it by 'inspecting authorities', who may be based outside of Wales, in determining the rating.

3.14 Clause 14: Review of operation of Act

Clause 14(1) requires DCs to keep the operation of the Bill in its area under review and provide the FSA with information as requested to inform the review described in Clause 14(2).

Clause 14(2) requires the FSA to carry out a review of the operation of the Bill within three years of its commencement. The review must consider (Clause 14(3)) whether the appeal process (Clause 3) is operating satisfactorily; whether there should be a limit on the number of re-ratings that can be requested (Clause 4); whether time periods specified in the Bill are adequate and whether the fixed penalty procedure (Clauses 10/11) is operating satisfactorily.

Clause 14(4) also provides for the FSA to carry out subsequent reviews as and when it considers appropriate and prepare and send a report to the DHSSPS (14(5)). The DHSSPS must publish the report (14(7)) and then may (by order) amend the Act to implement recommendations from the FSA (14(8)).

With regard to a review of the statutory FHRS in Wales, Section 14(1)(d) and (e) are particularly relevant as the FSA (Wales) must⁵⁴:

(d) at the end of the period of 1 year beginning with the commencement of the scheme, and each subsequent period of 1 year, conduct a review of the operation of the appeals system established under section 5 during that period;

⁵³ Personal Email Communication with FSA (Wales), Team Leader, Local Authority Delivery and Support, 11/11/14

⁵⁴ As above

(e) at the end of the period of 1 year beginning with the commencement of the scheme, and each subsequent period of 3 years, otherwise review the implementation and operation of the food hygiene rating scheme established under this Act during that period.

3.15 Clause 15: Guidance

Clause 15 requires DCs to have regard to guidance issued by the DHSSPS and the FSA, in exercising functions under the Bill.

3.16 Clause 16: Interpretation

Clause 16 contains definitions of terms used in the Bill and ensures that definitions of EU Regulations are transferred to this Bill.

3.17 Clause 17: Transitional provision

Clause 17 allows the DHSSPS to make, by order, transitional or saving provisions in connection with the commencement of a provision of the Bill. In particular the order may provide for ratings assessed prior to the commencement of the legislation to be treated as the establishment's food hygiene rating, until a new rating is prepared under the legislation (17(2)).

3.18 Clause 18: Regulations and orders

Clause 18 contains general provisions for making regulations and orders under the Bill:

- 18(2) - Regulations are to be subject to negative resolution,⁵⁵
- 18(3) - Orders are to be subject to negative resolution, except as provided by 18(4), which are to be approved by a resolution of the Assembly:
 - Power to amend the definition of “food business establishment”;
 - Power to provide for a person other than a DC to hear appeals;
 - Power to amend the Act in light of review by the FSA;
 - Power to specify level of fixed penalty; and
 - 18(3) does not apply to an order under Clause 20 (commencement).

Also see Table 1 for full summary of subordinate legislation in the Bill.

3.19 Clause 19: Crown application

Clause 19 states that the Crown is bound by the provisions of the Bill to the full extent authorised or permitted by the constitutional laws of NI.

⁵⁵ Meaning that they will become law after a period (usually 30 days when the Assembly is sitting) unless the Assembly passes a resolution to annul them

3.20 Clause 20: Short title and commencement

Clauses 16 to 19 and 20 come into operation on the day after Royal Assent and the other provisions come into operation on such day as the DHSSPS may, by order, appoint (different days may be appointed for different purposes).

3.21 Schedule

The schedule sets down provisions for a fixed penalty notice scheme. A fixed penalty notice must:

- State the alleged offence;
- Give reasonable information about the offence;
- The amount of the penalty and the period for its payment;
- Consequences of non-payment;
- Person and address to whom payment may be made (the relevant DC), the method of payment; and person and address to whom representations relating to the offence may be made (the DC); and
- Inform the person to whom it is given of the person's right to be tried for the alleged offence and explanation as to how that right may be exercised.

The DHSSPS will by order specify the level of the fixed penalty and a 25% discount for early repayment within the first 14 days of the 28 day period allowed for payment is proposed. Any sums received by DCs will have to be applied for the purposes of the legislation.

If the person to whom a fixed penalty notice is given asks to be tried for the alleged offence then proceedings may be brought against that person. If the fixed penalty is paid before the end of the payment period no proceedings may be brought.

