Committee for Health, Social Services and Public Safety

Report on the Food Hygiene Rating Bill (NIA Bill 41/11-16)

Together with the Minutes of Proceedings of the Committee Relating to the Report, Minutes of Evidence, Written Submissions and Other Papers

Ordered by the Committee for Health, Social Services and Public Safety to be printed 29 April 2015

Mandate 2011/16

Third Report - NIA 204/11-16

Membership and Powers

The Committee for Health, Social Services and Public Safety is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1988 and under Standing Order 48.

The Committee has the power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for person and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister for Health, Social Services and Public Safety.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The current membership of the Committee is as follows:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mr Mickey Brady
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Paul Givan
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Fearghal McKinney
Mr George Robinson

With effect from 23 January 2012 Ms Sue Ramsey replaced Ms Michaela Boyle
With effect from 06 February 2012 Ms Sue Ramsey replaced Ms Michelle Gildernew as Chairperson
With effect from 23 April 2012 Mr Conall McDevitt replaced Mr Mark Durkan
With effect from 02 July 2012 Ms Michelle Gildernew was no longer a Member
With effect from 10 September 2012 Ms Maeve McLaughlin was appointed as a Member
With effect from 15 October 2012 Mr Roy Beggs replaced Mr John McCallister
With effect from 04 September 2013 Mr Conall McDevitt was no longer a Member
With effect from 16 September 2013 Mr David McIlveen replaced Ms Paula Bradley
With effect from 16 September 2013 Ms Maeve McLaughlin replaced Ms Sue Ramsey as Chairperson
With effect from 30 September 2013 Mr Fearghal McKinney was appointed as a Member
With effect from 04 July 2014 Mrs Jo-Anne Dobson replaced Mr Samuel Gardiner
With effect from 23 September 2014 Ms Paula Bradley replaced Mr Jim Wells as Deputy Chairperson
With effect from 06 October 2014 Ms Rosaleen McCorley was appointed to the Committee
With effect from 06 October 2014 Mr George Robinson replaced Mr David McIlveen
With effect from 06 October 2014 Mr Michael McGimpsey replaced Mr Roy Beggs
With effect from 01 December 2014 Mr Paul Givan replaced Mr Gordon Dunne

Table of Contents

Report

Executive Summary 1

Introduction 2

Consideration of the Bill 3

Clause by Clause Consideration of the Bill 14

Appendix 1

Minutes of Proceedings 19

Appendix 2

Minutes of Evidence 43

Appendix 3

Written Submissions 145

Appendix 4

Correspondence from the Department and Other Papers 199

Appendix 5

List of Witnesses 255

Executive Summary

The purpose of the Bill is to provide for the operation of a food hygiene scheme in Northern Ireland. The scheme will give consumers information about food hygiene standards in the establishments where they eat out or shop for food. The objective is to enable consumers to make informed choices, which in turn will provide a strong incentive for businesses to comply with existing food hygiene law. Ultimately, the aim is to reduce the incidence of foodborne illness caused by poor hygiene standards.

The evidence from stakeholders was overwhelmingly in favour of the Bill, although a few key issues did emerge.

The first key issue was the display of hygiene ratings on websites through which consumers make food orders. The Bill as drafted requires businesses to display a valid rating sticker, in a location and manner to be specified by the Department in regulations. The Department advised that its intention was that stickers would only be required to be displayed at the physical location of a business. The Committee believed that for transactions which are made online, and therefore customers do not visit the premises or talk to someone over the telephone before placing an order, they should be able to have sight of the business's rating on the website or alternatively be provided with a link to the Food Standards Agency's website (which contains ratings for all food business establishments in Northern Ireland). Given that one of the key stated aims of the Bill is to allow consumers to make an informed choice regarding where they choose to shop for food, the Committee strongly believed that the lack of information in relation to orders made through websites was a significant omission. The Department accepted the Committee's rationale and drafted an amendment to provide for a regulation making power to require businesses supplying food by means of an online facility to ensure that the establishments' food hygiene rating is provided online.

The second issue concerned timescales for the notification and publication of hygiene ratings. As drafted, the Bill did not contain timescales within which councils must inform the Food Standards Agency of a rating and within which the Food Standards Agency must publish the rating online. The Committee was concerned that without specified timescales, the ratings published on the Food Standards Agency website could potentially become significantly out of date. This would be detrimental to businesses which had improved on a previous rating, and also potentially mislead consumers where a rating had either improved or fallen. The Department accepted the Committee's point and drafted a range of amendments to create timescales for notification and publication within the Bill.

The third issue related to the provision for a review of the operation of the legislation within three years of its commencement. The Bill as drafted permitted the Department to amend the Act by secondary legislation to implement recommendations produced by the Food Standards Agency as part of its review of the scheme. The Committee was of the view that this power was too wide-ranging, given that it ultimately provided for any aspect of the scheme to be altered by secondary legislation. As an alternative, the Committee suggested that the Bill be amended to provide for order-making powers to allow the Department to only be able to alter time limits in the legislation following review of the Act. The Department accepted these points and drafted the appropriate amendments.

Introduction

1. The Food Hygiene Rating Bill (NIA 41/11-16) was referred to the Committee in accordance with Standing Order 33 on completion of the Second Stage of the Bill on 11 November 2014.

2. The Minister for Health, Social Services and Public Safety made the following statement under section 9 of the Northern Ireland Act 1998:

   "In my view the Food Hygiene Rating Bill would be within the legislative competence of the Northern Ireland Assembly."

3. The stated purpose of the Bill is to reduce the incidence of food-borne illness by making it mandatory for food businesses to display information to consumers about hygiene standards, based on inspections by district council food safety officers. The mandatory display of food hygiene ratings is intended to provide an impetus for businesses to achieve and maintain compliance with food hygiene law, as well as allowing consumers to make an informed choice regarding where they choose to eat or shop for food.

4. During the period covered by this Report, the Committee considered the Bill and related issues at 12 meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1.

5. At its meeting on 26 November 2014 the Committee agreed a motion to extend the Committee Stage of the Bill to 8 May 2015. The motion to extend was supported by the Assembly on 8 December 2014.

6. The Committee had before it the Food Hygiene Rating Bill (NIA 41/11-16) and the Explanatory and Financial Memorandum that accompanied the Bill. On referral of the Bill the Committee wrote on 12 November 2014 to key stakeholders and inserted public notices in the Belfast Telegraph, Irish News, and News Letter seeking written evidence on the Bill by 12 December 2014.

7. A total of 15 organisations responded to the request for written evidence and a copy of the submissions received by the Committee is included at Appendix 3.

8. Prior to the introduction of the Bill the Committee took evidence from the Food Standards Agency on 23 January 2013 and 5 February 2014. Following the introduction of the Bill the Committee took evidence from:

   a. The Food Standards Agency on 26 November 2014;

   b. The Chief Environmental Health Officers Group on 14 January 2015; and

   c. Pubs of Ulster on 21 January 2015.

9. The Committee discussed the evidence received with the Food Standards Agency on 11 February 2015, 4 March 2015 and 15 April 2015.

10. The Committee carried out its clause by clause scrutiny of the Bill on 22 April 2015. At its meeting on 29 April 2015 the Committee agreed its report on the Bill and that it should be printed.

Consideration of the Bill

Background

11. The Food Hygiene Rating Scheme has been operating in Northern Ireland on a voluntary basis for over two years, providing a simple numerical rating, displayed by way of a sticker placed in a prominent position in the premises of the food business. The scheme also operates in England and Wales, though the Welsh scheme is mandatory.

12. The relevant statistics give reasonable cause for concern, highlighting a surprisingly high number of instances of food-borne illness. On average, there are around 48,500 cases of food-borne illness in Northern Ireland each year, 450 of which result in hospitalisation, and there are up to 20 deaths. There is also an associated cost to the economy of £83 million.

13. Although the voluntary scheme has been deemed generally successful, only 50% of businesses are choosing to display their rating. This figure drops considerably among businesses with lower ratings (zero, one, or two). At the time of a Committee briefing in January 2013, it was 22% for those businesses, and this had further dropped to 13% by the time of a further Committee briefing in February 2014.

14. Therefore, the evidence is clearly showing that a significant number of businesses with lower ratings are not voluntarily choosing to display them. The aim of this Bill is to reduce the incidence of food-borne illness by making it mandatory for food businesses to display information to consumers about hygiene standards, based on inspections by district council food safety officers. The mandatory display of food hygiene ratings is intended to provide an impetus for businesses to achieve and maintain compliance with food hygiene law, as well as allowing consumers to make an informed choice regarding where they choose to eat or shop for food.

15. The Bill will introduce a mandatory display scheme for food business establishments. It also contains provisions for businesses to appeal a rating or to a request a re-rating. Provisions in the Bill will also allow for fixed penalty notices to be issued for a number of offences, including that of failing to display a valid hygiene rating sticker.

16. The Bill has 20 clauses and one Schedule.

Key issues

17. To inform itself of the key issues in relation to the Bill, the Committee took written and oral evidence from a range of stakeholders. It also held a number of oral evidence sessions with Food Standards Agency officials, who provided additional information and clarification on the points raised in the submissions. The negotiations on the major issues regarding the Bill, and their outcome, are detailed below.

Notification and publication – Clause 2

18. Clause 2 sets out the arrangements for councils to notify food business operators of their rating, for councils to notify the Food Standards Agency of ratings, and for the Food Standards Agency to publish ratings on its website.

19. The councils were concerned about the requirement for them to forward certain information to businesses as part of the notification of the rating. Councils made the point that they send some of the information specified in Clause 2(3) well in advance of the notification of the rating, and they wanted the Clause to recognise this. The Food Standards Agency accepted this point and proposed an amendment to Clause 2(3) to allow for some of the information to

be provided at an earlier stage, and the remainder to be provided within the 14 days as part of the notification of the rating. The Committee was content with the Food Standard Agency's rationale and this amendment to Clause 2(3).

20. Food businesses pointed out that the Bill did not contain a timescale within which councils must inform the Food Standards Agency of a rating. Businesses advised that from experience it could take up to two and half months between an inspection and the rating being published on the Food Standards Agency website. For that period, this means that the Food Standards Agency website could be displaying an out of date rating which is either detrimental to a business which has improved its rating, or on the other hand, which is giving a false impression to consumers where a rating has fallen.

21. The Food Standards Agency recognised that this was an issue and proposed an amendment to Clause 2(4) to require councils to inform the Food Standards Agency of a rating with 34 days. The Committee was content with the Food Standard Agency's rationale and this amendment to Clause 2(4).

22. Food businesses also pointed out that the Bill did not contain a timescale within which the Food Standards Agency must publish a rating on its website. Again the Food Standards Agency recognised that this was an issue and proposed an amendment to Clause 2(5) to require it to publish a rating on its website within 7 days after the end of the appeal period. The Committee was content with the Food Standard Agency's rationale and this amendment to Clause 2(5).

Appeal – Clause 3

23. This Clause sets out the arrangements for food business establishments to appeal against the rating. Pubs of Ulster argued that businesses are reluctant to use an appeals process, because of an unwillingness to challenge council officers. They stated:

> *'However, to appeal it is a hard thing to do for many in our industry, so they will just take what they are given. They do not want to be seen to be challenging someone who — as one of the terms you hear goes — could get you in the long grass. They do not want to call such a person into question. So, that leaves people settling for whatever score they get because, if they appeal it, they will be getting into a whole confrontational situation' (Oral evidence, 21 January 2015, Appendix 2).*

24. Pubs of Ulster were in favour of a 'grace period' being introduced to allow businesses to rectify any issues identified during the inspection. They explained:

> *'What we would like to see, and where we would like to come from on this, is working together. We believe that the inspection process should come with an incentive to improve, along the lines of a visiting environmental health officer (EHO) coming along and saying: "You are a 3 rating and, if you do A, B and C, you could be a 4 rating. You have got a period of grace of six weeks: go for the 4 rating". This would encourage businesses to improve; this is working together. There is no confrontation; it would be more a case that, "if I want to keep in, I will do those things". There would be an incentive to drive on while, in the meantime, keeping your current score' (Oral evidence, 21 January 2015, Appendix 2).*

25. The Food Standards Agency's response to the view put forward by Pubs of Ulster was that it was opposed to the idea of a 'grace period', because they argued that it goes against the very purpose of the scheme which is to encourage self-compliance by businesses. If businesses were allowed a grace period to fix issues, there would be no incentive for them to continually maintain high hygiene standards. The Food Standards Agency also made the point that once the scheme becomes mandatory, it is more likely that businesses will make use of the appeals process if they feel their initial rating was not correct.

26. The Committee believed there was merit in the arguments put forward by both Pubs of Ulster and the Food Standards Agency. However, the Committee recognised that the Bill does contain a right to a re-rating, and that the period in which a business can request a re-rating has been reduced from 6 months (under the voluntary scheme) to 3 months under the proposed mandatory scheme. This will allow businesses to make fairly swift improvements in order to achieve a higher rating. Given that the Bill does contain a provision for re-rating, and the fact that one of the key aims of the legislation is to encourage self-compliance, the Committee came to the view that the introduction of a 'grace period' would not be appropriate.

Right of reply – Clause 5

27. This Clause sets out the arrangements for a food business establishment to make a written reply in relation to its rating, for publication on the Food Standard Agency's website. The purpose of the reply is to allow establishments to explain to customers any actions they have taken to improve hygiene standards, or any particular circumstances at the time of inspection that might have affected the rating.

28. Questions were raised in relation to Clause 5(2)(b) and (c) which give councils the power to edit representations before forwarding them to the Food Standards Agency or to refuse to send them to the Food Standards Agency in any form. The Committee was concerned that these arrangements would mean that the Food Standards Agency, as the ultimate owners of the scheme, would not be aware when representations had been edited, or when councils had decided not to send them on. As a result, the Food Standards Agency would not be aware of any patterns emerging in relation to particular councils.

29. The Food Standards Agency explained that councils would only edit a representation or refuse to send it on if it contained material that was inaccurate or defamatory. The grounds on which a council could take one of these two courses of action will be set out in guidance accompanying the Bill. Furthermore, the Food Standards Agency advised that it has the power to audit councils in terms of how they are operating the food hygiene rating scheme. Given those reasons and safeguards, the Committee agreed that it was content with the Food Standards Agency's approach to right of reply.

Duty to display rating and to provide information about a rating – Clause 7 & Clause 8

30. Clause 7(1) of the Bill sets out the duty for food business operators to display a valid rating sticker, in a location and manner to be specified by the Department in regulations. The Food Standards Agency advised the Committee that its intention is that businesses will only be required to display a physical sticker (made of plastic) at the physical location of their premises. Clause 8(1) sets out the duty for food business operators to verbally inform customers of their rating on request. This provides for people with visual impairments who are at the premises, and for people making a telephone order or enquiry.

31. The Committee was concerned that the Food Standards Agency does not intend that the rating should be displayed on businesses' websites in certain circumstances. The Committee was of the view that given customers can place orders for food through websites, those websites should display the business's rating. It drew a distinction between websites which simply advertise a business's existence (e.g. display a picture of the restaurant, provide details of the menu, provide a telephone number for bookings or phone orders) and those websites which allow for the direct ordering of food online, either for collection or delivery.

32. In relation to those types of transactions (where customers do not visit the physical location of the premises or talk to someone over the telephone before placing an order), the Committee believed that customers should be able to have sight of the business's rating on

the website through which the transaction is made, or alternatively be provided with a link to the Food Standards Agency's website (the Food Standards Agency's website contains ratings for all food business establishments in Northern Ireland). In relation to websites which allow online ordering from a range of businesses, the Committee believed that the website should provide a link to the Food Standards Agency's website.

33. The Food Standards Agency advised the Committee that it had given consideration to this issue, but had come to the view that it would not be viable for a range of reasons. The Food Standards Agency's aim is for the mandatory scheme to be as resource-neutral as possible, and they argued that to introduce a requirement in relation to businesses' websites would introduce additional costs for businesses, and also for councils in terms of policing compliance. It also stated that the Bill was designed to fill a gap in the current voluntary scheme by requiring display of a rating at the business's premises and pointed out that ratings were already available online on its own website. The Food Standards Agency advised that this issue had been explored in Wales but due to the complexities involved, it has not been progressed there.

34. The Food Standards Agency initially attempted to address the Committee's concerns by proposing an amendment to require the Food Standards Agency to promote the scheme. While the Committee had no issue with this proposed amendment, it did not believe that it addressed Members' concerns in relation to access to ratings on websites used for ordering food.

35. The Committee asked the Food Standards Agency to provide more detail on the challenges associated with the Committee's proposal, in terms of the experience in Wales. The Food Standards Agency stated that there were a range of difficulties including the arrangements which would be required for multinational companies who operate across a number of jurisdictions, and the location within a website of the rating. Officials stated:

> *'During the consultation in Wales, they put forward comments that the Welsh Government could be exceeding their powers by introducing a requirement that would apply to companies with websites that related to food premises outside Wales as well as companies or businesses in Wales. The same question would need to be answered for Northern Ireland. When ordering food online, the transaction may not take place in the jurisdiction of Northern Ireland. Would the requirements of the Act in Northern Ireland extend in those circumstances? On what page would the rating appear for it to be useful? Some websites are very large and have many, many pages, and it would not be proportionate to expect them to put their rating on every page. So, where exactly, even on a food business's own website, are we talking about?' (Oral evidence, 4 March 2015, Appendix 2).*

36. However, in the Committee's view, many of these challenges relate to having a blanket requirement for all websites linked in some way to food businesses having to display a rating. The Committee's proposal was much more limited in nature, in that it believed that only those websites which allow for the direct ordering of food online, either for collection or delivery should be required to display a rating or provide access to the ratings on the Food Standards Agency's website.

