

Hello Dr Aiken,

Please find attached the Environmental Health views/comments on the Food Hygiene rating Bill from Officers within Dungannon and South Tyrone Borough Council.

Regards

Fiona

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FOOD HYGIENE RATING BILL

CEHOG supports the introduction of the Food Hygiene Bill requiring businesses to display food hygiene ratings and recognises this Bill has the potential to better inform consumers whilst encouraging business to comply with the hygiene requirements.

Some councils have expressed concerns about the detail of the Bill and particularly:

- 1.** The scheme may be resource intensive and if, at some stage in the future, councils consider that the scheme is not making the best use of their limited resources to improve the health and wellbeing of its citizens, they would like an option to opt out. Consultation was carried out with the existing 26 councils and the support for a mandatory scheme may need to be re-assessed in line of the forthcoming Local Government Reform and resultant 11 councils. This scheme locks councils in at a time when FSA focus is increasingly on food standards work, food fraud and health improvement. These concerns are within the context of increasing budgetary stress, the aftermath of the horse meat scandal and the Elliot review. The focus is now shifting from Food Hygiene where compliance levels are high towards Food Standards.
- 2.** Its prescriptive nature in terms of response times for councils and detailed requirements around provision of the service. CEHOG recognises the need for agreed standards but is of the opinion that they should not be absolute legal requirements and are more appropriate in statutory guidance rather than in the Bill itself.

3. Whilst recognising the need for safeguards to protect businesses the appeals and re-rating requirements may be overly protective of businesses awarded poor ratings. This could be to the detriment of the consumer – the main stakeholder.
4. FSA policy to reduce the inspection burden through introducing flexibilities in the intervention requirements contained within the Food Law Code of Practice (FLCOP) and the financial stress councils are facing is likely to result in many food premises not being inspected as often or in the case of lower risk premises being removed from inspection programmes altogether.

CLAUSE 1: FOOD HYGIENE RATING

Clause 1(1)

Where a district council has carried out an inspection of a food business establishment in its district, it must rate the food hygiene standards of the establishment on the basis of that inspection.

Consumers may assume that all premises are subject to a reasonably frequent inspection programme to ensure ratings are periodically updated. This expectation may not be consistent with the FLCOP and FSA policy. The FLCOP encourages the removal of lower risk premises from inspection programmes and alternating between inspections and lighter touch interventions for the majority of other premises in an effort to reduce the regulatory burden on businesses. Therefore significant numbers of premises do not require inspection and most other premises are only required to be inspected every 3 or 4 years. Light touch interventions which may replace inspections would not collect sufficient information to produce a food hygiene rating. Therefore for some premises there is no mechanism to ensure the renewal of their rating and these will, over time, become out dated. Consumers can only expect that most premises have been rated within the previous 3- 4 years.

Clause 1(5)

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

Comments

What constitutes an *inspection* for rating purposes needs to be more clearly defined and consistent with requirements for an *intervention* rating within the FLCOP which states “The intervention rating(s) of a food business should only be revised at the conclusion of an inspection, partial inspection or audit, and in accordance with Annex 5. An officer must have gathered sufficient information to justify revising the intervention rating”.

CLAUSE 2 - Notification & Publication

2(1) Within 14 days of carrying out an inspection of a food business establishment, a district council must, if it has prepared a food hygiene rating for the establishment on the basis of that inspection, notify the rating to the operator the establishment.

(3) The notification must be in writing and accompanied by -

(relevant information as stipulated in a-h).

CEHOG agree that businesses should be notified of their rating in writing within 14 days as is the case under the voluntary scheme. There may be exceptional circumstances where this may not be possible and therefore an absolute legal requirement is not appropriate. CEHOG would suggest that the timeframe be detailed in (statutory) guidance rather than be prescribed in law. CEHOG are of the view that councils should monitor compliance with this requirement under section 14(1) and report performance to the FSA

Furthermore it may not be appropriate for all the information outlined under Clause 2(3) a-h to be provided at the same time, for example some councils may provide information on compliance in writing at the time of inspection and notify the Food Business Operators (FBOs) of their rating at a later time.

2(6) The Department may by regulations prescribe the form of sticker to be provided under subsection (3)(a).

Comments

2(6) As is the case with the voluntary scheme councils should be permitted to apply their own corporate branding to the stickers in addition to the FSA branding. This will reflect the major role the councils have in delivering the scheme and raise awareness that business and consumers should contact their local council if they have any queries. The FSA should cover the total costs of producing the stickers including the council branding as part of their contribution to the scheme.