A DC, having received representations made by, or on behalf of, the recipient of a fixed penalty notice, must decide whether to withdraw the notice.

The DHSSPS may by regulations provide that a fixed penalty notice is not given in specified circumstances; provide for the form of the fixed penalty notice; provide for the method of payment; amend the Schedule so that a DC may use money received for specified purposes; and provide for keeping of accounts in relation to the fixed penalties scheme.

Section 10 of the Welsh Act provides for Welsh Ministers, by regulations, to make provision about the promotion of a food business establishment's food hygiene rating by the operator (or by someone acting on the operator's behalf), for example electronic publishing of the rating or publicising the rating in material promoting the food provided by the establishment.⁵⁶

⁵⁶ Food Hygiene Rating (Wales) Act 2013, Section 10, <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

4 Summary of Subordinate Legislation in the Bill

As has been highlighted in the Clause by Clause analysis in Section 3 of this paper, the Bill contains the power to make subordinate legislation. Table 1 below summarises in relation to each provision:

- The person upon whom, or the body upon which, the power is conferred;
- The form in which the power is to be exercised;
- The proposed procedure; and
- The likely reason for the procedure.

Table 1: Summary of Subordinate Legislation in the Bill

| Clause | Power Conferred on | Form | Proposed Procedure | Reason for Power |
|------------------------|---------------------------|-------------|---------------------------------------|---|
| Clause 1 (6) | DHSSPS | Regulations | Negative Resolution | To specify categories of 'food business establishments' that need not be inspected and have a food hygiene rating |
| Clause 1 (7) | DHSSPS | Order | Approved by Resolution of NI Assembly | To amend the definition of 'food business establishment' |
| Clause 2 (2)(h) | DHSSPS | Regulations | Negative Resolution | To amend the list of information that must be included in the notification provided to the operator of a food business following an inspection for a rating |
| Clause 2 (6) | DHSSPS | Regulations | Negative Resolution | To prescribe the form of rating sticker to be provided to the food business |
| Clause 3 (10) | DHSSPS | Order | Approved by Resolution of NI Assembly | To provide for an appeal to be undertaken by a person other than the DC which produced the rating in question |
| Clause 4 (4)(h) | DHSSPS | Regulations | Negative Resolution | To amend the list of information that must be included in the notification provided to the food business operator following an inspection for a re-rating |

| Clause | Power Conferred on | Form | Proposed Procedure | Reason for Power |
|-----------------------|--------------------|-------------|---|---|
| Clause 4(5)(c) | DHSSPS | Order | Negative Resolution | To set fee for re-rating |
| Clause 12 (2) | DHSSPS | Regulations | Negative Resolution | To provide for the information that DCs must provide to new food businesses |
| Clause 13 (1) | DHSSPS | Regulations | Negative Resolution | To make provision for DCs to transfer inspection and rating functions for mobile food businesses to another DC |
| Clause 14 | DHSSPS | Order | Approved by Resolution of NI Assembly | To allow the DHSSPS to amend the Act following a review of the operation of the Act by the FSA |
| Clause 17 (1) | DHSSPS | Order | Negative Resolution | To allow the DHSSPS to make a transitional or saving provision in connection with the commencement of a provision of this Act |
| Clause 20 (3) | DHSSPS | Order | No procedure (normal for commencement orders) | Aside from Clauses 16-19 and 20, the other provisions come into operation on such a date as the DHSSPS may appoint by order |
| Schedule (4) | DHSSPS | Order | Approved by Resolution of NI Assembly | The amount of the fixed penalty will be specified by order |
| Schedule (14) | DHSSPS | Regulations | Negative Resolution | To provide for the detail of fixed penalty notices |

Note: The Welsh Act contains no orders, aside from the commencement order, and the regulations are a mixture of negative resolution and affirmative resolution, unlike the proposals for NI, where the regulations are *all* proposed under the negative resolution procedure. It may be necessary to consider if the negative resolution process is suitable for all the regulations, for example, Clause 1(6) provides for the DHSSPS to make regulations to expand or reduce the categories of food establishments that must be inspected and have a food hygiene rating.

5. Consultation Views from Northern Ireland

In February 2013 the FSA in NI launched a public consultation to assess the impact of mandatory display of food hygiene ratings in NI, which ran from 4th February to 26th April 2013 and the key findings are outlined below in Section 6.1.

