

Food Hygiene Rating Bill – Submission of Evidence to the Committee for Health, Social Services and Public Safety by The Co-operative Food

The Belfast Co-operative Society was founded by 200 individuals with a store on the Shankill Road in 1889. The enlarged Northern Ireland Co-operative Society now has almost 93,000 members and is part of The Co-operative Group.

The Co-operative Group now operates 32 food stores in the heart of local communities across Northern Ireland under the name of The Co-operative Food. The last year has seen the member-owned retailer invest around £3m in refitting and re-launching seven of its Northern Irish stores in Belfast, Bangor, Lisburn, Glengormley, Ballycastle and Castlederg. More makeovers are planned during 2015.

These stores offer shoppers a wide selection of fresh and chilled products, in-store bakeries and the premium Truly Irresistible range. They are served by a warehouse in Carrickfergus. We are therefore very interested in the progress of the Food Hygiene Rating Bill. We responded to the 2013 Food Standards Agency consultation. Since that time we have experienced first hand the introduction of a mandatory ratings scheme in Wales. We wish to share the benefits of our experience in Wales to ensure that, should Northern Ireland introduce a mandatory ratings scheme, it minimises any overly-onerous requirements upon food retailers while still safeguarding an effective scheme that can be easily understood by consumers.

Section 1 – Food hygiene rating

1 (1) as drafted requires a district council to rate the food hygiene standards of a food business establishment “Where... [it] has carried out an inspection”. However there is no specific requirement for the district council to conduct any inspections of food business establishments. In general we favour systems in which inspections are only carried out as a result of an evaluation of risk from an establishment. However, if district councils do not inspect all food business establishments this will mean that not all food business establishments will have a food hygiene rating to display. This is likely to confuse or – at worst – mislead consumers.

Recommendation 1

Insert wording requiring district councils to carry out inspections of all food business establishments in advance of the coming into operation of Sections 2 (5), 7 and 8. We would suggest that the Committee considers the merits of introducing wording along the lines of the following from the Food Hygiene Rating (Wales) Act 2013:

(1)A food authority must prepare, and keep under review, a programme which sets out—

(a)whether a food business establishment in its area must be inspected, and

(b)if an inspection is required, the frequency of inspections.

(2)A food authority must inspect food business establishments in its area in accordance with the programme.

1 (2) states that “the district council need not prepare a rating if it considers that it is not necessary to do so, in light of how long it is since it last did so.” However, we anticipate that district councils would only conduct a new inspection of a food business establishment within a short time of the previous inspection in one of two scenarios:

- A re-rating is requested by the operator under Section 4. In these instances 4 (4) requires that the district council must supply a new rating and therefore 1 (2) would not be relevant

- There is sufficient evidence of food hygiene-related risk in that food business establishment that an inspection is warranted to ensure that there is no possible risk to consumers. If it is judged that there is sufficient risk to the health of consumers from that establishment that a new inspection is warranted we believe that it is absolutely appropriate that a new food hygiene rating is provided as a result of that inspection.

Recommendation 2

Remove Section 1 (2).

1 (5) does not make it clear that any ratings granted must be based upon the national Brand Standard created by the Food Standards Agency. The aim of the Brand Standard is to ensure that where food business establishments are rated under the scheme and where consumers see scheme branding, they can be confident that the local authority is operating the scheme as the Food Standards Agency intends. It is available for all consumers to access on the FSA website here: <http://www.food.gov.uk/sites/default/files/multimedia/pdfs/enforcement/fhrsguidance.pdf>.

Instead 1 (5) merely says that “A reference to carrying out an inspection of a food business establishment is a reference to carrying out an activity in relation to the establishment as part of official controls under Regulation (EC) 882/2004”. The requirement in Section 15 that a district council must also have regard to “guidance issued by the Department” and “guidance issued by the Food Standards Agency” will also be relevant. We disagree with this phrasing. The guidance created by the Food Standards Agency – and in particular the Brand Standard – is paramount. To say otherwise is to allow an element of subjectivity to creep in to the rating process and would mean that a food business establishment with a certain rating in one council area might not actually be directly comparable with one displaying the same rating in a different council area, let alone one elsewhere in the UK.