37. Furthermore, the Committee was not convinced by the Food Standards Agency's argument that this requirement would require additional resources from councils in terms of policing compliance. The Food Standards Agency had stated:

> *'The other really big challenge that we see for online publication is enforcement. It would be resource-intensive for district council officers to police. In the first instance, they would need to determine whether a business had an online presence. As I said, an official website could have multiple pages, and it would require some resource to check through all the pages to ascertain whether the requirement was being complied with. We know that district councils would not have the resources to carry out those additional checks. In fact, we would not want that to divert from their planned programmes and the work that they do in dealing*

with poorly complying businesses. Unless significant resources are put into policing the requirement, there is the potential for many online ratings to be out of date, which could, ultimately, undermine the scheme' (Oral evidence, 4 March 2015, Appendix 2).

38. However, Committee members made the point that businesses could be required to provide a link to the Food Standards Agency's website, rather than having to display their own rating directly. This would deal with the issue of ratings becoming out of date. Furthermore, in terms of the duty under Clause 8 for businesses to verbally inform customers of their rating on request, the councils advised the Committee that they would not be actively policing compliance:

'If we got a complaint, we would probably look at our options for enforcing. The fact that it is there and we are dealing with businesses and telling them, "This is a requirement, and you need to address it" is a massive plus for people who are impaired. The fact that it is an offence gives us the option that, if we get a complaint or we think that somebody is not compliant, we can look at the best strategy to enforce that clause. That would give consideration to the option of a test purchase-type exercise' (Oral evidence, 14 January 2015, Appendix 2).

39. Therefore, the Committee would expect that councils could take a similar approach to the enforcement of the display of or access to ratings on websites which allow for the ordering of food.

40. The Food Standards Agency had also argued that the Bill was designed to fill the gap in the current voluntary scheme by making it mandatory for businesses to display their rating at their establishment. However, the Committee noted that Clause 8 goes further than this, and is providing an additional avenue for consumers to access the rating of an establishment, namely through a telephone enquiry.

41. The Food Standards Agency then proposed to deal with this issue as part of the review of the Act. Clause 14 requires the Food Standards Agency to review the Act within three years of it coming into operation. They suggested that Clause 14 could be amended to require, as part of the review of the Act, consideration of whether it would be feasible to impose on a food business the requirement to publish online ratings relating to the establishment. If the Food Standards Agency decided that this was feasible, it would bring in regulations to impose this requirement. However, the Committee's view was that this proposal would simply mean that consideration of the issue was deferred for three years. Furthermore, it offers no guarantees that following review of the Act, businesses which allow for ordering of food online would be required to display or provide access to the rating.

42. The Food Standards Agency then proposed an alternative amendment to provide regulation making powers for the Department to require food businesses supplying food by means of an online facility to ensure that the establishment's food hygiene rating was provided online. The manner of display would be specified in the regulations and could include providing a link to the Food Standards Agency's website. The amendment also set out that failure to comply with the duty would be an offence under Clause 10 with the possibility of a fixed penalty notice being served under Clause 11. The Food Standards agency advised that this power will be exercised in the first set of regulations drafted under the Act.

43. The Committee welcomed the Food Standards Agency's change in position on this matter. However, the Committee was concerned that the proposed amendment did not contain a timescale in which this regulation making power would have to be exercised. It was concerned that other priorities could mean that there was a delay in bringing the regulations forward. Therefore, the Committee requested a written Ministerial assurance that the power would be exercised as part of the first set of regulations made after the Act comes into operation. The Minister subsequently provided that assurance to the Committee, and the Committee agreed that it was content with the proposed amendment.

Review of operation of the Act – Clause 14

44. This Clause requires the Food Standards Agency to review the operation of the legislation within three years of its commencement. The Bill as drafted allows the Department to amend the legislation to implement recommendations produced by the Food Standards Agency as part of its review of the scheme.

45. The Committee was concerned that these powers which are contained in Clause 14(8), were too wide-ranging. It took the view that this would be an inappropriate delegation of powers and would set a dangerous precedent. As an alternative, the Committee suggested that the Clause be amended to provide for order-making powers to allow the Department to only be able to alter time limits in the Bill following review of the Act. The Committee believed that these powers should be subject to draft affirmative procedure – rather than negative resolution as envisaged in Clause 18(6).

46. The Food Standards Agency accepted the Committee's position and proposed an amendment to omit Clause 14(8), and consequentially Clause 18(4)(c) and Clause 18(6).

47. The Food Standards Agency also proposed a new Clause ("Adjustment of time periods") which will allow the Department to amend the time periods specified in the Act by substituting a different time period. In addition, an amendment was also proposed to Clause 4 to potentially limit the number of occasions a business can request a re-rating. All of these order-making powers would be by means of draft affirmative procedure.

48. The Food Standards Agency also proposed an amendment to Clause 14 to require the Department to indicate after having conducted a review, whether it intends to exercise any of those draft affirmative order-making powers, and if so, to explain why, and if not, why not. The Committee was content with the Food Standard Agency's response to these issues and the amendments to the relevant clauses.

Summary of Evidence

49. In considering the Bill, the Committee took account of the written and oral evidence received from the range of stakeholders who responded to its call for evidence. Below is a summary of that evidence.

Clause 1: Food hygiene rating

50. There was general support for the mandatory rating of food business establishments. However, concerns were raised by the Chief Environmental Health Officers Group and the Co-operative Food as to what constitutes an inspection for rating purposes. These organisations made the point that the Food Law Code of Practice encourages the removal of lower risk premises from inspection programmes or the use of lighter touch interventions which would not collect sufficient information to produce a rating. Therefore, they were concerned that for some premises there will be no mechanism to renew their rating and over time it will become outdated.

51. In terms of the definition of a food business establishment, the consumer organization, Which, was of the view that the legislation should be more wide-ranging, and also cover the business to business supply of food.

Clause 2: Notification and publication

52. The Chief Environmental Health Officers Group expressed concerns regarding the requirement for councils to notify a business of its rating within 14 days. Their view was that this timescale should be specified in statutory guidance, rather than in the Bill to allow

for occasions when councils would not be able to meet the deadline because of another emergency issue arising.

53. In terms of the information which councils must provide to businesses, the Chief Environmental Health Officers Group stated that it may not be possible or appropriate to provide all the information stipulated within the timescale. Dr Richard Hyde suggested that councils should also be required to send businesses information on their obligations to display their rating and to provide information verbally to customers, and the penalties for not meeting these obligations.

54. The Co-operative Food drew attention to the fact that this clause does not contain any timescales within which a council should inform the Food Standards Agency of a business's rating or within which the Food Standards Agency should publish the rating on its website. It suggested those timescales should be 14 days and seven days respectively. The Co-operative Food stated that currently it can take two and a half months between an inspection and publication of the rating on the Food Standards Agency's website. This means that the Food Standard Agency website could be displaying an out of date rating which is either detrimental to a business which has improved its rating, or on the other hand, giving a false impression to consumers where a rating has fallen.

55. The rating sticker itself was the subject of a number of comments, in terms of its the design and the information provided on it. The appropriateness of a plastic sticker was questioned by the Northern Ireland Hotels Federation, particularly in relation to high end establishments. Pubs of Ulster proposed that the stickers should be colour-coded to differentiate between different types of establishments. The Chief Environmental Health Officers Group suggested that individual council branding should be applied to the sticker, to recognize the role councils play in the scheme and to alert consumers as to the appropriate council they should contact with any complaints or concerns.

Clause 3: Appeal

56. There was broad support for the right to appeal a rating and that this process should be clear and transparent. However, Pubs of Ulster suggested that instead of an appeal process, there should be a 'grace period' to allow businesses to rectify any issues identified during the inspection. Their view was that businesses are reluctant to use the appeals process as they do not want to be seen to be challenging the Environmental Health Officer, and fear it may count against them in the future.

57. There were some concerns raised by the councils around the potential cost implications in terms of ensuring the independence of the appeal, but the Chief Environmental Health Officers Group concluded that this could be managed within the new council structures.

Clause 4: Request for re-rating

58. There was general support for the right of businesses to request a re-rating. However, the Chief Environmental Health Officers Group did express some concerns that the right to a re-rating within 3 months may encourage merely temporary improvements. Furthermore, they were concerned that the lack of a limit in terms of how many times a business can request a re-rating may lead to resource implications for councils. Their suggestion was that businesses should be limited to one re-rating every six months.

59. A contrary submission from The Co-operative Food suggested that the 3 month time frame should be reduced to 2 months, although it was accepted this may not be feasible, due to constraints on council resources.

60. The Chief Environmental Health Officers Group were of the view that the requirement to notify a business of its rating within 14 days should be contained in statutory guidance, rather than in the Bill.

61. They also expressed concern over how the term ‘inspection’ is used in this clause, and stated that it has a different meaning than how the term ‘inspection’ is used in clause 1.

62. The Co-operative Food was supportive of a common fee to be set for re-rating which would apply across all councils. They also made the point that experience in Wales indicates it is very rare for businesses to appeal a rating. They are more likely to want to make good any failings and receive a re-rating as soon as possible. Therefore, requiring businesses to wait until the appeal period is over (21 days), before being able to request a re-rating is actually a disincentive to making improvements promptly.

Clause 5: Right of reply

63. There was general support of the right of businesses to reply. However, the Co-operative Food queried the provision to allow councils to edit or refuse to send representations to the Food Standards Agency. Dr Richard Hyde queried whether decisions to edit replies or refusals to send them to the Food Standards Agency might be challenged through judicial review.

64. Ballymoney Borough Council objected to the lack of a publication deadline for the Food Standards Agency to publish any representations.

Clause 6: Validity of rating

65. The Chief Environmental Health Officers Group objected to the fact that this clause as drafted gives businesses the choice of whether to display its old or new rating during the period of an appeal. They were of the opinion that a business awaiting the outcome of an appeal should be forced to display the rating being appealed or a sticker advising a new rating is pending. Their view was that where business standards have dropped significantly, being permitted to display the previous rating would mislead consumers.

66. Both Dr Richard Hyde and The Co-operative Food expressed technical concerns regarding the definition of ‘change of ownership’ contained in Clause 6(2)(a). The Co-operative Food was concerned that businesses could use this as a loophole to avoid displaying a poor rating.

Clause 7: Duty to display rating

67. There was general support for the requirement to display the rating sticker in a prominent place, to allow customers to make a decision before entering the premises. Practical issues were raised, such as where a sticker would be displayed in a hotel which could have multiple food areas, and the need to ensure that all businesses were supplied with a valid sticker before the legislation comes into force.

68. The Consumer Council stated that it would support a requirement for the rating to be displayed on a company website where applicable.

Clause 8: Duty to provide information about rating

69. While there was support for this clause, concerns were raised as to how councils would enforce it. The Chief Environmental Health Officers Group stated that the existence of the offence of not providing verbal information to customers was a useful tool, and that if they received complaints that businesses were not complying, they would look to ways of tackling that, including the possibility of test purchasing.

70. Fermanagh District Council and Dr Richard Hyde suggested that further clarification is required on the definition of a ‘relevant employee’.

Clause 9: Enforcement and powers of entry

71. The Committee did not receive any comments in relation to Clause 9.

Clause 10: Offences

72. Different opinions were received on the matter of fines. The Northern Ireland Hotels Federation stated that fines are not in the interest of consumers, whereas Which suggested that there should be strict penalties to act as a deterrent.

73. Dr Richard Hyde suggested extending the Clause to cover employees who intentionally provides false information, and to amending the clause to make it explicit that it is not an offence to deface a rating sticker in the process of removing it.

Clause 11: Fixed penalty

74. There was a single response received from Which on the issue of fixed penalties, repeating the assertion that they should be strict enough to act as a deterrent.

Clause 12: Provision of information for new business

75. The Chief Environmental Health Officers Group and Fermanagh District Council both stated that it would not be appropriate to require councils to provide new businesses with information within 14 days. They made the point that different councils communicate with businesses in different ways, and some flexibility should be permitted. They suggested that if required, the 14 day time limit should be covered in statutory guidance.

76. The Co-operative Food suggested that councils should be required to conduct an initial inspection of any new food business within a certain period of them commencing trading.

Clause 13: Mobile establishments

77. The only response received in relation to this Clause was from the Chief Environmental Health Officers Group in support of the requirement to carry out inspections of mobile businesses during operating hours.

Clause 14: Review of operation of Act

78. The Chief Environmental Health Officers Group believe that this Clause should be widened to specify that the review consider whether businesses are complying with the scheme, whether food-borne illness has decreased, and what the resource burden of the legislation has been on councils. Dr Richard Hyde suggested that the Clause should also specify that the operation of sections 10 and 11 of the Act should be part of the review, particularly whether fixed penalty notices are working.

79. Fermanagh District Council stated that more clarification is required in terms of how councils are expected to keep the operation of the Act under review and what information they are expected to collect.

Clause 15: Guidance

80. The only response received on Clause 15 was from the Chief Environmental Health Officers Group who suggested the guidance should be '*definitive, clear and timely*'.

Clause 16: Interpretation

81. The Chief Environmental Health Officers Group believed the Clause should include definitions for 'inspection' for both rating and re-rating purposes.

Clause 17: Transitional Provision

82. The Chief Environmental Health Officers Group stated that historical data should be used to produce ratings for premises, and were supportive of transitional provisions to facilitate this.

Clause 18: Regulations and Orders

83. The Chief Environmental Health Officers Group welcomed the option of making regulations and orders to make improvements or changes to the scheme as required.

Clause 19: Crown Application

84. The Chief Environmental Health Officers Group was supportive of the Clause.

Clause 20: Short Title and Commencement

85. The Chief Environmental Health Officers Group made the point that the timing of commencement will be crucial, given the current local government reform.

Schedule

86. Two responses were received on Section 4 of the Schedule. The Chief Environmental Health Officers Group and Fermanagh District Council both agreed that £200 is an appropriate level for a fixed penalty.

Additional Comments

87. The Committee received several comments which were not directly related to any of the Clauses of the Bill.

88. The Northern Ireland Hotels Federation suggested that food hygiene ratings are not particularly relevant to consumers, who use social media sites in terms of making choices about eating out.

89. The Northern Ireland Hotels Federation, Pubs of Ulster and Which all made the point that a public information campaign will be required to make consumers aware of the mandatory scheme.

90. The Northern Ireland Hotels Federation and Pubs of Ulster expressed concern that a mandatory scheme will place increased costs and bureaucracy on businesses.

91. The issue of consistency was raised by a number of respondents with Which, Pubs of Ulster and the Chartered Institute of Environmental Health all expressing a concern that it was important to ensure a level playing field across all council areas.

92. The Co-operative Food suggested that the Bill should contain sanctions for councils who do not meet the timeframes set out in the Bill.

93. The Chartered Institute of Environmental Health made the point that other areas are of higher priority areas than food hygiene, such as food standards, food fraud and food sustainability and security.

Clause by Clause Consideration of the Bill

94. The Committee undertook its clause by clause scrutiny of the Bill on 22 April 2015 – see Minutes of Evidence in Appendix 2.

Clause 1: Food hygiene rating

95. The Committee indicated it was content with the Clause as drafted.

Clause 2: Notification and publication

96. The Committee indicated it was content with the Clause as drafted subject to the proposed amendments agreed with the Department to allow councils to provide some information to operators of establishments at an earlier date than the notification of the rating; to require councils to inform the Food Standards Agency of a rating with 34 days, to require the Food Standards Agency to publish a rating online within 7 days after the end of the appeal period; to define the end of the appeal period; and to allow for the potential of different types of stickers, such as those with council branding applied.

Clause 3: Appeal

97. The Committee indicated it was content with the Clause as drafted subject to the proposed amendments agreed with the Department to require councils to inform the Food Standards Agency of the outcome of an appeal; and to require the Food Standards Agency to publish online any new rating as a result of the appeal within 7 days.

Clause 4: Request for re-rating

98. The Committee indicated it was content with the Clause as drafted subject to the proposed amendments agreed with the Department to require councils to inform the Food Standards Agency of the outcome of a re-rating; to require the Food Standards Agency to publish online any new rating as a result of the re-rating within 7 days after the end of the appeal period; and to allow the Department by order to limit the number of occasions a business can request a re-rating.

Clause 5: Right of reply

99. The Committee indicated it was content with the Clause as drafted subject to the proposed amendments agreed with the Department to require the Food Standards Agency to publish representations online within 7 days; and to link the publication of representations to the publication of the rating to which it refers.

Clause 6: Validity of rating

100. The Committee indicated it was content with the Clause as drafted subject to the proposed amendment agreed with the Department given that the "end of the appeal period" is now covered in the amendments to Clause 2.

Clause 7: Duty to display rating

101. The Committee indicated it was content with the Clause as drafted subject to the proposed amendment agreed with the Department to provide for a regulation making power to require businesses supplying food by means of an online facility to ensure that the establishment's food hygiene rating is provided online.

Clause 8: Duty to provide information about rating

102. The Committee indicated it was content with the Clause as drafted.

Clause 9: Enforcement and powers of entry

103. The Committee indicated it was content with the Clause as drafted.

Clause 10: Offences

104. The Committee indicated it was content with the Clause as drafted subject to the proposed amendment agreed with the Department given the amendment to Clause 7, which will mean that a failure to comply with the duty under Clause 7 would be an offence.

Clause 11: Fixed penalty

105. The Committee indicated it was content with the Clause as drafted.

Clause 12: Provision of information for new businesses

106. The Committee indicated it was content with the Clause as drafted subject to the proposed amendment agreed with the Department to allow councils the flexibility to provide information to businesses at different stages of the registration process.

Clause 13: Mobile establishments

107. The Committee indicated it was content with the Clause as drafted.

Clause 14: Review of operation of Act

108. The Committee indicated it was content with the Clause as drafted subject to the proposed amendments agreed with the Department to limit and to specify more precisely the Food Standards Agency's powers to make changes to the Act following review; and to require the Food Standards Agency to promote the food hygiene rating scheme.