There were a total of 29 responses to the consultations broken down as follows:

District Councils 10; Trade Associations 5; Individuals 5; Food Businesses 3; Enforcement Representative Bodies 2; Consumer Representative Bodies 2; Advisory Groups 1 and NGO 1.

Overall, the majority of respondents were in favour of mandatory local authority participation within a statutory scheme in NI to ensure consistency of approach for consumers and food businesses alike. Three DCs and one trade association favoured the statutory scheme being delivered through voluntary participation as at the time of the consultation 25 of the 26 DCs were already participating in the voluntary scheme.⁵⁷

It is known that small/micro food businesses and consumers do not typically engage with the formal consultation process, so the FSA gathered additional information from these groups through an independently conducted Citizens Forum research programme, including four consumer workshops across NI and 37 face to face interviews with small and micro businesses.⁵⁸ These findings are summarised in Section 6.2 below.

5.1 Key Issues from public consultation process

5.1.1 Carry forward of ratings

The majority of respondents expressed a preference for ratings issued under the voluntary scheme to be carried forward to the proposed statutory scheme. Should the statutory scheme be agreed, businesses will be notified of their rating under the scheme and will be given the opportunity at that stage to avail of the safeguards, including: an appeal, re-rating inspection, and right to reply.⁵⁹

5.1.2 Appeal process

There was general support for the appeals mechanism but a longer period to consider lodging an appeal was requested. The Bill now reflects that, with 21 days allowed as opposed to the originally proposed 14 days. There were some concerns expressed including the inflexibility of the appeal needing to be made in writing as opposed to by

⁵⁷ Mandatory Display of Food Hygiene Ratings in Northern Ireland, Consultation Report 2013, FSA, page 12

⁵⁸ Citizen's Forum: Mandatory Display of FHRS, TNS BMRB, February 2013, Executive Summary

⁵⁹ Mandatory Display of Food Hygiene Ratings in Northern Ireland, Consultation Report 2013, FSA, page 14

phone and the need for independent scrutiny of the appeals process, including potentially third party external assessment.⁶⁰

5.1.3 Display of ratings and verbally informing customers

Twenty-one of 28 respondents supported mandatory display of ratings. Four trade associations and one food business were against this. Some did not believe there was sufficient evidence to justify making the mandatory scheme and display of ratings. The FSA believe that the evidence is there as figures show that 43% of businesses do not to display their rating and this figure rises to 87% of businesses with a low rating of 0, 1 or 2.⁶¹

Issues were raised regarding:

- Whether or not regulations should prescribe the positioning of the rating sticker;
- The challenges that existed for certain businesses for example, outlets at food courts in shopping malls, market stalls, outlets with multiple entrances; and
- How internet on-line sales would be captured within the proposals.

The FSA noted that the suggestions for further consideration in secondary legislation, particularly the issue of internet sales, would need further work with stakeholders.⁶²

The majority of respondents agreed in principle with the need to provide the rating verbally as an important provision for visually impaired consumers and those ordering by telephone. Practical issues regarding businesses with large staff numbers and/or high turnover were raised and that enforcement would be difficult.⁶³

5.1.4 Re-rating

A majority of respondents thought that food businesses should pay for requested re-rating inspections in advance, but views from the industry were mixed with some believing that businesses should not bear the cost of re-rating and others highlighting that three to six month period before re-rating was carried out was too long. This has now been changed in the Bill and a re-rating inspection should be carried out within three months of it being requested (in line with the Welsh scheme).⁶⁴

The majority of respondents agreed that a single fee for a re-rating inspection should be set for NI but a number suggested a set of banded fees according to business size/turnover etc. The Bill proposes a single fee to be worked out in secondary legislation, with stakeholders to agree the detail of this cost.⁶⁵

⁶⁰ Mandatory Display of Food Hygiene Ratings in Northern Ireland, Consultation Report 2013, FSA, page 16

⁶¹ As above, page 19

⁶² As above, page 21

⁶³ As above, page 23

⁶⁴ As above, page 26

⁶⁵ As above, page 29

5.1.5 Review of Scheme

Of the 22 respondents to the question around review of the scheme, 13 agreed that the local authority should periodically review the scheme. Of the nine who did not agree, six were DCs and one was an enforcement representative body suggested there were already sufficient requirements within Food Law Enforcement and the FHRS Brand Standard on local authorities to do this without additional law. However, the FSA propose that such reviews do take place within the statutory scheme.⁶⁶