CLAUSE 3 - Appeal

3(1) The operator of a food business establishment may appeal against the establishment's food hygiene rating.

Comments

CEHOG believe an appeal mechanism is an essential element of the FHRS, although some councils have expressed concerns about the potential resource implications. CEHOG supports clause 14 (3 b) which requires the FSA to review the operation of this section.

CLAUSE 4 – Request for Re-rating

4(2) Within three months of receiving the request, the district council must -

a) inspect the establishment and review the establishment's food hygiene rating on the basis of that inspection

Comment

CEHOG fully supports the provision that businesses may request additional inspections for the purposes of re-rating.

The term *inspection* is used again in this section without definition although section 16 (2) states it is not to be read in accordance with section 1. The term *inspection* for the purposes of re-rating should be clearly defined and consistent with that in the *brand standard* under the voluntary scheme to be *any official control*.

4(2)(a) Under the proposed scheme the maximum period of time between initial inspection and re-rating is just approximately 4 months as opposed to the voluntary scheme which is just approximately 6 months.

Whilst this might be favourable to FBOs it may encourage temporary improvements which would defeat the purpose of the scheme. CEHOG supports clause 14 (3)(c) which requires the FSA to review the operation of this section. This should evaluate fluctuations in compliance rates.

There is currently no limit on the number of revisits that a business owner can request and the payment of fees may favour the larger businesses due to their ability to pay for multiple visits. CEHOG are of the opinion that businesses should only be able to demand one re-rating inspection in any 6 month period. This will help reduce demand on councils whilst allowing business sufficient opportunities for re-rating.

A flat fee for Northern Ireland has been suggested in previous consultation responses to be set at a level to help prioritise only reasonable requests.

4(3) Within 14 days of carrying out an inspection under subsection (2), the council must notify the operator of the establishment of its determination on reviewing the establishment's food hygiene rating

CEHOG would repeat the comments made under clause 2(1) to the effect that timeframes for notification should be stipulated in (statutory) guidance as opposed to legislation. And performance should be closely scrutinised by councils and reported to the FSA under section 14(1).

CLAUSE 6 - Validity of rating

6(1) A food business establishment's food hygiene rating –

- a) becomes valid when it is notified to the operator of the establishment under section 2, 3 or 4 (as the case may be), and**
- b) unless it ceases to be valid as a result of subsection (2), continues to be valid until, where there is a new food hygiene rating for the establishment, the end of the appeal period in relation to that new rating.**

Comments – Offence

Clause (10) Concerns have been raised about implications on the potential council resources to monitor the display and accuracy of stickers on premises. Enforcement may prove to be a lower priority within some councils.

Some councils have concerns that the proposals allow a business to display their old rating until the end of the appeal period. Where a business's compliance has significantly fallen this will mislead the consumer. CEHOG are of the opinion that a business should be required to display the new rating **or** an awaiting rating sticker

until the end of the appeal period. Furthermore councils should be given the power to remove FHRS stickers immediately should there be a significant drop in standards.

There is the potential for a delay in updating a new rating on the website. This may contrast with a more up-to-date rating on display at the premises.

CLAUSE 7 - Duty to display rating

7(1) The operator of a food business establishment must ensure that a valid sticker showing the establishment's food hygiene rating is displayed in the location and manner specified by the Department in regulations for so long as the rating is valid.

Comments

CEHOG is of the view that the sticker should be visible to consumers before they enter the premises so enabling customers to make an informed choice prior to entering.

It will be essential that the requirements of these regulations are clear and supported by guidance sufficient to ensure consistency of enforcement.

CLAUSE 8 - Duty to provide information about rating

8(1) The operator of a food business establishment or a relevant employee at the establishment must, on being requested to do so, orally inform the person making the request of the establishment's food hygiene rating.

Comments

CEHOG welcome this clause whilst recognising it may be difficult to enforce.

CLAUSE 10 & 11

CLAUSE 10 - Offences

10(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

CLAUSE 11 - Fixed Penalty

11(3) The Schedule (which makes further provision about fixed penalties) has effect.

Comments

CEHOG note the fixed penalty amount under the Welsh scheme is set at £200 and consider this an appropriate penalty. CEHOG are of the view a similar penalty is required in NI to provide a suitable deterrent.