Section 3 (1) of the Welsh Food Hygiene Rating Act is clearer. It specifies that “a food authority must assess the food hygiene standards of the establishment and produce a rating (a “food hygiene rating”) for that establishment scored against criteria set out by the FSA (the “rating criteria”).” All ratings are made with reference to the FSA Brand Standard, ensuring a consistent set of criteria across all food business establishments, wherever they be located.

Recommendation 3

Make it clear that ratings should be based upon the guidance issued by the Food Standards Agency in their Brand Standard. This will entail replacing the current Section 1 (5) with text similar to that contained within Section 3 (1) of the Food Hygiene Rating (Wales) Act 2013. We would suggest that 1 (5) should read:

Where a food business establishment has been inspected in accordance with this section, a food authority must assess the food hygiene standards of the establishment and produce a rating (a “food hygiene rating”) for that establishment scored against criteria set out by the FSA (the “rating criteria”).

Section 15 should also be removed as a consequence.

Section 2 – Notification and publication

2 (4) states that once the operator of a food business establishment has been informed of the food hygiene rating for that establishment the district council “must inform the Food Standards Agency of the rating”. No timeframe is given within which the Food Standards Agency is to be informed. 2 (5) then states that the Food Standards Agency, “having been informed of a food hygiene rating under subsection (4), must publish the rating on its website”. Again, no timeframe is given for this action to be carried out. From our own experiences we have found that it often takes up to two-and-a-half months for the FSA to update ratings on their website following inspections.

Recommendation 4

Specify the timeframes within which district councils must notify the Food Standards Agency of ratings and the Food Standards Agency must publish that rating on its website. We acknowledge that it would not be appropriate for a district council to inform the Food Standards Agency of any rating before the end of the 21 day appeal period provided for in Section 3. Beyond that we would suggest that it is appropriate for the district council to notify the Food Standards Agency within 14 days and for the FSA to publish the rating on their website within another seven days. The Food Hygiene Rating (Wales) Act 2013 allows, in section 6 (4), no more than 28 days for a food authority to communicate ratings to the FSA. Section 6 (3) then requires the FSA to host the information within seven days of receipt.

Section 3 – Appeal

3 (4) sets a 21 day period for the operator of any food business establishment to register an appeal against the food hygiene rating produced by a district council. This is an increase from the 14 days initially proposed in last year's consultation document. We support this increase.

Section 4 – Request for re-rating

We have major concerns about how long it will take for any re-rating to come into effect.

- 4 (6) states that a request for re-rating cannot be made “before the end of the period within which an appeal against the food hygiene rating in question may be made under section 3”. Section 3 states that this period is “21 days beginning with the day on which the operator receives the notification”.
- 4 (2) states that a district council must, within three months of receiving a request for a re-rating from the owner of a food business establishment, either carry out an inspection or explain to the operator why they do not intend to do so.
- 4 (3) states that the operator of the establishment must then be informed of the new rating within 14 days of carrying out the inspection.

This means that it could take up to 114 days (21 days appeal period plus three months) for a re-rating inspection to take place. It would then be another 14 days (hence 128 days total) before the operator is informed of the results of that inspection. As we outlined above under Section 2 there are then no defined timescales within which any new rating must be provided to the FSA by the district council or hosted by the FSA on their website. This means that even if district councils were given 28 days to inform the FSA (as under the Welsh mandatory scheme) and the FSA were given seven days to upload the results to their website (again, as under the Welsh scheme) a food business operator might not get a re-rating published until over 23 weeks (163 days) after the previous rating was given. Furthermore, there do not appear to be any sanctions built into the scheme should a district council not adhere to these timescales.

Our experience from Wales is that it is very rare that we would seek to appeal a rating – any appeal “may be made only on the ground that the rating does not reflect the food hygiene standards at the establishment at the time of the inspection on which the rating is based” (Section 3 (3)). However we may wish to ask for a re-rating. On more than one occasion the only failing we have had pointed out to us following an inspection was something we were able to correct before the inspection officer had even left the store. When the failing is made good immediately it seems disproportionate to force an operator to live for almost six months with a hygiene rating that is no longer accurate.