5.1.6 Offences and Penalties

The majority of the 24 respondents to this question agreed with the proposed penalties. However, it was noted that offences committed fraudulently should be treated more seriously and that offences should relate to misuse of the rating more widely than just the sticker, as the rating may be misused in other forms, for example, in posters, publicity etc. The majority of respondents agreed that fixed penalty notices were appropriate but industry respondents expressed concern that fixed penalty notices would not be used proportionately.⁶⁷

The FSA noted Industry's concerns over the use of fixed penalty notices and propose to produce guidance on enforcement more widely, taking into consideration the overall graduated enforcement approach and to consider deliberate fraudulent display by a food business and persistent offenders.

5.2 Views of consumers and small/micro food businesses⁶⁸

5.2.1 Views of consumers

- Recognition of FHRS was good in NI, reflecting findings from previous forums where research across the UK suggested that consumers in NI had higher recognition of the scheme than in England and Wales;
- Recognition of FHRS is not necessarily translating into understanding of how the scheme works and this, combined with people currently only seeing relatively high ratings, means that the scheme is not typically used as a way to differentiate between food businesses;
- Despite recognition of the scheme, consumers did not notice when FHRS was not displayed, even when prompted to look for the rating during an observation exercise;
- As noted in previous forums, consumers were strongly in favour of making the display of FHRS ratings mandatory in NI - believing this would increase visibility of

⁶⁶ Mandatory Display of Food Hygiene Ratings in Northern Ireland, Consultation Report 2013, FSA, page 31,

⁶⁷ As above, page 34

⁶⁸ Citizen's Forum: Mandatory Display of FHRS, TNS BMRB, February 2013,

the scheme and therefore the consumer expectation of seeing the ratings and being able to react to low ratings.

- It was widely believed that all local authorities in NI should be required to participate if the scheme is put on a statutory footing to provide a level playing field between food outlets;
- Consumers generally struggled to understand the concept of re-rating inspections and appeals, although agreed that safeguards should be in place for businesses wish to improve their rating and that businesses should pay for re-rating inspections;
- Consumers were generally supportive of fines as a way to enforce businesses to display their FHRS sticker in a prominent position; and
- Consumers felt that in order for a statutory scheme to be effective, the FSA should launch a public information campaign to prevent people misunderstanding the ratings.

5.2.2 Views of small/micro businesses

- The views of small/micro businesses about the proposals for a mandatory display scheme were influenced by their experiences of the current scheme and their current ratings were a key indicator for support of the scheme, with businesses who received a rating of three and below being more critical;
- There were two factors that affected support among both high and low rated businesses:
 - Whether the scheme was of practical use to them; and
 - Whether they felt it had been implemented fairly (concerns about fairness related to whether the inspection process was deemed to reliable and the consistency of officers' judgements in implementing the scheme.
- Businesses generally felt a mandatory scheme would be a step in the right direction to help restore public trust in the food industry, however, where businesses had low confidence and/or low ratings, they were less likely to support the proposals;
- Businesses were in favour of mandatory participation to ensure uniform implementation across NI; and
- Penalties for failure to display were broadly accepted, but with the caveat that this should not unfairly penalise small businesses. A similar view was expressed in relation to revisits, whereby charges should be proportionate to avoid disadvantaging small businesses.

Appendix 1 – Food Hygiene Ratings Schemes in Other Countries⁶⁹

Table 1: Food Hygiene Information Schemes operating in other countries

Los Angeles Grade Card Scheme

Operated since 1997, this requires display at premises of hygiene 'grade card' - A, B, or C - or a score card for those not scoring high enough for a letter grade.

The introduction of the scheme was followed by a 13.1% decrease in foodborne illness related hospitalisations and this has subsequently been maintained.

Analysis controlled for the main factors influencing foodborne disease incidence, so that the decrease should only reflect the effect of the hygiene rating scheme.⁷⁰

Before grade cards, changes in restaurant hygiene quality had no impact on restaurant revenue, but after the scheme was in place, the revenue of restaurants that received an A grade increased by 5.7% relative to revenue when there were no grade cards. B grade restaurants saw a revenue increase of 0.7% but C grade restaurants saw a decrease of 1%.