CEHOG believe an additional offence should be considered to prevent an establishment making any misleading claims or false advertising with respect to a valid rating. A catch all clause of this nature could cover claims made other than by way of a FHRS sticker.

CLAUSE 12 - Provision of information for new businesses

12-(1) this section applies if an establishment which is or would be a food business establishment-

(a) is registered under article 6 of Regulation (EC) 852/2004 by a district council, or

(b) applies to a district council for approval under Article 4 of Regulation (EC) 853/2004.

(2) the district council must, within 14 days of making the registration or receiving the application, provide the person who is or would be the operator of the establishment with such information as the Department may specify in regulations.

Comments

A key objective of our enforcement and regulatory policy is to support the local economy and in particular to assist businesses in complying with their legal obligations. Councils adopt a range of techniques to do this including provision of seminars for new businesses, operating business advice centres, identifying and providing information to new business prior to their opening etc. CEHOG would encourage the FSA to engage with councils to agree standards or develop guidance on the provision of information for the FHS and CEHOG supports an FSA review of this approach under section 14. However CEHOG is of the opinion that using a legislative instrument to require councils to provide information to all businesses within 14 days of making the registration is not appropriate. Councils should have some flexibility in how they achieve the overall objective, providing information in the most appropriate way.

We agree that councils will want to support businesses particularly new businesses to build compliance and specifying 14 days for information to be forwarded to newly registered businesses should not pose any particular problem for local councils. However it places an additional burden on councils and timeframes should, if required, be contained within guidance.

CLAUSE 13 – Mobile Establishments

13(1) The Department may by regulations make provision for enabling the transfer of the inspection and rating functions of a district council, in so far as they are exercisable in relation to mobile food business establishments registered with the council under Article 6 of Regulation (EC) 852/2004, to another district council.

Comments

Premises would usually be inspected during operating hours rather than at their home address where trading may not take place. It is envisaged that this would require agreements and co-operation between councils.

CLAUSE 14 - Review of operation of Act

14(1) Each district council –

- a) must keep the operation of this Act in its district under review, and**
- b) must provide the Food Standards Agency with such information as it may request for the purpose of carrying out a review under this section.**

Comments

This should give some more detailed direction on the type and extent of review that is expected. Information currently required by FSA should be revised to reflect the additional requirements so as to avoid an additional administrative burden.

Under section 14(2) the FSA must carry out a review of the Act. Considering some of the concerns raised by councils CEHOG welcomes the inclusion of this clause.

14(3) The review must include a consideration of the following matters –

- a) where this Act specifies a period in which something may or must be done, whether that period is adequate for the purpose;**
- b) whether section 3 is operating satisfactorily;**
- c) whether section 4 is operating satisfactorily and, in particular, whether there should be a limit on the number of occasions on which the right to make a request for a re-rating under that section may be exercised.**

FSA 14(3) The review should measure the progress of the statutory scheme in achieving the stated aims and objectives, in particular improving compliance (as

determined by ratings, not re-ratings) and reducing foodborne illness in NI and providing value for money.

The review should estimate the resource burden placed on councils and seek their views as to how successful the scheme has been, considering value for money and where they would like to see the scheme improved.

The review should include consultation with all relevant stakeholders especially consumers.

CLAUSE 15 – Guidance

- 15 In exercising a function under this Act, a district council must have regard to**
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- a) guidance issued by the Department, and**
 - b) guidance issued by the Food Standards Agency.**

Comments

CEHOG consider that guidance should be definitive, clear and timely.

CLAUSE 16 – Interpretation

CEHOG believe this should include definition of inspection for rating and inspection for re-rating.

CLAUSE 17 - Transitional Provision

The Bill allows for the Department to make a transitional provision which would allow councils to use historical data to produce ratings.

CEHOG are of the opinion that historical data should be used to produce ratings for all premises within scope, and CEHOG also supports the introduction of transitional provisions to facilitate this.

There must be a widely advertised campaign for food businesses, covering the whole of Northern Ireland, well in advance of the introduction of mandatory display legislation.

CLAUSE 18 - Regulations and Orders

Councils welcome the option for making regulations and orders under the scheme to permit necessary improvements/amendments following consultation with all stakeholders.

CLAUSE 19 - Crown Application

CEHOG agree that the duty to display should apply to Crown premises.

CLAUSE 20 - Short title and commencement

20(2) CEHOG believe that the timing of enactment date is very important to councils as they are preparing for LGR and transition to larger councils and welcome some space for this reform process to be embedded prior to enactment.