Recommendation 5

Remove Section 4 (6) (a). An operator may feel that the rating given did reflect the food hygiene standards at the establishment at the time of the inspection and therefore not want to appeal. However, the operator may wish to make good any failings immediately and then seek a re-rating. Forcing the operator to wait three weeks before seeking a re-rating creates a disincentive to putting right failings immediately. However it would make sense to

retain Section 4 (6) (b) – establishments should not be able to seek a re-rating before the outcome of any appeal they have lodged is determined by the council or abandoned by the operator.

Recommendation 6

Reduce the timeframe within which any requested re-rating inspection must occur (or be dismissed) as laid out in Section 4 (2). We would like to see this reduced to two months following receipt of a re-rating request. We will understand if district councils are adamant that they need three months in which to schedule re-rating inspections, especially if there is anticipated to be a large number of requests for re-ratings when the mandatory scheme goes live.

Recommendation 7

Enforce timescales by introducing a system of sanctions. At present there are timeframes within which district councils “must” carry out actions – in Sections 2 (1), 3 (5), 4 (2), 4 (3) and 12 (2). However, the Bill makes no provision of what occurs should a district council not carry out actions within the permitted time. We believe that the Bill should mention what sanctions are available against the district council in question and whether these would automatically apply or whether the food business operator would have to seek redress.

4 (5) (c) states that any request for re-rating must be accompanied by “a fee of such amount as the Department may by order specify”. This sounds as though there will be a single flat fee that will apply across all district councils in Northern Ireland. We support the introduction of a set fee. We fail to see why costs should differ between district councils. A set fee will encourage councils to work efficiently and within their means. Furthermore this gives greater consistency of approach; this is helpful to retailers who work across council boundaries. It will also be helpful to independent retailers who might otherwise find themselves having to pay more for a re-rating inspection than competitors a street away across the council boundary. Different local charges have the capacity to disadvantage some areas at the expense of others.

Recommendation 8

Specify in 4 (5) (c) that whatever fee may be specified by order by the Department of Health this should be a set fee for all re-rating requests, no matter within which council area the establishment is located.

Section 5 – Right of reply

Section 5 allows the operator of a food business establishment to make written representations on the establishment’s food hygiene rating. 5 (2) gives the district council a range of options to how they deal with these written representations:

it may—

- (a) send them to the Food Standards Agency in the form in which it received them,*
- (b) edit them and send them to the Food Standards Agency in that edited form, or*
- (c) refuse to send them to the Food Standards Agency in any form.*

On what grounds may a district council edit or refuse to send on written representations? Granting district councils the power to edit or refuse these representations undermines the purpose of allowing a right to reply in the first place. The Food Hygiene Rating (Wales) Act 2013 specifies that any representation submitted “must” be forwarded to the FSA. However, under the Welsh legislation the FSA “may” publish these on the website whereas in the Bill in question the FSA “must” publish any representations forwarded across by the district council.

Recommendation 9

Require district councils to forward on any written representations received to the FSA in all instances and require the FSA to publish these representations in all instances. We suggest the following text, based on 11 (3) of the Food Hygiene Rating (Wales) Act 2013 with one change:

A food authority must forward any such comments to the FSA who must publish the comments on their website with the food hygiene rating to which the comments relate.

Section 6 – Validity of rating

According to Section 6 (2) (a) if there is a change of ownership of a food business establishment the existing food hygiene rating ceases to be valid. However, as pointed out under Section 1, there is no requirement for a district council to conduct a new inspection to grant a new food hygiene rating. This could leave a new food business establishment without a rating to display. This could confuse or mislead consumers. For example, The Co-operative Food opened a new store in Hillsborough in November this year. According to the rules set out in Section 6 (2) (a) it would open with no food hygiene rating and would continue to have no food hygiene rating until and unless either the district council conducted an inspection or we as a retailer requested a re-rating (and, under Section 4 (5) (c), paid the specified fee). Alternatively there is a risk that if an establishment was given a poor hygiene rating its operator could transfer ownership (to another family member for example) to avoid displaying the required food hygiene rating sticker or making improvements.