Toronto DineSafe scheme

Introduced in 2001 and businesses are required to display certificates with food safety inspection results - 'pass', 'conditional pass' or 'closed' – in an obvious place.

DineSafe resulted in a significant increase in compliance levels and this coincided with a significant decline in the annual number of cases of foodborne illness in Toronto - it is reasonable to suggest that the scheme played a role in this.⁷¹

Denmark Smiley Scheme

This was introduced in Denmark in 2001 – Businesses must display their latest smiley - one of four (big smile, small smile, straight face, and frown).

The Danish Veterinary and Food Administration claim 100% consumer awareness of the scheme and a 23.7% increase in the number of businesses with the top smiley in 2002.⁷²

New York restaurant letter grading

This mandatory programme started in July 2010.

Preliminary results from the first six months of letter grading suggest that restaurants are taking actions to improve their food safety practice.⁷³

⁶⁹ Table extracted from Mandatory display of food hygiene ratings in Northern Ireland, Regulatory Impact Assessment, Summary Intervention and Options, page 10, 28/01/13, Food Standards Agency, <http://www.food.gov.uk/sites/default/files/multimedia/pdfs/consultation/mandfhrs-ni-impact.pdf>

⁷⁰ Simon et al. (2005). Impact of Restaurant Hygiene Grade Cards on Foodborne-Disease Hospitalisations in Los Angeles County. *Journal of Environmental Health*, 67(7), 32-36.

⁷¹ Foodborne illness in Toronto, April 2009 (http://www.toronto.ca/health/moh/pdf/staffreport_april15_2009.pdf)

⁷² Smileys keep food safety high in Denmark – see <http://www.findsmiley.dk/en-US/Forside.htm>. Ministry of Food, Agriculture and Fisheries, Danish Veterinary and Food Administration. May 2011.

⁷³ Farley, T. New York City Department Health & Mental Hygiene (2011) *Restaurant letter grading: the first six months* available at <http://www.nyc.gov/html/doh/downloads/pdf/rii/restaurant-grading-6-month-report.pdf>

Appendix 2 Financial Implications, Costs and Benefits

The Explanatory and Financial Memorandum highlights that the Bill will not have *significant* financial implications.

The Regulatory Impact Assessment (RIA) outlines in more detail what the actual costs are likely to be for businesses, local authorities and the FSA, and also the benefits to businesses, local authorities and consumers. A summary of the issues in the RIA are included below.

The total cost of the proposals is estimated in the Regulatory Impact Assessment as £624,908 (PV over ten years) and total benefits are £7,751,729 (PV over ten years). This generates a net benefit of £7,126,820 (NPV over ten years).⁷⁴

In Wales, most witnesses welcomed the proposals for local authorities to implement cost recovery in terms of revisits and the FSA (Wales) were content with the financial implications. The Committee for Health and Social Care in Wales were “*satisfied that any financial implications have been adequately addressed*”. The figures provided for Wales were:⁷⁵

In the first year of the scheme, the estimated cost is £475,350. That includes £225,000 for food businesses requesting re-rating inspections, £101,000 for the FSA to cover marketing and the provision of stickers, £10,000 for the training of local authority enforcement officers, and £139,350 for local authorities’ communication with food businesses, the consideration of appeals, and the enforcement of the scheme.

1. Business costs⁷⁶

Familiarisation - The RIA highlights that there will be minimal costs for businesses to familiarise themselves with the new statutory scheme and to disseminate this information to their staff. Based on the total number of businesses in the sector in NI (16,000), the RIA estimates a total one-off familiarisation cost of £208,800.

Administrative costs associated with appeals, re-rating inspection and ‘right to reply’ – Greater promotion of the scheme and increased consumer awareness could lead to an increase in the number of businesses appealing against the rating given, requesting re-rating inspections and submitting a “right to reply”. Under the proposals any costs for revisits that local authorities incur (see 5.2 below) are recharged to businesses. This is estimated at a total cost over 10 years of £420,494 (£56,066 for the first five years and then £28,033 for the next five years).