Clause 15: Guidance

109. The Committee indicated it was content with the Clause as drafted.

New clause: Adjustment of time periods

110. The Committee indicated it was content with the new Clause as drafted by the Department to allow the Department to amend time periods specified in the Act by substituting a different time period; and to allow councils and the Food Standards Agency flexibility around meeting various timescales in the Act because of Christmas closure of premises and because of "exceptional circumstances".

Clause 16: Interpretation

111. The Committee indicated it was content with the Clause as drafted subject to the proposed amendment agreed with the Department in relation to the definition of the "end of the appeal period".

Clause 17: Transitional provision

112. The Committee indicated it was content with the Clause as drafted.

Clause 18: Regulations and orders

113. The Committee indicated it was content with the Clause as drafted subject to the proposed amendments agreed with Food Standards Agency as a consequence of the amendments made to Clause 7 and Clause 14, and to specify how subordinate legislation will operate in relation to the new clause on Adjustment of time periods.

Clause 19: Crown application

114. The Committee indicated it was content with the Clause as drafted.

Clause 20: Short title and commencement

115. The Committee indicated it was content with the Clause as drafted.

Schedule: Fixed Penalties

116. The Committee indicated it was content with the Schedule.

Long Title

117. The Committee indicated it was content with the Long Title of the Bill.

Appendix 1

Minutes of Proceedings

Minutes of Proceedings

Table of Contents

5 November 2014

26 November 2014

14 January 2015

21 January 2015

11 February 2015

25 February 2015

4 March 2015

11 March 2015

18 March 2015

15 April 2015

22 April 2015

29 April 2015

Wednesday 5 November 2014
Senate Chamber, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Ms Paula Bradley MLA (Deputy Chairperson)
Mr Mickey Brady MLA
Mrs Pam Cameron MLA
Mrs Jo-Anne Dobson MLA
Mr Gordon Dunne MLA
Mr Kieran McCarthy MLA
Mr Fearghal McKinney MLA
Ms Rosie McCorley MLA
Mr George Robinson MLA

Apologies: Mr Michael McGimpsey MLA

In Attendance: Dr Kathryn Aiken (Clerk)
Ms Marie Austin (Assistant Assembly Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2:03pm The meeting commenced in public session.

6. Food Hygiene Rating Bill: Proposals for Handling Committee Stage

The Committee considered proposals for handling the Committee Stage of the Food Hygiene Rating Bill pending the completion of its Second Stage.

Agreed: The Committee agreed a closing date of 12 December 2014 for written evidence.

Agreed: The Committee agreed the draft media sign-posting notice and list of key stakeholders.

Agreed: The Committee agreed that written submissions received should be published on the Committee web page.

Agreed: The Committee agreed that the Delegated Powers Memorandum should be sent to the Assembly Examiner of Statutory Rules.

Agreed: The Committee agreed that an oral evidence session with the Food Standards Agency should be arranged for 26 November 2014, and with the Chief Environmental Health Officers Group for 14 January 2015.

The Committee noted the Bill timetable.

4:05pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday 26 November 2014
Senate Chamber, Parliament Buildings

Present:	Ms Maeve McLaughlin MLA (Chairperson) Ms Paula Bradley MLA (Deputy Chairperson) Mr Mickey Brady MLA Mrs Pam Cameron MLA Mrs Jo-Anne Dobson MLA Mr Gordon Dunne MLA Mr Kieran McCarthy MLA Mr Fearghal McKinney MLA Ms Rosie McCorley MLA Mr George Robinson MLA
Apologies:	Mr Michael McGimpsey MLA
In Attendance:	Dr Kathryn Aiken (Clerk) Ms Marie Austin (Assistant Assembly Clerk) Mr Innis Mennie (Clerical Supervisor) Mr Craig Mealey (Clerical Officer) Mr Colin Pidgeon (Item 2 only) Mr Tim Moore (Item 7 only)

2:02pm The meeting commenced. in closed session.

7. **Food Hygiene Rating Bill: Briefing by Assembly Researcher**

The Committee received a briefing from an Assembly Researcher on the Food Hygiene Rating Bill.

A question and answer session ensued.

5:20pm Ms Jo-Anne Dobson joined the meeting.

The Chairperson thanked the Assembly Researcher for attending.

8. **Food Hygiene Rating Bill: Briefing by the Food Standards Agency**

The Committee took evidence from:

Mr Michael Jackson	Head of Local Authority Policy and Delivery, Food Standards Agency in Northern Ireland
Ms Kathryn Baker	Head of Consumer Protection, Food Standards Agency in Northern Ireland

A question and answer session ensued.

6:11pm Mr George Robinson left the meeting.

6:23pm Ms Maeve McLaughlin left the meeting.

6:23pm Ms Paula Bradley took the Chair.

The Deputy Chairperson thanked the officials for attending.

6:46pm The meeting was suspended.

6:47pm The meeting resumed.

9. Food Hygiene Rating Bill: Proposals for Handling the Committee Stage

The Committee considered a motion to extend the Committee Stage of the Food Hygiene Rating Bill.

Question put and agreed:

> *"That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 8 May 2015, in relation to the Committee Stage of the Food Hygiene Rating Bill (NIA 41/11-16)."*

The Committee agreed to visit the catering facilities in Parliament Buildings on 3 December 2014 to inform its consideration of the Food Hygiene Rating Bill.

Ms Maeve McLaughlin

Chairperson

[EXTRACT]

Wednesday 14 January 2015
Room 30, Parliament Buildings

Present: Ms Paula Bradley MLA (Deputy Chairperson)
Mr Mickey Brady MLA
Mrs Pam Cameron MLA
Mrs Jo-Anne Dobson MLA
Mr Paul Givan MLA
Ms Rosie McCorley MLA
Mr Kieran McCarthy MLA
Mr Michael McGimpsey MLA
Mr Fearghal McKinney MLA
Mr George Robinson MLA

Apologies: Ms Maeve McLaughlin MLA (Chairperson)

In Attendance: Dr Kathryn Aiken (Clerk)
Ms Marie Austin (Assistant Assembly Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2:05pm The meeting commenced. in public session.

4. Food Hygiene Rating Bill: Briefing by the Chief Environmental Health Officers Group

The Committee considered proposals in relation to oral evidence sessions on the Food Hygiene Rating Bill.

Agreed: The Committee agreed to take oral evidence on the Bill from The Co-operative Food, Pubs of Ulster, Fermanagh District Council and Ballymoney Borough Council.

2:07pm Mr Fearghal McKinney joined the meeting.

The Committee considered the report of the Assembly Examiner of Statutory Rules on the delegated powers contained in the Food Hygiene Rating Bill.

Agreed: The Committee agreed to forward the report of the Examiner of Statutory Rules to the Food Standards Agency and the Department.

The Committee took evidence from:

Ms Fiona McClements — Acting Director of Environmental Health, Dungannon and South Tyrone Borough Council

Mr Larry Dargan — Principal Environmental Health Officer, Western Group Environmental Health Committee

Mr Damien Connolly — Environmental Health Officer, Belfast City Council

A question and answer session ensued.

The Deputy Chairperson thanked officials for attending.

Ms Maeve McLaughlin
Chairperson

[EXTRACT]

Wednesday 21 January 2015
Senate Chamber, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Ms Paula Bradley MLA (Deputy Chairperson)
Mr Mickey Brady MLA
Mrs Pam Cameron MLA
Mrs Jo-Anne Dobson MLA
Mr Paul Givan MLA
Mr Kieran McCarthy MLA
Ms Rosie McCorley MLA
Mr Michael McGimpsey MLA
Mr Fearghal McKinney MLA
Mr George Robinson MLA

Apologies: None

In Attendance: Dr Kathryn Aiken (Clerk)
Mr Oliver Bellew (Assistant Assembly Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2:07pm The meeting commenced. in public session.

4. Food Hygiene Rating Bill: Briefing by Pubs of Ulster

The Committee took evidence from:

Mr Colin Neill — Chief Executive, Pubs of Ulster

A question and answer session ensued.

2:40pm Mr Michael McGimpsey left the meeting.

The Chairperson thanked the witness for attending.

Ms Maeve McLaughlin
Chairperson

[EXTRACT]

Wednesday 11 February 2015
Room 29, Parliament Buildings

Present:	Ms Maeve McLaughlin MLA (Chairperson) Mr Mickey Brady MLA Mrs Pam Cameron MLA Mrs Jo-Anne Dobson MLA Mr Paul Givan MLA Mr Kieran McCarthy MLA Ms Rosie McCorley MLA Mr Michael McGimpsey MLA Mr Fearghal McKinney MLA Mr George Robinson MLA
Apologies:	Ms Paula Bradley MLA (Deputy Chairperson)
In Attendance:	Dr Kathryn Aiken (Clerk) Mr Oliver Bellew (Assistant Clerk) Mr Innis Mennie (Clerical Supervisor) Mr Craig Mealey (Clerical Officer)

2:03pm The meeting commenced in public session.

4. Food Hygiene Rating Bill – Food Standards Agency briefing

The Committee took evidence from:

Mr Michael Jackson	Foods Standards Agency
Ms Kathryn Baker	Foods Standards Agency

A question and answer session ensued.

2:17pm Mr McGimpsey joined the meeting.

2:23pm The meeting was suspended.

3:00pm The meeting resumed with the following members present:

Ms Maeve McLaughlin MLA	Mr Kieran McCarthy MLA
Mr Mickey Brady MLA	MrRosie McCorley MLA
Mrs Pam Cameron MLA	MrFearghal McKinney MLA
Mrs Jo-Anne Dobson MLA	Mr George Robinson MLA

3:01pm Mr Brady left the meeting.

3:01pm Mr Givan joined the meeting.

3:09pm Mr McGimpsey joined the meeting.

3:21pm Mr McGimpsey left the meeting.

3:29pm Mr Gvan left the meeting.

3:48pm Mr McCarthy left the meeting

3:54pm Mr McCarthy rejoined the meeting.

4:36pm Mr McKinney left the meeting

The Chairperson thanked officials for attending.

Agreed: Members agreed that the FSA responses would be considered at the meeting on 25 February 2015, in closed session.

Agreed: Members agreed to bring forward items 6 – 14 on the agenda.

5:00pm The Chairperson adjourned the meeting.

Ms Maeve McLaughlin

Chairperson

[EXTRACT]

Wednesday, 25 February 2015
Room 29, Parliament Buildings

Present: Ms Paula Bradley MLA (Deputy Chairperson)
Mr Mickey Brady MLA
Mrs Pam Cameron MLA
Mrs Jo-Anne Dobson MLA
Mr Paul Givan MLA
Mr Kieran McCarthy MLA
Ms Rosie McCorley MLA
Mr Michael McGimpsey MLA
Mr George Robinson MLA

Apologies: Ms Maeve McLaughlin MLA (Chairperson)

In Attendance: Dr Kathryn Aiken (Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2:10pm The meeting commenced in closed session.

2. Food Hygiene Rating Bill – Discussion of Evidence

2:16pm Mr Paul Givan joined the meeting.

2:21pm Mr Michael McGimpsey joined the meeting.

Members discussed the written/oral evidence received on the Food Hygiene Rating Bill.

2:52pm The meeting moved into public session.

Maeve McLaughlin
Chairperson

[EXTRACT]

Wednesday, 4 March 2015
Senate Chamber, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Ms Paula Bradley MLA (Deputy Chairperson)
Mr Mickey Brady MLA
Mrs Pam Cameron MLA
Mrs Jo-Anne Dobson MLA
Mr Paul Givan MLA
Mr Kieran McCarthy MLA
Ms Rosie McCorley MLA
Mr Michael McGimpsey MLA
Mr Fearghal McKinney MLA
Mr George Robinson MLA

Apologies: None

In Attendance: Dr Kathryn Aiken (Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2:12pm The meeting commenced in public session.

4. Food Hygiene Rating Bill – Evidence session with FSA

2:15pm Ms Rosie McCorley left the meeting.

2:21pm Mr George Robinson joined the meeting.

The Committee took evidence from:

Mr Michael Jackson Head of Local Authority Policy and Delivery, FSA NI

Ms Kathryn Baker Policy Lead, Food Hygiene Rating System, FSA NI

A question and answer session ensued.

2:46pm Mrs Jo-Anne Dobson joined the meeting.

2:52pm Mr Michael McGimpsey joined the meeting.

3.00pm Mr Fearghal McKinney joined the meeting.

3:14pm Mr Michael McGimpsey left the meeting.

3:16pm Mr Mickey Brady left the meeting.

3:22pm Mrs Pam Cameron joined the meeting.

The Chairperson thanked officials for attending.

Agreed: To discuss the evidence provided by the FSA in closed session at the meeting on 11 March 2015.

5:05pm The Chairperson adjourned the meeting.

Maeve McLaughlin
Chairperson

[EXTRACT]

Wednesday 11 March 2015
Senate Chamber, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Ms Paula Bradley MLA (Deputy Chairperson)
Mr Mickey Brady MLA
Mrs Pam Cameron MLA
Mrs Jo-Anne Dobson MLA
Mr Paul Givan MLA
Mr Kieran McCarthy MLA
Ms Rosie McCorley MLA
Mr Fearghal McKinney MLA
Mr George Robinson MLA

Apologies: Mr Michael McGimpsey MLA

In Attendance: Dr Kathryn Aiken (Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2:03pm The meeting commenced in closed session.

2. Food Hygiene Rating Bill - discussion of evidence

Members discussed the written/oral evidence received on the Food Hygiene Rating Bill.

Agreed: To seek legal advice in relation to the display of ratings on websites.

Agreed: Agenda item 3 not required, as further clarification from the Food Standards Agency on the Bill not needed at this time.

Ms Maeve McLaughlin

Chairperson

[EXTRACT]

Wednesday 18 March 2015
Room 29, Parliament Buildings

Present:	Ms Maeve McLaughlin MLA (Chairperson) Ms Paula Bradley MLA (Deputy Chairperson) Mr Mickey Brady MLA Mrs Pam Cameron MLA Mr Paul Givan MLA Mr Kieran McCarthy MLA Ms Rosie McCorley MLA Mr Michael McGimpsey MLA Mr Fearghal McKinney MLA
Apologies:	Mr George Robinson MLA
In Attendance:	Dr Kathryn Aiken (Clerk) Ms Sohui Yim (Assistant Clerk) Mr Innis Mennie (Clerical Supervisor) Mr Craig Mealey (Clerical Officer)

2:04pm The meeting commenced in public session.

The Chairperson advised Members that a new agenda was tabled to accommodate three Statutory Rules (SRs) in relation to the Health and Social Care Pension Scheme.

Agreed: Content with the new agenda and to consider the three SRs after agenda item 6.

4. Food Hygiene Rating Bill – Informal clause-by-clause scrutiny

2:09pm Paul Givan and Fearghal McKinney joined the meeting.

The Committee discussed the clauses of the Bill.

The Committee noted correspondence received from the Food Standards Agency regarding a further proposed amendment to clause 14 and agreed to discuss this matter at its meeting on 15 April.

2:13pm Rosie McCorley joined the meeting.

The Chairperson advised Members that the Committee will be considering legal advice on issues relating to clause 7 at the meeting of 15 April 2015 and undertaking formal clause-by-clause scrutiny at the meeting of 22 April 2015.

Ms Maeve McLaughlin

Chairperson

[EXTRACT]

Wednesday 15 April 2015
Senate Chamber, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Ms Paula Bradley MLA (Deputy Chairperson)
Mrs Pam Cameron MLA
Mr Kieran McCarthy MLA
Ms Rosie McCorley MLA
Mr Michael McGimpsey MLA
Mr Fearghal McKinney MLA
Mr George Robinson MLA

Apologies: Mr Mickey Brady MLA
Mr Paul Givan MLA

In Attendance: Dr Kathryn Aiken (Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.03pm The meeting commenced in closed session.

2. Food Hygiene Rating Bill – Consideration of Legal Advice

Members considered legal advice in relation to the Bill.

2.05pm Fearghal McKinney joined the meeting.

2.15pm Michael McGimpsey joined the meeting.

2.32pm The meeting moved to public session.

3. Food Hygiene Rating Bill – Evidence from the Food Standards Agency

The Committee heard evidence from:

Mr Michael Jackson Head of Local Authority Policy and Delivery, FSA NI

Ms Kathryn Baker Policy Lead, Food Hygiene Rating System, FSA NI

Agreed: For FSA officials to seek written confirmation from the Minister that the powers under the proposed amendment to clause 7 (in relation to online display of ratings) will be exercised in the first set of regulations drafted after the Act comes into operation.

Ms Maeve McLaughlin
Chairperson

[EXTRACT]

Wednesday 22 April 2015
Senate Chamber, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Ms Paula Bradley MLA (Deputy Chairperson)
Mrs Pam Cameron MLA
Mr Paul Givan MLA
Mr Kieran McCarthy MLA
Ms Rosie McCorley MLA
Mr Michael McGimpsey MLA
Mr Fearghal McKinney MLA
Mr George Robinson MLA

Apologies: Ms Jo-Anne Dobson MLA

In Attendance: Dr Kathryn Aiken (Clerk)
Ms Sohui Yim (Assistant Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.07pm The meeting commenced in public session.

4. Food Hygiene Rating Bill – Formal clause-by-clause scrutiny

The Committee commenced its formal clause-by-clause consideration of the Food Hygiene Rating Bill.

Clause 1 - Food hygiene rating

The Committee considered Clause 1 as drafted.

Question: “That the Committee is content with Clause 1 put and agreed to”.

Clause 2 - Notification and publication

The Committee considered amendments proposed by the Department to allow councils to provide some information at an earlier date than the notification of a rating; to introduce a timescale of 34 days within which councils must inform the FSA of a rating; to introduce a timescale of 7 days after the end of the appeal period in which the FSA must publish the rating online; to define the end of the appeal period; and to allow for the potential of there being different types of stickers and specify who will pay for the different types of stickers.

Agreed: The Committee is content with the following amendments proposed by the Department:

Clause 2, page 2, line 8, after second “must” insert “(in so far as the district council has not already provided the operator with the following)”.