Recommendation 10

Require district councils to conduct initial inspections of any new food business establishments opening in their area within a certain period of it commencing trading. As the only current requirement in the Bill for a food business operator to pay a fee for an inspection is in relation to a request for re-rating (4 (5) (c)) and as this is not a request for re-rating it is logical that this initial inspection should be funded from the district council's budget. We do not wish to be prescriptive about when this initial inspection should take place – it may be before the establishment is allowed to commence trading, it may be within 14 days of registering the establishment or receiving the application for approval to tie in with Section 12 (2), or it may be within the timescales laid out for conducting a re-rating inspection under Section 4 (2) once it has opened for business.

Section 7 – Duty to display rating

Section 7 (1) states that a valid sticker displaying the establishment's food hygiene rating must be displayed "in the location and manner specified by the Department in regulations". We believe that this is the right approach. We would urge the Department to allow flexibility and recognise the number of different types of food business establishment when they come to set these regulations. A good example of flexible, workable guidance would be the Smoke Free (Signs) Regulations (Northern Ireland) 2007 which requires only that a no-smoking sign needs to be "in a prominent position" at the entrance to the establishment.

Recommendation 11

Any regulations published as a result of this legislation should simply require that an establishment's food hygiene rating should be displayed "in a prominent position" at the entrance to the establishment.

By the time any mandatory rating scheme is expected to come into force in 2016 it will have been a long time since some food business establishments were inspected. We have one store which was rated as far back as November 2011. As the previous scheme was voluntary businesses may have decided to not display the sticker sent following inspection; in the intervening period they may have lost or disposed of that sticker. It is not reasonable to require an establishment to display a sticker that was sent to them over four years previously when there was no requirement to display. We believe that should the Bill in its current format become law any of those establishments would be in immediate breach of legislation unless they requested a re-rating inspection (and submitted the required fee from 4 (5) (c)). Even so, they would be in breach until

the district council conducted that re-rating inspection and sent out a new hygiene rating. The Bill as drafted would hence be retrogressive and potentially lay the Northern Ireland Government open to legal proceedings.

Recommendation 12

Prior to the coming into force of the mandatory scheme district councils should reissue ratings stickers detailing the rating given under the voluntary scheme to all existing food business establishments. This would be vital if the Department were to exercise its powers under Section 2 (6) and prescribe a form of sticker different to those which had already been distributed.

Section 12 – Provision of information for new businesses

At present Section 12 (2) merely requires that district councils “provide the person who is or would be the operator of... [any new food business] establishment with such information as the Department may specify in regulations”. It does not require that the new food business establishment is inspected and given a food hygiene rating. As per our Recommendation 10 above, we believe that district councils should be required to conduct an initial inspections of any new food business establishment opening in their area within a certain period of it commencing trading.

Summary of Recommendations

- 1) Insert wording requiring district councils to carry out inspections of all food business establishments in advance of the coming into operation of Sections 2 (5), 7 and 8.
- 2) Remove Section 1 (2).
- 3) Make it clear that ratings should be based upon the guidance issued by the Food Standards Agency in their Brand Standard.
- 4) Specify the timeframes within which district councils must notify the Food Standards Agency of ratings and the Food Standards Agency must publish that rating on its website.
- 5) Remove Section 4 (6) (a).
- 6) Reduce the timeframe within which any requested re-rating inspection must occur (or be dismissed) as laid out in Section 4 (2).
- 7) Enforce timescales by introducing a system of sanctions.
- 8) Specify in 4 (5) (c) that whatever fee may be specified by order by the Department of Health this should be a set fee for all re-rating requests, no matter within which council area the establishment is located.
- 9) Require district councils to forward on any written representations received to the FSA in all instances and require the FSA to publish these representations in all instances.
- 10) Require district councils to conduct initial inspections of any new food business establishments opening in their area within a certain period of it commencing trading.
- 11) Any regulations published as a result of this legislation should simply require that an establishment’s food hygiene rating should be displayed “in a prominent position” at the entrance to the establishment.
- 12) Prior to the coming into force of the mandatory scheme district councils should reissue ratings stickers detailing the rating given under the voluntary scheme to all existing food business establishments.