⁷⁴ PV - PV is the current worth of a future sum of money or stream of cash flows given a specified rate of return, http://www.iit.edu/arc/workshops/pdfs/NPV_calculation.pdf

⁷⁵ Food Hygiene Rating (Wales) Bill Stage 1 Committee Report, October 2012, paragraphs 175 - 185, <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=3812&Opt=0&AIID=8966>

⁷⁶ Mandatory display of food hygiene ratings in Northern Ireland, Regulatory Impact Assessment, Summary Intervention and Options, pages 21-22, 28/01/13, Food Standards Agency

Transfer in revenue as a result of mandatory display - It is anticipated that this will increase consumer confidence in the market and help stimulate more competition in the sector. This may lead to a transfer in revenue to businesses with the top rating from those that have lower ratings.

Penalty notices served for failure to display a rating - It is envisaged that local authorities would be able to issue penalty notices for failure to do display the rating awarded. It is assumed that businesses would be compliant until there is data to suggest otherwise; therefore this cost has not been monetised in the RIA.

2. Local authority costs⁷⁷

Familiarisation - The introduction of a statutory scheme means that all food officers in NI would need to be aware of changes from the current voluntary scheme. Based on the number of 83 full time equivalent Environmental Health Officers posts in NI in relation to food safety, a total cost of familiarisation to enforcement of £849 is estimated.

Informing food businesses - It is envisaged that there will be an administrative one-off cost to local authorities in writing to businesses to inform them about a statutory scheme and providing each with a new sticker (the cost of the stickers would fall to the FSA). This results in a total cost of informing businesses of £28,160.

Administrative costs associated with appeals, re-rating inspections and 'right to reply' -

It is anticipated that the expected increase in the number of appeals, requested re-rating inspections and "right to reply" submissions would increase costs to local authorities. It is assumed for the purposes of costing that a statutory FHRS will result in a 200% increase in the number of appeals, meaning that councils would have to deal with another 40 appeals per annum. It is further assumed that after five years this increase will level off by 50% to 20 appeals per annum. It is estimated that this will result in a total per annum cost of £1,023 for the first five years and £512 for the last five years.

Handling and undertaking requested re-rating inspections - It is assumed that a statutory FHRS will lead to a 200% increase in the number of re-rating inspections requested, this means that councils in NI would have to carry out another 1096 re-rating inspections per annum. It is further assumed that after five years this increase will level off by 50% to 548 re-rating inspections per annum. It is estimated that this will generate a total per annum cost of £56,060 for the first five years and £28,030 for the second five years. **These costs are to be recouped from businesses.**

Handling 'right to reply' submissions - It is assumed that a statutory FHRS would lead to a 200% increase in the number of businesses exercising this right; this means that councils would need to handle an additional 64 submissions per annum. It is further

⁷⁷ Mandatory display of food hygiene ratings in Northern Ireland, Regulatory Impact Assessment, Summary Intervention and Options, pages 23-24, 28/01/13, Food Standards Agency

assumed that after five years this increase will level off by 50% to 32 submissions per annum. It is estimated that this will generate a total per annum cost of £655 for the first five years, and £327 for the second five years.

Compensation - It is anticipated that compensation claims would increase but the RIA has not monetised this potential cost due to a lack of evidence.

Monitoring compliance - It is envisaged that monitoring by DCs could be carried out during routine duties. The cost of monitoring is therefore considered to be minimal. In cases of non-compliance, DCs would need to take enforcement action against those businesses that fail to display their ratings. However, impact assessments assume 100% compliance with the regulatory requirement unless there is evidence to the contrary and the RIA has therefore not monetised this potential cost.

3. FSA costs⁷⁸

Increased levels of enquiries - It is anticipated that the FSA would be required to handle an increased level of enquiries about the scheme from businesses and consumers. The FSA staff estimates that this will result in a total one off cost in year one of the policy of £1,258.

Marketing and promotion of the scheme – No additional costs of promotion of the scheme compared to the current scheme for the FSA are envisaged.

Informing food businesses – The RIA anticipates that new stickers would need to be provided to each business when a statutory scheme is introduced, which results in a total one-off cost of stickers of £2,400 to the FSA.

4. Benefits to food businesses⁷⁹

Reduced burden of enforcement - mandatory display of ratings would strengthen the incentive for businesses to improve and maintain standards and in turn, this provides a basis for earned recognition with fewer inspections for compliant businesses. FSA modelling based on the Los Angeles County scheme (see Appendix 1) indicates that a one percentage point increase in the level of broad compliance could lead to 94 fewer inspections per annum as a conservative estimate, as there will be other businesses moving beyond broad compliance to full compliance.