Clause 2, page 2, line 19, leave out “Having given a notification under this section” insert “Within 34 days of carrying out an inspection of a food business establishment on the basis of which it prepares a food hygiene rating”.

Clause 2, page 2, line 24, leave out “on its website” and insert “online”.

Clause 2, page 2, line 25, after “appropriate” insert “; and, if it is required to publish the rating, it must do so no later than 7 days after the end of the appeal period in relation to the rating”.

Clause 2, page 2, line 25, at end insert -

"(5A) The "end of the appeal period", in relation to a food hygiene rating, means—

(a) the end of the period within which an appeal against the rating may be made under section 3, or

(b) where an appeal against the rating is made under that section, the end of the day on which the operator of the establishment is notified of the determination on the appeal (or, if the appeal is abandoned, the end of the day on which it is abandoned)."

Clause 2, page 2, line 26, leave out "of sticker to be provided under subsection (3)(a)" and insert "or forms of stickers to be provided under subsection (3)(a); and, in the case of each form so prescribed, the regulations must specify whether the cost of producing stickers in that form is to be borne -

(a) by the Food Standards Agency,

(b) by the district council which provides the stickers, or

(c) by the Food Standards Agency and the district council jointly in the specified manner."

Question: "That the Committee is content with Clause 2 subject to the Department's proposed amendments put and agreed to".

Clause 3 – Appeal

The Committee considered amendments proposed by the Department to require a council to inform the FSA of the outcome of an appeal, or if the appeal has been abandoned. If the rating has changed as a result of the appeal, the FSA will be required to publish the new rating online within 7 days.

Agreed: The Committee is content with the following amendments proposed by the Department:

Clause 3, page 3, line 11, at end insert -

"(6A) The district council to which the appeal is made must also, before the end of the period under subsection (5)—

(a) inform the Food Standards Agency of its determination on the appeal (or, if the appeal is abandoned, that it has been abandoned), and

(b) if the district council has changed the establishment's food hygiene rating on the appeal but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(6B) The Food Standards Agency, having been informed under subsection (6A)(a) of the determination on the appeal, must, if the rating has been changed on the appeal, publish the new rating online, unless it has been informed under subsection (6A)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so within 7 days of having been informed of the determination on the appeal."

Clause 3, page 3, line 19, leave out "the" and insert "a".

Question: "That the Committee is content with Clause 3 subject to the Department's proposed amendments put and agreed to".

Clause 4 – Request for re-rating

The Committee considered amendments proposed by the Department to require a council to notify the FSA of the outcome of a re-rating within 34 days; to require the FSA to publish the new rating online within 7 days of the end of the appeal period; and, to allow the Department through sub-ordinate legislation to limit the number of occasions on which a business can request a re-rating.

Agreed: The Committee is content with the following amendments proposed by the Department:

Clause 4, page 4, line 6, at end insert -

"(4A) Within 34 days of carrying out an inspection under subsection (2), a district council -

(a) must inform the Food Standards Agency of its determination on the review, and

(b) if the district council has changed the establishment's food hygiene rating on the review but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(4B) The Food Standards Agency, having been informed under subsection (4A)(a) of the determination on the review, must, if the rating has been changed on the review, publish the new rating online, unless it has been informed under subsection (4A)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so no later than 7 days after the end of the appeal period in relation to the new rating."

Clause 4, page 4, line 25, after "applies" insert ", with such modifications as are necessary,".

Clause 4, page 4, line 27, leave out "the" and insert "a".

Clause 4, page 4, line 28, at end insert—

"(10) The Department may by order amend this section so as to limit, in the case of each food hygiene rating for an establishment, the number of occasions on which the right to request a review of the rating may be exercised."

Question: "That the Committee is content with Clause 4 subject to the Department's proposed amendments put and agreed to".

Clause 5 - Right of reply

The Committee considered amendments proposed by the Department to specify a time period of 7 days in which the FSA must publish a right of reply online; and, to link the publication of the right of reply to the publication of the rating to which it refers.

Agreed: The Committee is content with the following amendments proposed by the Department:

Clause 5, page 5, line 1, leave out "having received" and insert "within 7 days of receiving".

Clause 5, page 5, line 2, leave out "on its website" and insert "online".

Clause 5, page 5, line 3, at end insert -

"(3A) But where, at the time when the Food Standards Agency receives the representations, it has yet to publish under section 2(5) the rating to which the representations relate, the duty under subsection (3) instead applies as a duty to publish the representations within 7 days of publishing the rating under section 2(5)."

Clause 5, page 5, line 4, leave out "(2)" and insert "(3)".

Clause 5, page 5, line 5, after “2(4)(b)” insert “, 3(6A)(b) or 4(4A)(b)”.

Question: “That the Committee is content with Clause 5 subject to the Department’s proposed amendments put and agreed to”.

Clause 6 - Validity of rating

The Committee considered an amendment proposed by the Department to remove Clause 6(4) given that the “end of the appeal period” is now covered in the amendment to Clause 2.

Agreed: The Committee is content with the following amendment proposed by the Department:

Clause 6, page 5, line 29, leave out subsection (4).

Question: “That the Committee is content with Clause 6 subject to the Department’s proposed amendment put and agreed to”.

Clause 7 - Duty to display rating

The Committee considered an amendment proposed by the Department to provide for a regulation making power to require businesses supplying food by means of an online facility to ensure that the establishments’ food hygiene rating is provided online. The Committee noted a written assurance from the Minister that the powers will be exercised in the first set of regulations drafted after the Act comes into operation.

Agreed: The Committee is content with the following amendment proposed by the Department:

Clause 7, page 6, line 2, at end insert -

“(3) The Department may by regulations provide that, in the case of a food business establishment which supplies consumers with food which they order by means of an online facility of a specified kind, the operator must ensure that the establishment’s food hygiene rating is provided online in the specified manner.

(4) The regulations may, for example, require a food hygiene rating to be provided online by means of a link to the rating in the form in which it is published by the Food Standards Agency under section 2(5).”

Question: “That the Committee is content with Clause 7 subject to the Department’s proposed amendment put and agreed to”.

Clause 8 - Duty to provide information about rating

The Committee considered Clause 8 as drafted.

Question: “That the Committee is content with Clause 8 put and agreed to”.

Clause 9 - Enforcement and powers of entry

The Committee considered Clause 9 as drafted.

Question: “That the Committee is content with Clause 9 put and agreed to”.

Clause 10 - Offences

The Committee considered an amendment proposed by the Department which is a consequence of the amendment to Clause 7, and will mean that a failure to comply with the duty under Clause 7 would be an offence.

Agreed: The Committee is content with the following amendment proposed by the Department:

Clause 10, page 6, line 32, leave out "7" and insert "7(1) or a duty in regulations under section 7(3)".

Question: "That the Committee is content with Clause 10 subject to the Department's proposed amendment put and agreed to".

Clause 11 - Fixed penalty

The Committee considered Clause 11 as drafted.

Question: "That the Committee is content with Clause 11 put and agreed to".

Clause 12 - Provision of information for new businesses

The Committee considered an amendment proposed by the Department to allow councils the flexibility to provide information to businesses at different stages of the registration process.

Agreed: The Committee is content with the following amendment proposed by the Department:

Clause 12, page 8, line 8, after "regulations" insert "(in so far as the district council has not already done so)".

Question: "That the Committee is content with Clause 12 subject to the Department's proposed amendment put and agreed to".

Clause 13 - Mobile establishments

The Committee considered Clause 13 as drafted.

Question: "That the Committee is content with Clause 13 put and agreed to".

Clause 14 - Review of operation of Act

The Committee considered amendments proposed by the Department to limit and specify more precisely the Food Standards Agency's powers to make changes to the Act following review; and, to require the Food Standards Agency to promote the food hygiene rating scheme.

Agreed: The Committee is content with the following amendments proposed by the Department:

Clause 14, page 9, line 6, at end insert -

"(7A) The Department must publish its response to the report; and its response must indicate -

(a) whether it proposes to exercise one or more of the powers under sections 1(7), 3(10), 4(10) and [Adjustment of time periods](1),

(b) in so far as it does so propose, the amendments it proposes to make and its reasons for doing so, and

(c) in so far as it does not so propose, its reasons for not doing so."

Clause 14, page 9, line 7, leave out subsection (8).

Clause 14, page 9, line 8, at end insert -

"( ) The Food Standards Agency must promote the scheme provided for by this Act."

Question: "That the Committee is content with Clause 14 subject to the Department's proposed amendments put and agreed to".

Clause 15 - Guidance

The Committee considered Clause 15 as drafted.

Question: “That the Committee is content with Clause 15 put and agreed to”.

New Clause: Adjustment of time periods

The Committee considered a new clause proposed by the Department “Adjustment of time periods”, which would allow the Department to amend the time periods specified in the Act by substituting a different time period; and allow councils and the FSA itself flexibility around meeting various timescales in the Act because of Christmas closure of council/FSA premises and because of “exceptional circumstances”.

The Committee considered new clause “Adjustment of time periods” as drafted.

Question: “That the Committee is content with new clause “Adjustment of time periods” put and agreed to”.

Clause 16 - Interpretation

The Committee considered an amendment proposed by the Department in relation to the definition of the end of the appeal period.

Agreed: The Committee is content with the following amendment proposed by the Department:

Clause 16, page 9, line 19, at end insert -

““end of the appeal period”, in relation to a food hygiene rating, has the meaning given in section 2(5A);”.

Question: “That the Committee is content with Clause 16 subject to the Department’s proposed amendment put and agreed to”.

Clause 17 - Transitional provision

The Committee considered Clause 17 as drafted.

Question: “That the Committee is content with Clause 17 put and agreed to”.

Clause 18 - Regulations and orders

The Committee considered amendments proposed by the Department to take account of the amendments made to Clauses 7 and 14, and to specify how subordinate legislation will operate in relation to the new clause on Adjustment of time periods.

Agreed: The Committee is content with the following amendments proposed by the Department:

Clause 18, page 10, line 19, at end insert -

“(1A) No regulations shall be made under section 7(3) (online provision of ratings) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”

Clause 18, page 10, line 20, after “under” insert “any other provision of”.

Clause 18, page 10, line 21, leave out subsection (3).

Clause 18, page 10, line 27, at end insert -

“( ) section 4(10) (power to limit number of requests for review of rating);”

Clause 18, page 10, line 28, leave out paragraph (c).

Clause 18, page 10, line 29, at end insert -

( ) section [Adjustment of time periods](1) (power to amend time periods);"

Clause 18, page 10, line 30, at end insert -

"(4A) An order under any other provision of this Act, other than section 20 (commencement), is subject to negative resolution."

Clause 18, page 10, line 31, leave out subsection (5).

Clause 18, page 10, line 32, leave out subsection (6).

Clause 18, page 10, line 33, at end insert -

"( ) An order under section 1(7) may, in reliance on subsection (1) of this section, amend sections 7, 10 and 11 (online provision of ratings, offences and civil penalties)."

Question: "That the Committee is content with Clause 18 subject to the Department's proposed amendments put and agreed to".

Clause 19 - Crown application

The Committee considered Clause 19 as drafted.

Question: "That the Committee is content with Clause 19 put and agreed to".

Clause 20 - Short title and commencement

The Committee considered Clause 20 as drafted.

Question: "That the Committee is content with Clause 20 put and agreed to".

Schedule

The Committee considered the Schedule to the Bill as drafted.

Question: "That the Committee is content with the Schedule to the Bill put and agreed to".

Long Title

The Committee considered the Long Title as drafted.

Question: "That the Committee is content with the Long Title put and agreed to".

Ms Maeve McLaughlin

Chairperson

[EXTRACT]

Wednesday 29 April 2015
Room 29, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Ms Paula Bradley MLA (Deputy Chairperson)
Mrs Pam Cameron MLA
Ms Jo-Anne Dobson MLA
Mr Paul Givan MLA
Mr Kieran McCarthy MLA
Ms Rosie McCorley MLA
Mr Michael McGimpsey MLA
Mr Fearghal McKinney MLA
Mr George Robinson MLA

Apologies: None

In Attendance: Dr Kathryn Aiken (Clerk)
Ms Marie Austin (Assistant Clerk)
Mr Innis Mennie (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

4. Food Hygiene Rating Bill – Report

The Committee considered the draft report on the Food Hygiene Rating Bill.

Title Page, Committee Membership and Powers, and Table of Contents

The Committee considered the Title Page, Committee Membership and Powers, and Table of Contents.

“Question: That the Committee is content with the Title Page, Committee Membership and Powers, and Table of Contents as drafted put and agreed to”.

Introduction

The Committee considered the Introduction section of the report.

“Question: That the Committee is content with the Introduction, paragraphs 1 to 10, as drafted put and agreed to”.

Consideration of the Bill

The Committee considered the Consideration of the Bill section of the report.

“Question: That the Committee is content with the Consideration of the

Bill section of the report, paragraphs 11 to 93, as drafted put and agreed to”.

Clause by Clause consideration of the Bill

The Committee considered the Clause by Clause consideration of the Bill section of the report.

“Question: That the Committee is content with the Clause by Clause consideration of the Bill section of the report, paragraphs 94 to 117, as drafted put and agreed to”.

Appendices

The Committee considered the Appendices section of the report.

"Question: That the Committee is content with the contents of Appendices 1 to 5 to be included in the report put and agreed to".

Executive Summary

The Committee considered the draft Executive Summary of the report.

"Question: That the Committee is content with the Executive Summary as drafted put and agreed to".

Agreed: The Committee agreed that it was content for the Chairperson to approve the extract of the Minutes of Proceedings of today's meeting for inclusion in Appendix 1 of the report.

Agreed: The Committee agreed to order the Report on the Food Hygiene Rating Bill (NIA 41/11-16) to be printed.

Agreed: The Committee agreed that an electronic copy of the Bill report should be sent to all organisations and individuals who provided evidence to the Committee on the Bill.

Ms Maeve McLaughlin
Chairperson

[EXTRACT]

Appendix 2

Minutes of Evidence

Minutes of Evidence

Table of Contents

Food Standards Agency	26 November 2014
Chief Environmental Health Officers Group	14 January 2015
Pubs of Ulster	21 January 2015
Food Standards Agency	11 February 2015
Food Standards Agency	4 March 2015
Informal Clause-by-Clause Consideration	18 March 2015
Food Standards Agency	15 April 2015
Formal Clause-by-Clause Scrutiny	22 April 2015

26 November 2014

Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Fearghal McKinney

Witnesses:

Ms Kathryn Baker — *Food Standards Agency NI*
Mr Michael Jackson

1. **The Chairperson (Ms Maeve McLaughlin)**: We have with us Michael Jackson, who is the head of local authority policy and delivery; and Kathryn Baker, who is the head of consumer protection. You are very welcome. Folks, this is the first conversation we are having around the clause-by-clause approach. I ask you to be as succinct as you can in answering questions. I have also asked members to be concise with their questions. I ask you to make opening comments.

2. **Mr Michael Jackson (Food Standards Agency NI)**: Thank you very much for inviting us along today to talk to you about the Bill. You have just received a very helpful introduction around some of the key aspects of the Bill, so we will try to cut back on our discussion on those. We will point out a couple of key issues to help you to understand the basis on which the whole scheme has been developed. We will then go through the clauses and try to highlight why some of the particular aspects are there and what they mean in practical terms.

3. You are well aware of the position in the voluntary scheme: around 65% of our high-rated businesses are displaying, but only 23% of those with 1 and 2 ratings, and only 40% were putting their sticker in a place where it is visible from the outside. The basic reason for trying to move forward with the Bill is that we will have a system requiring businesses to display their sticker. I have brought a sticker so that you can see one in the flesh today. That is the size. The rating is on the front. This one is a 5 — very good. On the reverse there are details about the date of inspection, date of issue and so on, which are part of the validation and authenticity of the rating.

4. When developing the Bill, our approach was not to replicate requirements that sit elsewhere. Tim mentioned to you that the rating system is driven by the inspection regime. Basically, the inspection regime that is delivered by all district councils is already set out in European regulations. The detailed requirements for how inspections are conducted and when they have to be carried out, depending on risk and compliance, are all laid out in the Food Law Code of Practice (Northern Ireland). That is a statutory code that is signed off by the Minister each time it is reviewed. In practice, it is this code that drives the planned hygiene inspections, and the information gathered from the inspections is used to calculate the rating. You will get a good insight into how an inspection is carried out and how those findings are then used to produce the rating when we visit the kitchens in Parliament Buildings next week with the food safety officers from Belfast City Council.

5. In essence, the Food Hygiene Rating Bill is built on work that is already being done by councils to fulfil their statutory duties to comply with European legislation and to protect public health. All that this scheme does is to introduce the additional requirement to display the rating. In reality, the sum total of the burden is the sticker, which the Food Standards Agency (FSA) provides and the business displays. Our approach minimises the burdens that arise from introducing a requirement.

6. The detailed operation of the current voluntary scheme is laid down in guidance that was developed by the Food Standards Agency, local authorities and industry around the UK, and it sits in the 'Brand Standard' document. The framework lays out the mechanisms that run in the background to allow the ratings to be developed. Indeed, there was reference to the fact that this Bill has been developed along the lines of the scheme in Wales. The Bill has been developed along the lines of the voluntary scheme that operated originally in England, Wales and Northern Ireland. We have the same nought-to-five scheme operating in the three countries. That is where we started. Wales has now put the same scheme on a statutory footing, and that is what we are trying to take forward in Northern Ireland. The basis is the voluntary scheme already in place.

7. I now turn to the clauses, and I will try to cover them as quickly as possible. I have already explained how the information is gathered from routine inspections. You are aware that the ratings are currently awarded to those businesses that supply food directly to the consumer. The types of business that do not receive a rating are wholesalers, food processors and manufacturers, and places that are not open directly to the public. The reason for that is that the whole purpose of having the rating sticker displayed is so that consumers can make informed choices at the point at which they make the decision to purchase food or eat out. That is the logic on which the Food Hygiene Rating Scheme was originally built.

