

FERMANAGH DISTRICT COUNCIL

COMMENTS ON THE PROPOSED FOOD HYGIENE RATING BILL

CLAUSE 2: NOTIFICATION AND PUBLICATION

Comments:

Whilst it is within the Brand Standard Guidance that District Councils should notify the Food Business Operator within 14 days of inspection and that generally this is achieved, there is concern that by including this within legislation, this introduces a totally inflexible approach should there be any emergency issues within Councils which would mean this timescale could not be adhered to.

In addition, this mandatory requirement is being introduced at a time when the Food Standard Agency's focus is increasingly on work related to food standards, food fraud and health improvement.

Consideration should be given to removing this requirement from the Bill and addressing it within accompanying Guidance.

The voluntary scheme which Fermanagh District Council introduced four years ago, allows individual District Councils to add their own logo to the sticker. The Bill states that Regulation will prescribe the form of sticker to be provided. This ability for District Councils to add their own logo/crest and name ensured a true partnership between the FSA and individual Councils. The importance for customers in easily recognising the input that their local Council had in the Scheme and in providing an immediate point of contact for any queries they had, should not be underestimated.

In addition, the term 'local authority' is not one which consumers in Northern Ireland easily recognise.

CLAUSE 3: APPEAL

Comments:

The increased length of the appeal period allows a business, whose rating has moved downwards, to display the previous higher rating until any appeal period is up. This can be between 21 and 42 days plus a potential 14 days for notification of the change of rating.

If a line manager checks/signs off a rating prior to issue, does this mean that they cannot be part of the appeal process? If so, this could have implications for the appeal mechanism.

Fermanagh District Council operates an internal procedure that where the rating of a premises moves downwards, there is verification of this by the Senior Officer and other team members. This procedure ensures a consistent approach

and in the four years of operating the voluntary Scheme no appeals have been lodged.

The Bill introduces the payment of a fee by the Food Business Operator requesting the re-rating of a premises but there is no proposed requirement to lodge a fee for an appeal (even if this were to be refundable if the appeal is upheld). It is, therefore, envisaged that businesses will consider the appeal route as their first option.

Section 3(7) – If the operator of the establishment does not permit the District Council to inspect the food business where the Council considers it necessary to do so for the purposes of determining the appeal, how will this affect the appeal process? Consideration should be given to removing the wording “and in so far as the operator of the establishment permits it to do so”?

If the Food Business Operator has requested an appeal there should be an acceptance that the District Council must take all steps necessary to establish that the rating was correct – if this merits re-inspection/visit to the food business that should form part of the process.

What additional measures are envisaged to replace/amend Section 3(10)? Consideration should be given to the implications of Section 3(10) – the ability of the Department to provide for an appeal to be determined by a person other than the District Council which produced the rating. What are the cost implications for another District Council or body to investigate the appeal? Can this be achieved within the given timescale?

Is it realistic for another District Council/external body to hold the necessary information regarding the original inspection? Are there any data protection issues, etc.?

CLAUSE 4: REQUEST FOR RE-RATING

Legislation Proposals:

Comments:

It is difficult to comment further without knowing the proposed fee. However, it is envisaged that the payment of a fee for re-rating will increase the likelihood of businesses opting for appealing the rating. Fermanagh District Council, in a previous consultation, had suggested a set fee across Northern Ireland, England, Scotland and Wales. As the scheme has now become mandatory in Wales and a re-rating fee of £150 has been set nationally, consideration should be given to applying the same re-rating fee in Northern Ireland.

CLAUSE 6 & 7: VALIDITY OF RATING AND DUTY TO DISPLAY THE RATING

Comments:

The sticker should be visible to consumers before they enter the premises, so enabling customers to make an informed choice prior to entering.

It is likely that additional District Council resources will be needed to monitor the display of stickers on premises and the accuracy of those stickers.

CLAUSE 8: DUTY TO PROVIDE INFORMATION ABOUT RATING

Comments:

The proposed legislation refers to a relevant employee which may need further definition in guidance. The Food Business Operator commits an offence if this fails to be provided but this is unlikely to be detected unless through, perhaps, test purchasing or through customer complaints. Both these possibilities would have implications on resources and difficulties with enforcement.

CLAUSE 10 & 11: OFFENCES AND FIXED PENALTY

Comments:

Schedule 4(1) and 4(2) – Is the payment period working days?

Schedule 8 – Where the Food Business Operator has requested that they be tried for the alleged offence and then pay the Fixed Penalty, consideration should be given to allowing the Council to claim any costs already incurred in the preparation of legal proceedings.

As the scheme is now mandatory in Wales and a Fixed Penalty fee of £200 payable within 28 days has been set, reduced to £150 if paid within 14 days, consideration should be given to applying the same penalties in Northern Ireland.

CLAUSE 12: PROVISION OF INFORMATION FOR A NEW BUSINESS

Comments:

Similar comments regarding the inflexibility of a legislative timeframe for the provision of information. This is an unnecessary burden placed on Councils and there is no similar legislation requirement in other legislation.

CLAUSE 14: REVIEW OF OPERATION OF ACT

Comments:

The expectations of what reviews are required by District Councils should be clarified. Information currently requested by the Food Standards Agency should be amended to reflect the proposed details and not to be an additional administrative burden or one which is particularly onerous for Councils.

CLAUSE 17: TRANSITIONAL PROVISION

Comments:

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.