Fewer inspections represent a cost saving to business as time can be allocated to business activities rather than inspections. Over 10 years, it is estimated that this generates a total time saving per annum to industry of £5,076 during the first five years and a time saving of £2,538 per annum during five last years.

Growing of market - making the display of ratings mandatory could increase consumer awareness of food hygiene practises in food establishments. It is envisaged that this

⁷⁸ Mandatory display of food hygiene ratings in Northern Ireland, Regulatory Impact Assessment, Summary Intervention and Options, pages 25-26, 28/01/13, Food Standards Agency

⁷⁹ As above, page 26

may have the effect of growing the market by increasing consumer's confidence in the food industry and encouraging those who did not eat out of the home to do so. This is a potential benefit that the RIA has been unable to monetise.

5. Benefits to local authorities⁸⁰

Efficiency gains from resource allocation - If mandatory display leads to improved business compliance with food hygiene law, this could lead to a reduction in the number of inspections that local authorities need to carry out. This may generate efficiency gains (difficult to monetise) if local authorities are able to reallocate resources to other areas of food safety concern.

Benefits to Consumers - If mandatory display of ratings increases awareness, consumers would realise a benefit in terms of being better able to make informed choices about food they buy and eat outside of the home.

Wider benefits - If mandatory display leads to a reduction in the number of cases of foodborne illness, there could be a benefit from a reduction in costs to the health service associated with such illness. Empirical evidence from the Los Angeles hygiene quality grade scheme (see Appendix 1) showed that mandatory disclosure of hygiene grade cards resulted in an average increase in inspection scores of 5.3% and a statistically significant decrease of 20% in related hospitalisations.

In order to calculate an estimate of the benefits from a reduction in foodborne illness for NI, the RIA makes the assumption that the introduction of a statutory scheme would result in a 1% decrease in cases of foodborne illness. This would reduce the number of cases of foodborne illness in NI to approximately 47,800 cases (a reduction of 500 cases), with a corresponding reduction in costs of £896,643.

6. FSA Response to Consultation

Responses to the Regulatory Impact Assessment part of the consultation process led to the FSA proposing to reconsider the following costs:

- The familiarisation cost for local authorities contained in the Regulatory Impact Assessment is based on 30 minute officer familiarisation time. The FSA notes that as a result of consultation responses this is likely to be under-estimated and has proposed re-adjusting the costs using a one hour 30 minute period; and
- The number of re-rating inspections are likely to be under-estimated and the FSA has proposed re-adjusting these costs for the first year, based on a 500% increase (rather than a 200% increase). This increase also takes consideration of additional re-rating inspections that might be requested in advance and as a result of a statutory scheme coming into operation.

⁸⁰ Mandatory display of food hygiene ratings in Northern Ireland, Regulatory Impact Assessment, Summary Intervention and Options, page 27, 28/01/13, Food Standards Agency

ⁱ Community legislation covers all stages of the production, processing, distribution and placing on the market of food intended for human consumption. 'Placing on the market' means the holding of food for the purpose of sale, including offering for sale, or any other form of transfer, whether free of charge or not, and the sale, distribution and other forms of transfer themselves.

The new hygiene rules were adopted in April 2004 by the European Parliament and the Council. They became applicable on 1 January 2006. They are provided for in the following key acts :

- Regulation (EC) 852/2004 on the hygiene of foodstuffs, 29 April 2004
- Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin, 29 April 2004
- Regulation (EC) 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption, 29 April 2004
- Directive 2004/41/EC repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC, 21 April 2004

The hygiene rules take particular account of the following principles:

- Primary responsibility for food safety borne by the food business operator;
- Food safety ensured throughout the food chain, starting with primary production;
- General implementation of procedures based on the HACCP principles;
- Application of basic common hygiene requirements, possibly further specified for certain categories of food;
- Registration or approval for certain food establishments;
- Development of guides to good practice for hygiene or for the application of HACCP principles as a valuable instrument to aid food business operators at all levels of the food chain to comply with the new rules; and
- Flexibility provided for food produced in remote areas (high mountains, remote island) and for traditional production and methods.

Source: European Commission, Health and Consumers, Food,

http://ec.europa.eu/food/food/biosafety/hygienelegislation/comm_rules_en.htm