8. You may have noted from clause 1(2) that councils are not required to prepare a rating on every occasion, and you may wonder why that would be the case. That takes account of the fact that councils carry out inspections other than the planned inspection, which is set through the code of practice. For example, if a planned inspection takes place and the food safety officer finds that conditions are not good, they will arrange to conduct a further visit within a short time to make sure that the business is taking the necessary action. As there is a range of visits, it is not necessary or, indeed, appropriate to award a rating every time. The rating is primarily driven by the planned inspection or the rerating, if the business asks for one when it has carried out the necessary work.

9. At this stage, I will hand over to Kathryn, and she will take you through the next set of clauses.

10. **Ms Kathryn Baker (Food Standards Agency NI)**: I will quickly take us up to clause 8. Clause 2 deals with notification and publication of the rating. Clause 2 requires the district councils to notify ratings to operators within 14 days of conducting the inspection. This has to be accompanied by certain other information. That includes the sticker, the reasons for the rating, details of any improvements that the business might need to make to comply and to improve their rating, and an explanation of the safeguards that are available to them. In addition to notifying the operator, the councils also have to let the Food Standards Agency know, so that the information can be published on the website.

11. Within the current voluntary scheme, there is a very small number of exceptions where this information — the rating — is not put up onto the website. This relates to Ministry of Defence establishments, where publishing addresses might have security implications. Clause 2(4) takes account of that, and we anticipate that the detailed guidance would sit within an equivalent guidance document to the 'Brand Standard'.

12. Clause 2(2) provides a regulation-making power to prescribe the form of the sticker, which Michael has shown you. It is intended that the format and look of the sticker will remain exactly the same in the statutory scheme.

13. Clause 3 covers appeals. This clause provides the first of the safeguards for businesses. It provides the operators with a right to appeal their rating.

The intention is that they could make one appeal. This would be made in writing to the council that produced the rating, within 21 days of receiving the rating. There was some discussion about the difference between the grounds for appeal in the Welsh Act and the Northern Ireland Bill. In the Bill, an appeal can only be made on the ground that the rating does not reflect the hygiene standards at the time of inspection. The legislation is drafted to cover both circumstances included in the Welsh Act — what the officer has seen and how they have used the guidance to produce a rating. We think that our one ground encapsulates what was drafted into the Welsh legislation.

14. To provide for greater independence in the appeal system, the Bill sets out in clause 3(2) that anyone involved in producing the original rating cannot then be involved in determining the appeal. Once councils receive an appeal, they are obliged to determine and communicate the outcome within 21 days. There was some discussion earlier about the time periods, and they have indeed increased from those in the voluntary scheme. Businesses now have 21 instead of 14 days to make an appeal. That was in response to the consultation. The councils also have 21 days to determine the appeal. Again, that was in response to the consultation.

15. Finally, clause 3(10) provides a regulation-making power for an appeal to be determined by a person other than the district council that produced the rating. This was included in response to the consultation. A number of respondents queried whether there would be sufficient independent scrutiny in the process if the same council that produced the rating subsequently determined the appeal. So, following discussion with stakeholders around the time of the consultation, it was determined that the appeals process should continue as it did under the voluntary scheme. However, the FSA should be obliged to review that and determine, based on how the statutory scheme operates, whether any changes are needed. The Bill provides the flexibility in that clause. Members might wish to know that a similar provision also exists in the Welsh legislation, and similar discussions were had around this at the Committee Stage.

16. Clause 4 is on the request for rerating. This is the second of the safeguards for business, and it obviously provides them with a right to request a rerating. That can be made after the appeal period. The request has to be in writing; it must include an explanation of the steps that they have taken to improve; and it must be accompanied by a fee. Subsection 5(c) provides a regulation-making power to specify the fee. During the consultation, very clear views were expressed from all parties that this needed to be a level fee across Northern Ireland, not different fees depending on which council area you were located in. We propose to consult further with stakeholders on the level of the fee, following a cost-benefit analysis. For your information, the fee that has been set in Wales is £150.

17. The councils' obligations are that, within three months of receiving the request, they should conduct an inspection and review the rating. At this time, it is worth pointing out that this is a change from the current voluntary scheme. I am sure that you will hear from other stakeholders, particularly the district councils, when they come to speak to you around this issue. In the current voluntary scheme, businesses cannot receive that rerating inspection in the first three months after the original inspection, and it is commonly referred to in the current scheme as the standstill period. You will see in this clause that the standstill period does not feature. Again, this has been in response to the consultation. Industry expressed the view that waiting three months before you can even ask for the rerating inspection, which could be another three months, was really too long for it to wait. To encourage businesses to improve, this should be

carried out quicker so that they could benefit from their investment earlier.

18. The clause provides that the council can decide not to complete a rerating. Again, you might be asking yourself why a council would decide not to do that, but it is only where the Bill is not being complied with. You will see that detailed in subsection 7. For example, a district council may decide not to do the rerating where an operator is not displaying the rating — it is choosing not to display it for consumers to see — or where they have not provided the information about any improvements that they have made.

19. I turn to the right of reply, which is in clause 5. As has been said, it allows the operators to make a written reply. You might be wondering what that actually means and what that will look like, so I thought that I would read you out two examples that are currently provided on the website. In these examples, businesses have made statements that they have asked to be put onto the website. These are both businesses that were rated 1 at the time when they made the comment. The first is:

"The conditions found at the time of the inspection were not typical of the normal conditions maintained at the establishment. The environmental health officer has visited the premises and confirmed that we have carried out all works to their satisfaction. We are currently waiting a revisit for rerating and are confident our rating will increase".

20. **The second one is**:

"The conditions found at the time of the inspection were not typical of the normal conditions maintained at the establishment and arose because the head chef had left and the new head chef had not been appointed and the kitchen was not being managed properly by the temporary supervisor. Since the appointment of the new head chef, health & safety procedures have been fully restored & all staff have been re-trained."

21. **Mr McCarthy**: Have you got a new sign that says, "Top Marks"?

22. **Ms Baker**: Once they put their request in for a rerating and they have made all the changes, yes.

23. The Bill provides for the councils to amend or to edit any responses. The purpose of that is to take out information that is misleading or which is not true or is inaccurate and to take out any defamatory remarks that might be made against an officer or someone from the council. At that point, once it has been rectified, it will be published on the Food Standards Agency website.

24. Clauses 6 and 7 are quite difficult to read. I do understand that you might look at them and think that they are quite dense, but they are very closely interconnected, so I will take the two of them together. Clause 7 places a duty on the operators to display the valid sticker, and subsection 1 provides a regulation-making power, so the manner and location would be specified in regulations. During the consultation, we did seek the views of stakeholders as to where the ratings should be displayed. Some common principles were expressed, including that the display needed to be seen from outside before entering the premises; for example, on an entrance door or window at approximately eye-level height. However, a lot of people recognised that that will be difficult in some circumstances and will present some challenges. I will draw your attention to some examples: an outlet that does not have a traditional entrance, such as a very large retailer; outlets in food courts, where there are many outlets; market stalls; and mobile traders. We therefore consider that it would be prudent to detail more provisions in the regulations, to give very clear guidance to businesses and enforcement officers, and to consult further on the detailed provisions for that.

25. Clause 6 sets out when the rating and the sticker itself become valid and when they are not valid. The rating will become valid as soon as the operator receives it. However, it continues to be valid until they receive their new rating and the appeal period has expired. In practice, that means that once an operator gets a new rating, they can, in the 21-day appeal period, choose to display either the existing rating or the

rating that they have just received. There is a good reason for that. You need to remember that they still have the right to appeal the new rating and that the appeal may be upheld that the rating should not change. Therefore, it would not be justified to impose on them to display a rating that might subsequently be changed on appeal. Clause 6(2) sets down that the rating ceases to be valid when the establishment closes. Another example is where enforcement action has been taken, such as an emergency prohibition notice because of food safety and hygiene issues found.

26. My last bit is just to mention the duty to provide information about the rating. That is oral information and it requires the operator or a relevant employee to orally inform persons where the rating is requested. As has been discussed, the purpose of that is to inform anybody who may be partially sighted or blind. However, it is also there for anybody making a telephone order; for example, to a takeaway. A relevant employee is a person who, in the opinion of the operator, is likely to be asked for the information. Considering very big businesses with hundreds of employees, that might be the customer services section. In a smaller business, it will be people taking telephone orders and serving customers. We anticipate providing more detail and guidance to help people understand and take that on.

27. **Mr Jackson**: I turn now to clauses 9 to 11, which are for enforcement of the Bill. Clause 9 is probably one of the more straightforward clauses that we have to deal with. It requires district councils to enforce the Bill and gives them powers of entry to establish whether businesses have complied with their duty to display and the requirement to provide information orally where that has been requested.

28. Clause 10 specifies a number of offences, covering failure to display a valid rating sticker or displaying a non-valid rating sticker; failure to orally inform a person of the rating when requested; intentionally altering, defacing or tampering a sticker, which would apply not just to the food business operator but to any person who would undertake such an activity; and, finally, obstructing an officer in exercising their functions. If you look at clause 10 in detail, you will see something that seems a little strange. It talks about a “reasonable excuse”. A food business operator would not have committed an offence if they had a reasonable excuse for having done one of the aforementioned things. That is there because this is common where offences would otherwise be strict liability offences and potentially unfair to defendants. However, it would be for a court to decide whether or not someone had a reasonable excuse when charged with an offence of this nature. To illustrate what that could look like, let us take the example of a hot-food bar. The food business operator gets his new rating sticker and puts it up on the door as required. At that point, he fully complies. Late on a Friday night, a crowd of yahoos comes in, and somebody decides to do a bit of vandalism. They pull the sticker off, and it disappears. Very shortly after that, the local food safety officers may do an inspection and discover that the sticker is not there, but, given the series of checks the business would normally have in place, it may not have realised that the sticker has been removed. In that situation, a business may be able to demonstrate a reasonable excuse, but it would be for the court to decide.

29. Clause 10(7) provides the level of fines for an offence. That is currently set at level 3, which has a maximum penalty of £1,000. From the debate at Second Stage, we are aware that members will probably wish to explore that matter in some detail.

30. Clause 11 allows for the issue of a fixed penalty notice when a business has failed to display a valid rating sticker or has displayed one that is not valid. The details of fixed penalties are contained in the schedule. As Kathryn highlighted, the amount of the fixed penalty is not in the Bill, and it is intended that penalties will be set by order in due course.

31. The figure of £150 that Kathryn mentioned is consistent with the figure that has been set in Wales. As yet, it has not been necessary to issue many fixed penalty notices in the operation of its scheme. To date, they have issued only a small number of penalties: it was fewer than 10 as of a couple of weeks ago.

32. Clauses 12 to 15 provide for miscellaneous functions. One of the issues is that the power to allow the inspection and rating of mobile establishments can be transferred from one council to another. That purely reflects the fact that current legislation requires that a mobile establishment be registered in the area in which it is kept. If someone operates three hot food vans and keeps them in their driveway in Carrickfergus but do not trade in Carrickfergus, when the food safety officers go out to check the details of the business, they can look at the units to see whether they are clean and in good repair, but they cannot assess the hygiene procedures and practices that the operator applies when he or she is preparing food. Whereas, when the unit is taken out and goes into the council area where it trades — for example, Belfast — the food safety officers there will be able to see the fine detail of what was going on when they carried out their inspection. In that situation, they would be able to gather the full picture that would allow the rating to be calculated in a comprehensive manner. That is the rationale for allowing the duty to be transferred.

33. You have also been made aware that there is a requirement in clause 14 for the FSA to review the operation of the Bill within three years of commencement. That is to make sure that the scheme is operating as intended and that some of the things that stakeholders were concerned about during the consultation have not become a reality or do not need to be addressed. Those concerns include the appeals process and its independence, and the way in which fixed penalty notices are issued in practice. Councils were also concerned about the possibility of one re-rating inspection becoming a disproportionate burden on their ability to deliver the planned inspection programme, which is most important to ensure that consumers are protected.

34. Clauses 16 to 19 contain some supplementary provisions and the application of the Bill to the Crown. That is very important, because nowadays a lot of establishments operate on Crown property to which the public have access. It is right and proper, therefore, that they are also able to make informed choices about those businesses.

35. **The Chairperson (Ms Maeve McLaughlin)**: Thank you both for that. A number of members have indicated that they want to ask questions about specific clauses. I make an appeal for questions and answers to be as succinct as possible. I appreciate your giving us that overview.

36. You touched on my question. Clause 1(1) suggests that councils must rate food businesses rather than the current process of specifying a rating of 0 to 5. Is there an explanation for that?

37. **Mr Jackson**: The reason why that detail is not included in the Bill is because it is laid out in the guidance document that the councils currently use, and we intend to replicate that in the statutory guidance for the Bill. There certainly is no intention on our part to change the basis on which ratings are awarded. It is very much about moving from the voluntary display of the 0 to 5 ratings to a statutory display.

38. **The Chairperson (Ms Maeve McLaughlin)**: So it will be included in the statutory guidance for the Bill.

39. Kathryn, I am not sure whether it was you who touched on it, but clause 1(2) states:

"the district council need not prepare a rating if it considers that it is not necessary to do so".

40. You also talked about councils' other inspection duties. Will you explain that a bit further?

41. **Mr Jackson**: I tried to illustrate the fact that they would visit for other reasons. There could be the revisit that I talked about because conditions were really bad. Irrespective of any rating scheme and a right for rerating, if a business is seriously failing to comply with its obligations, the food safety officer will schedule a revisit to check that the business is complying. Getting that compliance is the important thing.

42. Similarly, a district council may receive a complaint from a consumer and go out to do an inspection to investigate that complaint. In such situations, officers would not necessarily be gathering the full picture of information that they would get at the planned inspection to calculate the rating.

43. **Ms Baker**: That is not to say that, if there is a complaint and the council goes out to a business outside its planned programme and finds that the conditions are so poor, they would not conduct a full and proper inspection and gather all the necessary information and provide a rerating at that stage. It would be right and proper to do that. If, for example, a business went from a 5 to a 1, that should be reflected in its rating.

44. **The Chairperson (Ms Maeve McLaughlin)**: Clause 1 also deals with the definition of a food business establishment. What does that mean in practice? In essence, which businesses are covered and which are not?

45. **Mr Jackson**: In practice, all businesses that are clearly food businesses and are seen to be so in the eye of the consumer and that supply food directly to them are covered. That includes all restaurants, all takeaways and all catering establishments. The kind of business that can be exempt is one in which they may have a very small food activity, but food is not the primary purpose of the business. At this time of year, for example, Next, which is primarily a clothing shop, may have a couple of fancy goods that happen to be chocolate. The fact that they sell chocolate would make them a food business, and they would be required to register that activity with the district council. However, in that situation, because it is a very small part of the overall business and is not the primary reason why consumers are visiting that type of business, the current scheme allows for it to be exempted.

46. **The Chairperson (Ms Maeve McLaughlin)**: Paula, I think that you want to come in on that.

47. **Ms P Bradley**: We were told earlier during our research briefing that there are certain exemptions. I am on my iPad looking at the food hygiene ratings for my area, which I know very well. There are some private addresses, maybe for people who make cakes, wedding cakes and things like that. Those are not in shops, and people are doing that from home. They still have ratings.

48. **Ms Baker**: They do.

49. **Ms P Bradley**: Other than looking up the Internet, people have no way of knowing what their rating might be as they do not have their goods in place. How do people check that out? Is it just by looking under their council area?

50. **Ms Baker**: To be completely clear from the outset, there are two issues. The first is that, in the Bill, food business establishments are defined as businesses that supply food “direct to consumers”. If you are a business and supply food directly to consumers, you are within the scope of the Bill. That immediately puts people who do not supply directly to consumers out of scope. That is the kind of manufacturing end that supplies to other businesses, not directly to consumers.

51. Of those who are in scope, there is a regulation-making power to allow some to be exempt. It is that very small number of —

52. **Ms P Bradley**: Some of those are on the website.

53. **Ms Baker**: They are not exempt because they are on the website, and they would also have to display the rating, so they will have to find a way to display the

rating when someone comes to their premises, even if it is their domestic premises, to purchase food. Bed and breakfasts, for example, operate on domestic premises, but it is right and proper that that rating is displayed visibly for people to see before they decide whether they will go in there.

54. **Ms P Bradley**: People also cook food in their home for their local church. My mother does that: she provides food at a drop-in centre. The council has already done all the checks in her home. What way does that work? That is providing directly to customers.

55. **Ms Baker**: Again, it is very specific to the individual circumstances. In some of the circumstances that you are talking about, it may not need to be registered as a food business. The councils will have to look at the scale of the operation and how frequently it happens. Is it a continuous, frequent or regular activity? If it is, it needs to be registered. If they are supplying food directly to the consumer, they come within the scope of the scheme. There are a very small number of those types of businesses. Practically, the overarching number of people who are involved are from regular businesses that you would recognise in the high street.

56. **Ms P Bradley**: The church does not have a full kitchen, so all the food is prepared in my mother's house. She can heat up the food in the small kitchen in the church, but she cannot prepare the food there. Is that supplying directly to consumers?

57. **Ms Baker**: Again, if she —

58. **Ms P Bradley**: I know that I am just creating problems here.

59. **Ms Baker**: They are not problems; they are practical, real-life scenarios. It depends on whether your mother is registered as a food business. She may have been visited by the council, but she may not be a registered food business as such. They may have given her advice.

60. **The Chairperson (Ms Maeve McLaughlin)**: Clause 1(7) states:

"The Department may by order amend the definition of 'food business establishment'."

61. If we are fairly clear that those who are exempt have very little food activity, as you said, why would the Department want to give itself the power to amend the definition of "food business establishment" in the future?

62. **Ms Baker**: It is to do with clause 1(4)(b) and whether you might want to increase the scope to bring in other businesses that do not supply directly to consumers — the business-to-business trade. As the research officer pointed out, that is the situation in Wales. We do not have that because we feel that it is primarily a consumer scheme. The information is very simple, and it is simple on purpose. It has been devised after a lot of research with consumers. That is why we devised the 0 to 5 rating in the way that we did. Whether it is relevant to business-to-business trade is another question, but it was simply to provide flexibility, should it be felt in the future that it should be widened.

63. **Mrs Dobson**: In relation to clause 2(3)(b), in what circumstances would a council consider it not appropriate to publish a food business's rating? I know, Michael, that you touched on the Ministry of Defence being exempt. Will you outline that in a bit more detail for us?

64. **Ms Baker**: Will you say that again? Clause 2 —

65. **Mr Jackson**: Will you give us the reference, please?

66. **Mrs Dobson**: In relation to clause 2(3)(b), in what circumstances would a council consider it not appropriate to publish a food business's rating?

67. **Mr McKinney**: It is clause 2(4)(b)

68. **Ms Baker**: It is only in the circumstance that we described.

69. **Mrs Dobson**: Is it only for security reasons and no others?

70. **Ms Baker**: You have to provide the get-out to allow them not to provide. We will detail clearly in the guidance that this is the circumstance to which this clause refers.

71. **Mr Jackson**: The voluntary scheme that will be brought in as statutory operates on a basic premise: everybody is in unless there is a very sound reason — security or something like that — why it would not be right to include them. So the default position is that we get everybody in rather than have people taken out.

72. **Ms Baker**: It is not that those establishments will not get a rating. They will get a rating and a physical sticker to display on the premises, but, for security purposes, the details will not be on the website.

73. **Mrs Dobson**: In clause 2(6), why does the form of sticker need to be set down in regulations? You mentioned that. When I visit my local Chinese restaurant, for example, I am almost obsessed with looking for the sticker to see what the rating is, so it works very well. However, I am alarmed that you said that 65% of those premises with a high rating display it, but I think that you said that only 23% of those with a low rating do so because it is a voluntary scheme at the minute. Can you take us through that? Why the sticker?

74. **Mr Jackson**: Why do we prescribe the form of sticker?

75. **Mrs Dobson**: Yes.

76. **Mr Jackson**: It is very much about what it will look like. Although there is now a statutory scheme in Wales, with the exception of the logo of the Welsh Government, the sticker looks, to all intents and purposes, exactly as it did before.

77. **Mrs Dobson**: So what we have currently will not alter?

78. **Mr Jackson**: The intention is that we will prescribe the sticker to be exactly as it will appear. Although the scheme might become mandatory in Northern Ireland and Wales but be voluntary in England, the message to the consumer is exactly the same in each country. The consumer can build an identity with this, know to look for it, become familiar with it, and, fundamentally, it means the same thing. The detail will be laid down in regulations, but the purpose is to ensure that we are all clear what the sticker is and that it is the only one to be displayed.

79. **Mrs Dobson**: It is fairly clear. Kathryn, you said that the reason for 0 is that there could otherwise have been a misinterpretation that a rating of 1 is good, but with 0 shown, that clarifies it.

80. Clause 2(4) and clause 2(5) are about the timescale by which a council must notify the FSA of a business's rating and any timescales for the FSA to publish the ratings on its website. There might be concern that, if a business had improved its rating — you touched on that — say, from 2 to 4, the business would want to publish that on the FSA website as soon as possible to avoid losing trade. Do you have timescales for that?

81. **Ms Baker**: There are timescales with the voluntary scheme, which is that district councils need to upload information at least every 28 days. That takes account of the appeal period as well, because, in the appeal period —

82. **Mrs Dobson**: Is the appeal period 21 or 28 days?

83. **Ms Baker**: The appeal period is 21 days, but the period within which councils are asked to upload information is 28 days. Councils will upload a brand-new set of information for everybody each time. That is to make sure that the information is published regularly. That is detailed in the guidance document that Michael showed you — the brand standard. We anticipate putting that on the website. It means that we can perhaps reduce that period if we feel that councils should be uploading more frequently.

84. **Mrs Dobson**: I asked earlier about facilities for customers who are visually

impaired. Is there any practical way of letting visually impaired people know about the standard, other than doing so orally?

85. **Mr Jackson**: Do you mean letting them know about the rating for a business?

86. **Mrs Dobson**: Yes.

87. **Mr Jackson**: No. This has been constructed so that it is very much about providing the requirement that, if asked, businesses must be in a position to give that information to anyone who asks, whether or not they are visually impaired. We envisage that that would be a typical way in which people would try to find out that information. Say, for example, a visually impaired person walks in and wants to order food, and they need to find out certain information. We could reasonably expect them to ask about the hygiene rating and be provided with it.

88. **Mr McCarthy**: Clause 3 deals with the appeals process. Is there anything in that clause that limits businesses to making one appeal?

89. **Ms Baker**: It does not specifically state that a business can make only one appeal following receipt of its rating, but it is tied in to making an appeal or appeals within 21 days. Quite typically, appeals are laid out in this fashion. It is anticipated that, if a business wants to exercise that appeal on the grounds that are there, it would compile all the information collectively and put it in to the district council. Two days later, the business could decide to add some more information to that, but, within the 21 days, the district council needs to look at everything that it has received and make the determination.

90. **Mrs Cameron**: Thank you very much for your presentation. It was very interesting. In relation to clause 4, in what circumstances would a council refuse to do a rerating inspection?

91. **Ms Baker**: It is very much tied in to details in clause 4(7). A district council can decide to act under that clause only when the establishment is not complying with the provisions of the Bill. One example that I gave was when a business may decide that it has a poor rating, so it just does not wish to display it. It will take its chances and not display the rating but ask for a rerating, will hopefully get a better rating at that point, and, if it is happy with it, it will then display. The point is to deter people from not displaying in the period that the business has to wait for rerating.

92. District councils also need to see what the businesses have done to comply. The Bill states that businesses have to provide information about the improvements that they have made. If a district council does not get any information about that and just gets a rerating request, it will need to see what is being done by the business in order to make a decision and to know what it will look at when it subsequently does the inspection.

93. **Mr Jackson**: If the business wants a rerating, the burden is on the business to provide the evidence that it has made the necessary improvements. It is quite reasonable that, if it has not provided that information to the council, the council should not be obliged to proceed with a rerating.

94. **Mrs Cameron**: Does clause 4 specify the number of times that a business will be able to apply for a rerating within a certain period?

95. **Ms Baker**: No. There is no limit placed on it currently. The reason for that is — this came out quite strongly in the consultation — that we asked whether a business should be allowed to have more than one rerating request. The business community said that, if, for example, there was a year to wait between planned inspections, if a business put in a rerating request, did some work, and its rating improved from a 1 to a 3, that means that it is capped: it would have to wait until it had its next planned inspection, but it might be quite prepared to do extra work to push its rating up to a 5. It is all about giving businesses opportunities, because that is what the scheme is about:

improving compliance. It is allowing the businesses to do that.

96. However, the councils were very concerned that the businesses might ask for a limitless number of reratings. Although the rating is being paid for, it is still very difficult for them to resource that by way of having sufficient physical people doing the work. They were very concerned and said that, although they may not get many requests, they just do not know, because they are not in the statutory scheme. They asked that we look at it during operation and, if it is very burdensome, come back to this point. Wales has found that the burden has not been as extreme as might have been thought.

97. **Mr Jackson**: There have been only about 200 requests in Wales since the scheme became statutory a year ago. The number of scenarios in which businesses are looking for the rerating inspection is, pro rata, very low.

98. **Mrs Cameron**: Although that may change when it becomes statutory, because people who are not displaying will not be too worried about a rerating if they do not have to display it in the first place.

99. **Ms Baker**: Yes, but that is in the statutory scheme in Wales.

100. **Mr Jackson**: In the last year since the statutory scheme was introduced, there have been only 200 requests for rerating. An important point about where we are starting from in allowing more than one rerating is that it recognises that not all businesses are the same and not everybody can make the improvements and the investment at the same pace.For the likes of a major supermarket, it is no big deal to have to put things right quite quickly, and they are likely to be able to apply for a rerating and get to a 5 in one fell swoop. A smaller business may need to invest the money over a period of time to be able to get there, particularly when it comes to the practices and procedures that are involved, because it sometimes takes them longer to get those running very effectively. That is why there is provision for more than one rerating as the starting point. But, as we pointed out, we will review that very closely after the three years to make sure that it is working for business and for the councils and that it is not placing a significant burden on them.

101. **Mrs Cameron**: You partially answered my next question, but I will ask it anyway, because it is about ensuring the balance between the rights of food businesses that have made improvements and want a rerating, which you went over, and the demands that that will place on council resources. You mentioned both those. Where will you find the balance, especially in councils and resources?

102. **Mr Jackson**: It is quite difficult to forecast exactly what the likely demand will be, but the impact assessments that were carried out as part of our consultation and, indeed, in Wales show that the level of rerating inspection being demanded is significantly lower than was anticipated. There is also likely to be significant activity by the councils in the period immediately before launching the statutory scheme when they will work with businesses that have poor ratings to try to get them to a better place by the time the scheme goes lives. We will work closely with the councils on that and will look to support them as best we can to help them to do that extra bit of work to get people in a good position from day one.

103. **Mrs Cameron**: Finally, what sort of fee are you thinking of? Do you have any ballpark figures?

104. **Mr Jackson**: The intention is that the rerating fee will be set to reflect the work that is involved. It will not be about generating revenue; it will be about cost recovery. The figure in Wales has been set at £150. We will have to look at the actual costs to councils in a Northern Ireland context, and we discussed that closely with them in trying to come up with an appropriate figure.

105. **Mrs Cameron**: Obviously, that will go to councils.

106. **Mr Jackson**: The Bill says that the councils will be able to keep that money for the purposes of implementing the Act. So, it would help their funding for services that are provided.

107. **Mr G Robinson**: My question is on clause 5. What is the purpose of allowing businesses a right of reply? Is there a danger that that could undermine the authority of the council that has given the rating?

108. **Ms Baker**: It is really about letting businesses explain to their customers what they may have done to rectify the situation. Generally, that is how the right of reply is used. The businesses go on and may accept that, yes, when the officer was in, there were areas that needed to be improved. It gives them an opportunity to explain directly to their customers what they have done. I do not think that it undermines the council, because it goes to the council, which very much has to be sure that it is true before it publishes it. If the business is making a claim about having done things, the council will look to see that it has actually done them, and it will publish that information only if it is content that they have been done. So, the council is very much involved with the business in agreeing that the right to reply is true and fair.

109. **Mr McCarthy**: On clause 6, can you explain the issues that are involved in a sticker being valid if a business wants to appeal a new rating that it has received?

110. **Ms Baker**: These clauses are very dense to read, I have to say. To illustrate, I may be a business owner who has a coffee shop that, today, has a rating of 5. The officer could come in, do an inspection and, in a week's time, I get my new rating, which is a 3. I have a right to appeal that. I may not agree that that is a true reflection of what the officer saw at the time. During the appeal period, both ratings are valid, so I could choose to continue to display my rating of 5 until my appeal is heard. If it is upheld, I can then continue to display my rating of 5. Equally, somebody who received a higher rating would probably not appeal and would display their new rating straight away.

111. **Mr McCarthy**: Human nature being what it is, that means that they will keep the sticker for the higher rating for as long as they possibly can. I understand that.

112. **Mr McKinney**: I will deal with clauses 7 and 9. Clause 7 states that the Department will make regulations on how and where the sticker must be displayed. What is the general thinking on that? I know that we heard a bit about it, but what is the thinking?

113. **Mr Jackson**: The basic principle is based on what consumers have told us. For a lot of people, the decision to buy food from somewhere is instantaneous. They do not spend hours thinking about it, so this is about displaying a sticker somewhere where it really catches your eye as you approach.

114. The idea is that the requirement will be for the sticker to be displayed in a prominent place where it is clearly visible from outside the premises. The reason for having to develop this is that we have to bear in mind that we have a variety of types of business. Not all have a front door or a window. We have food courts and food malls where there are multisite operators, so we need to work out the detail of where that will work in practice so that the consumer can get the information and this will be enforceable by the local authority.

115. **Mr McKinney**: Earlier questions touched on the online aspect of it. Let me touch on an area that I raised earlier. I know that you probably heard, but what about the business of ringing in to a carry-out? Obviously, there is an oral potential there, but what about displaying the sticker on the packaging or on a leaflet or badge that accompanies the delivery?

116. **Mr Jackson**: A couple of issues come to mind. I will go with those first, and Kathryn might have others. I mentioned at the outset that the scheme has been designed with a view to minimising the burden on everyone, be it the food business operator or the local authority. The Food Standards Agency will fund

the stickers, which we will provide to councils. The food business operator will not have to pay each time it gets a rating.

117. If you were to require the business to put the sticker on the produce, that would introduce a cost to it. You also have to consider ratings changing with time. If a business had stocks of the wrong rating, you can see how it would become quite complex. Ultimately, there would be potential for the consumer to be misled, as mistakes could be made and so on.

118. **Mr McKinney**: Turning to clause 9, if a council officer has evidence that the correct sticker is not being displayed, they can enforce its display. How would they go about that?

119. **Mr Jackson**: In terms of what?

120. **Mr McKinney**: Enforcement. How would they enforce that?

121. **Mr Jackson**: Do you mean when they are likely to pick it up and when we are likely to discover it?

122. **Mr McKinney**: I mean when they discover it. How is it enforced, and what do they do?

123. **Mr Jackson**: You could have different scenarios. The way the clause is worded means that it is not just the food safety officer who can be authorised; a council could decide to authorise a range of officers who work in the council on regulatory functions and who might be checking other regulatory requirements. When they are carrying out their visits, it may be detected.

124. As I mentioned, the food safety officer will conduct other visits. Other activities include sampling and surveillance, as well as planned inspections. At that time, because this has to be so prominent, if the rating was not being displayed, they would be able to pick up on it then. Indeed, they may get consumer complaints.

125. **Mr McKinney**: That is the detection, but what about the enforcement?

126. **Mr Jackson**: The enforcement is laid down in the options on dealing with some offences by fixed penalty. For other offences, there is the option of legal proceedings. It would be for councils to decide what enforcement action they wished to take in the context of the general enforcement policy that they will have for food safety matters.

127. **Mr McKinney**: OK, thank you very much. On clause 9(3), the issue of a business operating in a private residence was raised earlier, but will the 24 hours' notice not allow the owner to get everything cleaned up specifically for that inspection?

128. **Mr Jackson**: You have to remember that this provision is about the display of the sticker, and the power of entry is to find out what the situation is with the display of the sticker; what is happening in the business is not the issue addressed by this power. It is, however, standard practice for domestic dwellings across food safety and other legislation that a 24-hour notice period is the norm. This is not something unusual brought into the Bill; it is the normal way that domestic premises are dealt with.

129. **Mr McKinney**: Does that throw up the issue of entering a private residence for the purpose of inspection? I am not aware of that.

130. **Ms Baker**: The same exists in all food safety legislation. If you are going to a private residence to make an inspection, you are expected to give 24 hours' notice. Clause 9 is to do with the European Convention on Human Rights, which is all about the right to privacy and a home life, and council officers need to have regard to that in exercising any enforcement powers, whether that provision is detailed in the Bill or not. They need to comply with that convention.

131. **Mr McKinney**: What does it mean for the consumer, who may have been receiving dodgy goods up to that point, when suddenly an inspector finds the kitchen delightfully clean?

132. **Ms Baker**: A person can go and see that it is not there and tell the inspector. It is only when the inspector goes to check that they have to give 24 hours' notice. However, if people complain that, "When we have gone to buy food at this private residence, they do not display any information; we cannot see it", that information can also be taken to create —

133. **Mr McKinney**: We are dancing over the two issues of the sticker and inspection.

134. **Mr Jackson**: I think that the question that you are asking is this: does the fact that the general food safety law requires 24 hours' notice for domestic premises cause problems for how the person running the business behaves? I think that it would be fair to say, in practice, no. You could have a situation whereby, within 24 hours, certain bits of cleaning might be attended to if there was an issue. However, they cannot fundamentally change the structure of the business; they cannot change the facilities; they cannot change their practice records and how they do things. There is so much in a hygiene inspection that you cannot change just like that. You cannot really change the picture significantly.

135. **Ms P Bradley**: I know that my mother has to keep a record of temperatures; she has a book of dates, times and temperatures, when and how it was used. That is kept for anybody to come in and see.

136. **Mr Jackson**: The council will be examining that in detail during the inspection. Your next question might be this: what if they are making up the records?

137. **Mr McKinney**: You read my mind.

138. **Mr Jackson**: The way that inspections are carried out means that there is a lot of interrogation and checking of the validity of records to make sure that you are not being presented with made-up data. For example, if there are cooking records, you can ask, "Can you show me your cooking probe? Can you show me exactly how you take the temperatures? When do you take them? For what type of foods?"

139. **Ms Baker**: Or, "Oh, look. There are no batteries in your probe; it does not work."

140. **Mr Jackson**: If you are trying to cook the books, you can be easily caught out by a good food safety officer.

141. **Mrs Cameron**: Fearghal mentioned online, but I am not sure that we actually covered the online aspect. The Bill talks about the link to the website. At the weekend, I was looking at a restaurant website that was already displaying the sticker, which I thought was very good. However, that will not be a requirement in the Bill. It is very important, given the amount of business done online and via telephone order, that it should be just as visible on the website as if you were there in person. It should be displayed. When you are hungry and want a takeout I do not think that you are going to divert to the other website to check the hygiene rating. That is not realistic. If some businesses are already displaying it — I think that it is easily updated — would it not be good practice to make it mandatory to display it on websites?

142. **Mr Jackson**: There are a couple of key issues around that. The first is that, for some businesses, it is quite easy to control and change the content of their website; they can do it themselves if they are IT literate. For many businesses, however, that would introduce a cost because they pay people to maintain websites. It could also create a burden on district councils to check it. Resources for everyone in government and local authority will reduce and come under increasing pressure in the near future. It is important that councils can focus their resource on doing the work that really matters: getting inspections done and addressing the businesses that are failing to comply and potentially putting consumers at risk. To bring in that aspect, you would have to have the enforcement of it as well.

143. The added complexity is that not all the internet operations of the food businesses you might be ordering from are based in Northern Ireland. If you order from a supermarket, you have no way of knowing where the food could be coming from, and that could vary, depending on logistical issues and peaks and troughs. On the face of it, having the rating on the internet sounds dead easy, but it is actually rather complex for many businesses.

144. **Mrs Cameron**: The restaurant that I looked at had a five-star rating; that it why it had it on. What if it keeps the five stars after the Bill passes? What if it has another inspection and it goes down to a four, a three or a two but it does not change it on the website? Will there be anything in the Bill to deal with that? Say, as Paula suggested, somebody decides to print on the menus or, as Fearghal suggested, on packaging. What if it gets a five at some stage, has it printed, uses that and then does not change its rating down?

145. **Ms Baker**: You are quite right; there is nothing in the Bill. However, there is a reason: the Trade Descriptions Act already covers that. Trading Standards would be involved in businesses trading with false or misleading information; there is already legal provision to allow that to be followed.

146. **Mrs Cameron**: Does it check up on that?

147. **Ms Baker**: We have come up against some instances, even in the voluntary scheme. There was a lovely example of somebody in Fermanagh who had a big sign made with a big flashing light; however, their rating changed. At least, in that instance, the council spoke to the business. It was not very happy about taking it down, but the council said, "You're contravening the legislation. We're gonna report you to Trading Standards. Trading Standards know about it; they're quite prepared to take action because this is misdescribing your operation". The lovely light then came down.

148. **Ms McCorley**: I will be brief. My question is in relation to clause 10. Someone could be committing an offence if they fail to display a sign. You said that it would be for the courts to decide what a reasonable excuse was. Is it only for the courts, or can someone make that decision in other circumstances?

149. **Mr Jackson**: The provision on reasonable excuses is something that the food business operator would try to demonstrate if it was charged with an offence. That would be for the courts to decide. However, if a district council finds that a business is not complying with any aspect, it will always gather the full facts and evidence; it will not make assumptions or jump straight in. It will gather the full picture, and, from there, it will decide the appropriate action. It would be for a court to decide whether there was a reasonable excuse.

150. **Ms Baker**: I think that what you are saying is right. A district council may decide not to serve a fixed-penalty notice if it feels that the reasonable excuse is fair; so, yes, councils would do that.

151. **Ms McCorley**: So there is scope to do that rather than go through a process.

152. **Ms Baker**: Yes, it does not have to go to a court to make a decision if it is quite obvious.

153. **Ms McCorley**: Could a council make that decision?

154. **Mr Jackson**: Yes. A council has the flexibility to decide whether it feels that a fixed-penalty notice is the appropriate way to go.

155. **Ms McCorley**: OK. If, for example, someone was displaying a sign that was telling lies, say, or was not an honest indication, how would the council monitor that? Would it send people in to check or to act as clients?

156. **Ms Baker**: As Michael said, the Bill does not just mean that an environmental health officer is the authorised officer; it can be any officer of the council that

it decides to authorise. For example, you might have people who are there on other council business, and they could be tasked, when they are down the street and doing their business, to make a note if they see any food businesses not displaying and then let us know at the end of the day so that we can follow it up. They will be out and about in their districts for all sorts of reasons: street cleaning; doing food hygiene inspections; following up complaints; health and safety visits; or doing consumer protection work around goods and services that are not what they say they are. Councils, particularly the environmental health departments that Michael and I have both worked in and are very familiar with, will be in commercial businesses regularly for a range of reasons.

157. **Ms McCorley**: Can a member of the public make a complaint?

158. **Mr Jackson**: We are in a good position in Northern Ireland in that our research shows that there is already a high awareness of the food hygiene rating scheme. When we have the statutory scheme, we anticipate that people will come to expect it to be there fairly quickly; they will know that it is something that a business should be doing. In Northern Ireland, when people find things wrong of that nature, they are quite willing to tell people about it. We expect that consumers, if they approach a business and there is absolutely no sign of the rating, would lift the phone and ring the council and tell them. The council would then investigate in accordance with its complaints procedure. It would go out and follow it up very quickly.

159. **Ms Baker**: Even now, we regularly get consumers phoning us to say that a business is not displaying. We have to tell them that it is not mandatory, so there is good knowledge.

160. **The Deputy Chairperson (Ms P Bradley)**: Just on fixed penalty notices, clause 11 states that if an operator is not displaying a notice or is displaying the wrong notice, as referred to in clause 10, it is up to a council to issue the fixed-penalty notice.

161. **Mr Jackson**: That is correct.

162. **The Deputy Chairperson (Ms P Bradley)**: Do we know how much a fixed penalty will be?

163. **Mr Jackson**: The fixed penalty has been set in Wales at £200, and if you pay within 14 days you get a 25% reduction to £150.

164. **Ms Baker**: Really, there is no reason why the fixed penalty notice cost could not appear in the Bill. We looked at other schedules in similar legislation in order to have a consistent approach, and there is no reason why the fixed penalty notice fee cannot be in the Bill.

165. **The Deputy Chairperson (Ms P Bradley)**: Sorry, how many days did you say they had to pay the fee? I am just writing notes.

166. **Ms Baker**: They have to pay it within 28 days, but if they pay it within 14 days, the amount is reduced by 25%. That is an incentive for them to pay it quickly.

167. **The Deputy Chairperson (Ms P Bradley)**: Is there an onus on a council to notify the public in any way that someone has received a fixed penalty notice?

168. **Ms Baker**: No, not currently.

169. **The Deputy Chairperson (Ms P Bradley)**: In the Tobacco Retailers Act, it was decided that we needed to let the public know when people were breaking the law. However, there is nothing in the Bill at the minute.

170. **Ms Baker**: No, there is nothing currently in the Bill about that.

171. **Mr McCarthy**: I have three quick questions about clause 14, which states that a review will be instigated after three years. How did you determine a period of three years?

172. **Ms Baker**: There is provision in the Bill for a transitional period. Obviously, when you move from one scheme to another, there needs to be a period to allow for

the schemes to transfer over. Across in Wales, the transitional period is 18 months. There are good reasons for that. It is tied in with the frequent period when officers do planned inspections of 18 months. Businesses were quite concerned — as were district councils, for some aspects of the scheme — that those bits should be reviewed when the scheme was live as a statutory scheme to see whether the burdens were greater than had been anticipated. We talked about the limit on revisits and the independence of appeals. The period of three years came about because it was considered that, once the scheme had formally transitioned over, which could take 18 months, you would need to allow at least a year with everybody being in the scheme to give them a fair opportunity to notice any issues that were affecting them. It was just to capture any issues within that time period.

173. **Mr McCarthy**: Are you confident that you will have the resources to carry out the review every three years? If, for example, priorities changed or budgets were cut, where would you stand?

174. **Mr Jackson**: The requirement in the Bill is to carry out a review within three years: it is not every three years. The idea is that any significant issues will have emerged within that period — within 18 months of the transition being completed.

175. With regard to having the ability to conduct that review, the Food Standards Agency takes the food hygiene rating scheme extremely seriously. It has been one of our flagship policies over the last few years. Clearly, if this provision is enacted, we will take that as a serious responsibility and ensure that we carry out that work. It will be important for the long-term sustainability of the scheme to make sure that it is working for both businesses and the district councils.

176. **Mr McCarthy**: Clause 14(8) gives the Department the power to amend the legislation by statutory rule to implement any recommendation made in the review. Does that leave open substantial aspects of the legislation to be changed at a later date through statutory rules? In theory, does that allow the Department to attempt to amend the legislation at a later date to say that there should be no appeals allowed and no rerating allowed? Shall I stop, or shall I go on?

177. **Mr Jackson**: The intent here is very much about refining the safeguards that we currently have. Having appeals processes and having the right to rerating are fundamental to the fair and equitable operation of the scheme, and there certainly is no intention on our part to remove those. The background to the whole scheme is that, in coming up with the voluntary scheme that this is now based on, we sat down with industry around the UK and with all interested parties. An awful lot of time and effort went in to building the voluntary scheme the way it is. Those safeguards really are fundamental, and we will only be looking to refine those. It will not — in any shape or form — be possible to remove those, because they go to the heart of the sustainability and credibility of the scheme.

178. **Mr McCarthy**: Or to amend the legislation to say that a council has six months to respond to an appeal if, the FSA does not have a firm understanding of how the legislation will operate in practice and hence thinks that it needs to be able to have a mechanism to substantially change it at a later date? Is this really the right time to be bringing forward the Bill in the first place?

179. **Mr Jackson**: With regard to extending an appeals period, the norm is that appeal periods against a decision are always short, and they have to be set at an interval that is practicable and reasonable. To move that way out just would not work. It would not make the appeal rational and fit for purpose, so there is not an intention to do that.

180. With regard to whether this is the right time to do it, we are very mindful of the current climate and the change that district councils are faced with over local government reform. As regards when we

will get through this process, bring the Act into place and have the regulations enacted, we will take that very much into consideration. At the heart of this is the fact that the proposals in the Bill are very much about moving us from the voluntary to the statutory, but minimising the burden. Every council in Northern Ireland is currently operating the food hygiene rating scheme on a voluntary basis. It is important that we try and maintain the scheme as common as possible. Therefore, provided that significant burdens are not introduced over and above what is currently required, it should be relatively straightforward for councils to be able to take the scheme forward, because the burden on them is pretty much the same with the exception of enforcement.

181. Again, we expect that the vast majority of businesses will comply. We have also got to remember that we have a very small number of businesses with poor ratings in Northern Ireland. They will be the people who will be the focus of attention.

182. **Ms Baker**: I would just like to say very briefly that amending anything as a result of review is really very limited to only those aspects in subsection 14(3), so it is only very particular things that were raised as issues that needed to be reviewed in the consultation. I will also point out that they can only be made by orders that are dealt with by affirmative resolution, so they have to be voted on in the Assembly. They have the highest level of scrutiny. If Members do not agree with anything that comes forward in those regulations, they will not be voted through.

183. **Mr McCarthy**: OK. That is grand. Thank you.

184. **Mr McKinney**: I just want to revisit something here. What is the rationale for choosing a level three fine?

185. **The Deputy Chairperson (Ms P Bradley)**: Under clause 10?

186. **Ms Baker**: Yes.

187. **Mr Jackson**: The primary reason for choosing a fine at this level is that it is consistent with other legislation on the nature of this particular offence. That was the rationale for it. If you look at failing to display a notice compared with, say, the substantive offences of not complying with food hygiene legislation, which is set at a higher level, you see that differentiation between the things which really, if they are not done in accordance with the law, can negatively impact on consumer protection versus providing information. That is the rationale for where we have placed this in the Bill.

188. **Mr McKinney**: Will it be a sufficient deterrent?

189. **Mr Jackson**: Ultimately, whether it is a sufficient deterrent will depend on the action that is taken by the court. Whether you have the maximum sitting at £1,000 or £5,000 may or may not have a significant impact on how a court decides to set a penalty. It is quite difficult, because it is within the gift of the court to decide what is appropriate.

190. **Mr McKinney**: What is the extent of any research that has been done on the impact that it will have on those businesses, particularly smaller businesses, in terms of loss of trade? Have you done any research into that?

191. **Mr Jackson**: We have not done any research into that. One of the key things that you have got to remember here is that a business that is able to get the top rating of five is doing no more than the law currently requires it to do. In this scheme, the requirements for a five rating are very clearly set out, so there is no gold-plating. You do not require good practice or bells and whistles. If you have got them, fantastic; you will have no difficulty getting your five rating and holding onto it. This is only about getting businesses to a place where they are doing what the law on food safety currently requires them to do.

192. **Mr McKinney**: Let us imagine a bigger business that can afford to potentially absorb the fine and carry on. Without

that research, is there not a danger that you may not hit on the right level of fine?

193. **Mr Jackson**: Again, I think that you have to look at it from the angle of how the regulatory framework currently operates. If you look at the penalties that exist for significant food safety offences, you see that the level is set for different types of offence but that it does not take into account the size or nature of the business. When it comes to the setting of the level of fine, it effectively works on a one-size-fits-all basis. It does not differentiate between sizes of business, and that is the norm for how levels of fines are set. You are right to say that, for some businesses, it might be easier to take the hit, but another way of looking at it is that the bigger businesses, which have more of a reputation to protect, are probably less likely to want to take that chance. It would not make sense for them to be failing to do something of this nature, because it just would not be worth the negative publicity.

194. **Mr McKinney**: The words that leap out at me from this are “deterrent value”. Ultimately, if there is a ceiling of £1,000, a court may come in at £500, so you cannot be assured. Would the proviso of, or at the least provision for, a higher fine not be something to have in your armoury for deterrent value?

195. **Ms Baker**: I think that it is fair to say that Michael is right. We have looked broadly at other types of offences and penalties, and that is where we have come to the level three. However, we are certainly prepared to take the Committee’s views on that. If you think that that is not appropriate, we can look at that.

196. **Mr McKinney**: It is down to the deterrent. Ultimately, we do not want anybody going into court. We want good food served well that is cooked and prepared and safe in clean surroundings. That is the ideal world. For some businesses, £1,000 may not count, whereas merely having the provision might. Of course, it is up to a court in any event to impose those fines.

197. **Mr Jackson**: One other thing that the Committee may wish to bear in mind is that, in England and Wales, the levels of fines are currently under review. A set of regulations have been made pursuant to an Act that will apply to England and Wales. If those regulations go through in the relatively near future, which we envisage is quite a strong possibility, the level of penalty associated at level three, the maximum, would move from £1,000 to £4,000. So, automatically, through the review of the level of fine in England and Wales, you could, relatively soon, have a situation in Wales where the maximum fine would actually be £4,000 because the top of level three had moved.

198. **Mr McKinney**: All right, it moves.

199. **Ms Baker**: It will move up.

200. **Mr Jackson**: Members may wish to consider that.

201. **Mr McKinney**: I am conscious of time, but it is important to go through them all. Thank you for your time. Who is the clause on defacing the sticker aimed at?

202. **Ms Baker**: Anybody who defaces it.

203. **Mr McKinney**: How do you know?

204. **Ms Baker**: There would need to be clear evidence of that to go to court and present that and be able to prove it beyond all reasonable doubt.

205. **Mr McKinney**: It covers anybody.

206. **Ms Baker**: Yes.

207. **Mr McKinney**: Can a shop owner or food outlet owner claim that somebody else defaced it? Is there a clause in there that says you are not allowed to display a defaced sticker?

208. **Ms Baker**: You cannot display a non-valid sticker, and there is an offence in the Bill for that. If you are displaying a sticker that is not the valid sticker, that is an offence.

209. **Mr McKinney**: Would that give them a defence if they did not display a sticker?

210. **Ms Baker**: No, it would still be an offence not to display the rating sticker if you have been provided with a rating.

211. **Mr McKinney**: Let me get this clear. In other words, if somebody defaces it and the owner takes it off because they are not allowed to display a defaced sticker, surely that gives them a defence for not displaying the sticker.

212. **Ms Baker**: I think that the council officers will listen to what they are being told and look at that and collect information and consider it on the face of it. If they do not believe it, that is —

213. **Mr McKinney**: Yes, but is there any provision to be made there? Is there a gap in the provision?

214. **Ms Baker**: No, I do not think so. If somebody defaces a sticker, the premises can rightly phone their council and ask for a replacement.

215. **Mr McKinney**: That will be readily available.

216. **Ms Baker**: Absolutely.

217. **Mr McKinney**: OK. At no extra cost.

218. **Ms Baker**: At no extra cost.

219. **Mr Jackson**: If something happens and someone defaces, tampers or removes the sticker, and you a need a new sticker, they will be absolutely no difficulty in the local authority providing one very quickly to enable you to comply once you have realised that something has happened to your sticker.

220. **The Deputy Chairperson (Ms P Bradley)**: If you notify the local authority as soon as you realise, that will be on their records anyway.

221. **Mr Jackson**: Yes.

222. **Ms Baker**: Yes.

223. **The Deputy Chairperson (Ms P Bradley)**: You will be very glad to hear that we have nearly finished, as will the members. I have a few final questions about the schedule at the end of the Bill. I am going back to the fixed penalty notices. Paragraph 10 states that the money accrued from fixed penalty notices must be spent for the purposes of the legislation. Paragraph 14 goes on to give the Department the power to change how money from fixed penalties can be used. Why does one seem to contradict the other?

224. **Ms Baker**: It does not contradict it in the first instance. If fixed penalty notices are served and those monies come in, the council retains them, but must use them for purposes under the Act. Paragraph 14 allows the Department to make regulations for that money to be used for something else. We do not anticipate that we will use this power, to be honest. We do not even anticipate that there is going to be huge money generated. We have looked across to the likes of the display of the non-smoking sticker at the time of the smoking ban. Very tiny fixed penalty notices were served. Obviously, this is different, and we expect that there will be more in this, because it has more of a business impact, but we do not expect there to be huge sums of money generated.

225. **Mr Jackson**: Wales have only had nine fixed penalty notices since they introduced their scheme.

226. **The Deputy Chairperson (Ms P Bradley)**: If it was to change, we would have our local councillors on to us demanding why. Most of us have come from local councils, and we would want to know why the money was being taken away. There would be issues with that anyway.

227. **Ms Baker**: We certainly would not want to take it away from the councils in the regulations. It might just be to use it for a purpose that was not just under the Act. We could maybe use it for other food safety reasons.

228. **The Deputy Chairperson (Ms P Bradley)**: You could understand that that might actually be acceptable in some cases, because it is all one department in the council.

229. My final question is in relation to paragraph 14 of the schedule. In what circumstances, briefly, will fixed penalty notices not be given?

230. **Ms Baker**: If the circumstances were seen to be serious, you might just want to go straight to court. Someone who wilfully tells lies and puts up a misleading, non-valid sticker is different from someone whose sticker has fallen off and has not realised for a week. It is a more serious offence: you are going out of your way to misrepresent your business to consumers.

231. **The Deputy Chairperson (Ms P Bradley)**: OK, I think that is us. Kathryn and Michael, thank you very much for your time. You are free to go now at last. You will maybe just catch the lighting of the Christmas tree and the carols.

14 January 2015

Members present for all or part of the proceedings:

Ms Paula Bradley (Deputy Chairperson)
Mr Mickey Brady
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Paul Givan
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Fearghal McKinney
Mr George Robinson

Witnesses:

Mr Damien Connolly	*Chief Environmental*
Mr Larry Dargan	*Health Officers Group*
Ms Fiona McClements	

232. **The Deputy Chairperson (Ms P Bradley)**: I welcome Fiona McClements, Larry Dargan, and Damien Connolly. Thank you very much for coming along today. If you have a presentation, please go ahead.

233. **Ms Fiona McClements (Chief Environmental Health Officers Group)**: I am the director of environmental services in Dungannon and South Tyrone Borough Council. My colleagues and I represent the Chief Environmental Health Officers Group (CEHOG). On behalf of CEHOG, I thank the Committee for the invitation to provide comment on the Food Hygiene Rating Bill. The Committee is aware that CEHOG has already provided written evidence on the Bill. We are joined today by Larry Dargan, the principal environmental health officer at food control, western group environmental health committee, and chair of the Northern Ireland Food Liaison Group, and by Damien Connolly, the environmental health manager (food safety and port health) with Belfast City Council.

234. CEHOG supports the introduction of the Food Hygiene Rating Bill, which requires businesses to display food hygiene ratings, and recognises that the Bill has the potential to better inform consumers while encouraging businesses to comply with hygiene requirements. However, some councils have expressed concerns about the detail of the Bill and particularly that the scheme may be resource intensive. The review should include an assessment of the effectiveness of the scheme in delivering the stated objectives. The consultation was carried out with the existing 26 councils, and support for the mandatory scheme may need to be reassessed in line with the forthcoming local government reform. Corporate priorities for the 11 councils have not been fully developed yet and this mandatory scheme commits councils strategically within the food control section at this time of transition. Furthermore, the Food Standards Agency's (FSA's) focus is increasingly on food standards work, food fraud and health improvement, while there is likely to be a reduction in the food safety grant to the councils from the FSA, which will inevitably contribute to the increasing budgetary pressures.

235. Taking account of the flexibility within the 'Food Law Code of Practice', which helps to reduce the inspection burden on businesses, and the financial stresses that councils are facing, it is likely that many food premises will not be inspected as often as they used to be or, in the case of lower-risk premises, may be removed from inspection programmes altogether. This may not be the expectation of consumers.

236. The proposed Food Hygiene Rating Bill appears to be prescriptive in nature, with specific response times and processes. 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 than in the Bill itself.

237. I will now outline comments in reference to certain clauses highlighted

by some CEHOG members. With respect to clause 1, which is on food hygiene rating, consumers may assume that all premises are subject to a reasonably frequent inspection programme to ensure that ratings are periodically updated. The 'Food Law Code of Practice' permits the removal of lower risk premises from inspection programmes and alternation between inspections and lighter-touch interventions for the majority of other premises. 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 the rating and it will, over time, become outdated. What constitutes an inspection for rating purposes needs to be more clearly defined and be consistent with requirements for an intervention rating within the 'Food Law Code of Practice'.

238. Clause 2 is about notification and publication. CEHOG agrees 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 that might not be possible, and CEHOG suggests that the time frame be detailed in guidance rather than prescribed in law. As is the case with the voluntary scheme, councils should be permitted to apply their corporate branding to the stickers in addition to FSA branding. That will reflect the major role that councils have in delivering the scheme and raise awareness that businesses and consumers should contact the local council if they have any queries. The FSA should cover the total cost of producing the stickers including the council branding, as part of their contribution to the scheme.

239. Clause 3 concerns appeals. CEHOG believes that an appeal mechanism is an essential element of the food hygiene rating scheme, although some councils have expressed concerns about the potential resource implications. CEHOG supports provision for review of the operation of this appeal mechanism within the Bill.

240. Clause 4 concerns requests for rerating. CEHOG supports the provision that businesses may request additional inspections for the purposes of rerating. The term "inspection for the purposes of rerating" should be clearly defined to be any official control. This is consistent with the brand standard under the voluntary scheme. The shorter time period from inspection to potential rerating visit may encourage temporary improvements, which would defeat the purpose of the scheme. CEHOG supports the requirement for the Food Standards Agency to review the operation of this clause, which should evaluate the fluctuations in compliance rates.

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

242. Clause 6 is about the validity of rating. Concerns have been raised about implications for council resources in monitoring the display and accuracy of stickers on premises. Some councils have concerns that the proposals allow a business to display its old rating until the end of the appeal period. Where a business's compliance has significantly fallen, that will mislead the consumer. CEHOG is of the opinion that a business should be required to display the new rating or an "awaiting rerating" sticker until the end of the appeal period. Furthermore, councils should be given the power to remove food hygiene rating stickers immediately should there be a significant drop in standards.

243. Clause 7 concerns the duty to display rating. CEHOG is of the view that the sticker should be visible to consumers before they enter the premises, so enabling them to make an informed choice prior to entering. It will be essential that the requirements of the regulations are clear and supported by guidance sufficient to ensure consistency of enforcement.

244. Clause 11 concerns fixed penalties. CEHOG notes that the fixed penalty amount under the Welsh scheme is set at £200 and considers this an appropriate penalty. CEHOG is of the view that a similar penalty is required in Northern Ireland to provide a suitable deterrent. An additional offence should be considered to prevent an establishment making any misleading claims or false advertising with respect to a valid rating.

245. Clause 12 concerns the provision of information for new businesses. 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. 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, and should be included in guidance. Councils should have some flexibility in how they achieve the overall objective, providing information in the most appropriate way. These approaches should be included in the FSA review under section 14.

246. Clause 14 concerns review. CEHOG agrees that district councils should keep the operation of the Act under review. More detailed direction and agreement on the type and extent of review to be carried out by each district council should be outlined in guidance. Requests for information currently required by the FSA should be revised to reflect the additional requirements so as to avoid any further additional administrative burden. CEHOG supports the inclusion of a review by the FSA. The review should measure the progress of the statutory scheme in achieving the stated aims and objectives, particularly improving compliance as determined by ratings, not reratings, and reducing food-borne illness in Northern Ireland and providing value for money. The review should estimate the resource burden placed on councils and seek their views on 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.

247. Clause 17 concerns transitional provision. CEHOG is of the opinion that historical data should be used to produce ratings for all premises within scope. It 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. There will be additional costs to fulfil these requirements.

248. Clause 20 concerns commencement. CEHOG believes that the timing of the enactment date is very important to councils as they are preparing for local government reform, and would welcome time for the reform process to be embedded prior to enactment.

249. In conclusion, I reiterate CEHOG's support for the introduction of a mandatory scheme for businesses to display food hygiene ratings. Consideration should be given to making the Bill less prescriptive in nature and transferring more detail into forthcoming guidance. There should also be a thorough review of the scheme to ensure its effectiveness in making the best use of council resources to improve the health and well-being of the citizens of Northern Ireland. Thank you very much for giving us the opportunity to provide evidence to the Committee. We would welcome any questions the Committee may have in relation to the briefing.

250. **The Deputy Chairperson (Ms P Bradley)**: Thank you, Fiona. Larry and Damien, is there anything that you want to add at

this stage? We will then just carry on with questions.

251. From your written submission, and in what you have told us today, you advise that the 'Food Law Code of Practice' and the Food Standards Agency's policy encourages the removal of lower-risk premises from inspection programmes and the use of lighter-touch interventions rather than full inspections. That light-touch intervention would not collect sufficient information to produce a rating. For some premises, therefore, there will be no mechanism to renew their ratings, and over time those will become outdated. Does this mean that businesses that have a three- or four-star rating will have no opportunity to renew and, therefore, achieve the five-star rating?

252. **Mr Damien Connolly (Chief Environmental Health Officers Group)**: It is not as simple as the rating that they get under the food hygiene rating scheme.

253. The inspections are dictated by the 'Food Law Code of Practice'. The scoring mechanism is linked to the food hygiene rating scheme but considers other factors. It rates premises as "a", "b", "c" or "d". An inspection is frequency required to check compliance based on the risk rating, with "a" being the highest and "e" being the lowest. Under the 'Food Law Code of Practice', a category "d" premises that is not handling open, high-risk food is not required to be inspected. It is required to have an intervention, but those interventions do not necessarily collect sufficient information to give it a rating. Category "e" premises are not required to be inspected. In Belfast, that equates to about 25% of premises in the voluntary food hygiene rating scheme.

254. **The Deputy Chairperson (Ms P Bradley)**: Could you give us an example of what a category "e" premises would be?

255. **Mr Connolly**: It is any premises that do not handle open, high-risk food. A corner shop might have a refrigerated cabinet and pre-packed, high-risk foods. Unless it handles open, high-risk foods, it would not necessarily be required to be inspected if it was a category "d" premises.

256. **The Deputy Chairperson (Ms P Bradley)**: I will move on to clause 2. In your written submission, and today, you advised that you are concerned with introducing a mandatory 14-day notification period for councils, given there could be other emergency issues in councils, and believe the requirement should be removed and placed in guidance instead.

257. Would there be a danger, if the 14-day notification period was set out only in guidance, that some councils could let that slip and be slow to notify businesses of their ratings?

258. **Ms McClements**: Under the voluntary scheme, it is currently 14 days for businesses to be notified in writing. It does not appear to be a problem for councils to achieve that target. It was really to have it in guidance in case there were exceptional circumstances. It does not seem to be an issue at this point in time under the voluntary scheme.

259. **Mr Connolly**: The FSA has included the requirement in the Bill for local authorities to monitor how they are operating the scheme and report back to the committee. If local authorities are not delivering what is expected of them in this regard, there is the option, in three years' time, to seek by regulations to bring it back within the regulatory requirement.

260. **The Deputy Chairperson (Ms P Bradley)**: You said that the current timescale is 14 days.

261. **Ms McClements**: Yes

262. **Mr Connolly**: In Belfast, for example, our current time frame for issuing letters is 10 days, which is stricter than the requirement in the brand standard.

263. **The Deputy Chairperson (Ms P Bradley)**: Are you concerned that there is no time frame specified in the Bill in which the

FSA must publish a business's rating on its website?

264. **Mr Connolly**: We looked at some of the concerns raised by industry, and one response made a bit of an issue of that. I am not aware of any unnecessary delays by the FSA in publishing information once it is given to them by local authorities. I would expect local authorities also to frequently upload.

265. In Belfast, we upload every Wednesday, although the requirement is no more than 28 days. I would not expect local authorities or the FSA to have a problem in complying with whatever standard is agreed.

266. **The Deputy Chairperson (Ms P Bradley)**: Most of us in this room come from a local council background and know that our local councils are quick to upload the information. We would all be very supportive of them anyway. I just wanted to clarify that.

267. Another issue is the branding of the sticker. Is there a danger that it could confuse customers if we look at council branding on the stickers?

268. **Mr Larry Dargan (Chief Environmental Health Officers Group)**: That is merely an issue about ownership of the scheme. Councils believe that they are significant partners in the food hygiene scheme and I think they simply wanted recognition of that.

269. **Mr Connolly**: From the point of view of the administration of the scheme, it is the councils. A consumer might be using the scheme and have an issue with the premises, and I think that it would be beneficial to consumers if they could see it, because the FSA is not enforcing the legislation. I think that it is in consumers' interests to say, "That is Belfast City Council. I know that I have to ring Belfast City Council to make the complaint and get action". I think that it is in consumers' interests.

270. **The Deputy Chairperson (Ms P Bradley)**: Pam has just said that it is a very good point. We all recognise that in our own council areas and our constituents recognise it as well.

271. **Mr Brady**: Thanks for the presentation. Unusually, I do not come from a local council background. I have never been a councillor.

272. **The Deputy Chairperson (Ms P Bradley)**: Never.

273. **Mr Brady**: I do not know whether that is good or bad. Anyhow, my question is about the appeals process. In your submission, you state that you are in favour of appeals, but it is really about determining whether there is sufficient clarity about who will be involved in determining the appeals. Do you think that there is sufficient clarity around that for the people who may want to go ahead with an appeal? What type of support might they receive?

274. **Mr Connolly**: I do not have a problem with the appeals system as it is written. It certainly introduces an element of independence. We currently operate an appeals system. We get very few appeals, which I look at as being reassuring with respect to how we are delivering the scheme and the consistency we are applying. One of the big things regarding who deals with appeals is that the scheme introduces a degree of independence. In Belfast, we could have a senior manager who checks the scores to make sure they are consistent, and that person could also hear the appeal. The Bill is looking for a different person to do this, and I think that it is a good idea and is something that we have to look at. I do not know whether it may cause some difficulties for smaller councils that have fewer staff.

275. **Ms McClements**: Because of the group system in the environmental health family, there is also the independence of the food control people, and, with the local government reform, the councils will be larger, with more environmental health staff working together. So, it may not be an issue from an independence point of view or having staff who are separate outside the process having a look at the appeals. From a personal

point of view, it has not been an issue in our area to date under the voluntary scheme.

276. **Mr Brady**: Do you think that, with more resources, there is a greater likelihood of more independence? With most appeals, whatever area they are in, independence is usually more acceptable.

277. **Ms McClements**: In general, there is a very good working relationship between councils and, if there are issues, those can be ironed out. A very good system already exists.

278. **Mr Connolly**: None of the councils raised any objections to the clause introducing a higher degree of independence in the appeal process.

279. **Ms McCorley**: I am interested in asking about the ratings. If a business is awaiting an appeal, should it be forced to display the rating under appeal rather than the previous one? Would that not place a business in a difficult position where it might lose custom if it has to display a rating it has an issue with?

280. **Mr Dargan**: I can understand that from the business perspective. However, if we take the consumer perspective, then it is important to give a rating that reflects what the officer found at that time. I know there are opportunities, in some cases, to fix things very quickly, but I think that the idea of the scheme is that there will be some confidence that standards will be maintained and improved when people are not being inspected. To have a degree of integrity, the scheme needs to maintain that.

281. **Mr Connolly**: There are a couple of ways of looking at this. We might go to premises that have had a very good rating but there has been a significant drop in standards. If that business is allowed to continue to display the good rating, when the conditions are poor, that, to me, puts consumers at risk. The Bill, as currently written, allows a business to do that.On the other hand, if the business is forced to put up the bad rating, that prejudices the right of appeal and could affect businesses. In response, we have suggested that there is a third option, which is that the business can put up the new rating. If that is a lower rating and they do not want to display it but want to appeal, another notice can be put up to say that that rating is awaiting appeal or some words to that effect. Currently, under the voluntary scheme, there is a display sticker that does not give a rating but says that the business is awaiting inspection. That is currently used, and, that way, neither the consumer nor the business is prejudiced.

282. **Mrs Cameron**: Thank you for your presentation. On the subject of stickers and of the councils displaying their logo, I think that that is quite a good idea, especially given the move to the new super-councils come April. I might even suggest that no matter what is put on the sticker, people might not recognise what council it is, especially Kieran's old council.

283. **Mr McCarthy**: We will be all right. We will get sorted out. This is Ards and North Down we are talking about.

284. **Mrs Cameron**: In relation to clause 4, you have noted that there is currently no limit on the number of times that a business can request a rerating, and you believe that it should be limited to once every six months. Do you think that there is a danger that businesses will request multiple reratings, even if they have not made the necessary improvements?

285. **Mr Dargan**: Yes, that is a possibility. I suppose that we would like to limit it to once every six months to preclude that possibility.

286. **Mrs Cameron**: Is it more to put the pressure on the business having to have it as right as they can from the start?

287. **Mr Connolly**: That is the absolute value of the scheme. The value of the scheme, in my mind, is that a premises gets an unannounced inspection by an officer and the findings on that unannounced inspection are published. Those inspections are indicative of how that business is proactively managing

hygiene. If a rerating is requested and a reassessment is done, the findings are indicative of the business addressing what they were told to address. I think that the former is the more reliable, but it is about striking the balance between, yes, telling the consumers how we are finding the businesses are managing compliance without our intervention but yet giving them a right to remedy it. There are two sort of competing agendas, but, certainly, the fact that the scheme does require what we found in our initial inspection to be displayed for a period of time is where the incentive for self-regulation comes. We have sufficient regulatory powers to deal with non-compliance as we find it. It is the encouragement of self-regulation that the scheme really delivers.

288. **Mr Dargan**: If I may say so, you could view it as the inspection bringing the opportunity to find out what your problem areas are and then you fix them. You then go for another rating, and, if you continually do that, there is not really much of an incentive to maintain standards, and you do not know exactly when an inspection might be due. So, the incentive should be there for self-regulation.

289. **Mrs Cameron**: On the back of that, would guidance be available to a new business on how it could achieve the best rating possible before it would get its very first inspection?

290. **Mr Connolly**: As we say in our submission, absolutely fundamental to councils is to try to assist businesses in compliance and to support the local economy, and we realise how important it is to support our food businesses. I would expect every council to do that. We look at the applications made to the planning authority for new food premises, and we look at the building control applications, and we try to engage businesses, before they actually spend money fitting out premises, to make sure that they get it right from the start. So, we very much see it as a major role to give them advice on how to comply before they start spending money on the premises and opening.

291. I noticed in one of the industry responses that they had some concerns about the fact that, when a new business does open, there is no requirement in the Bill for local authorities to inspect those new businesses. I would advocate that that is adequately dealt with in the 'Food Law Code of Practice', which requires the councils to inspect new businesses within 28 days of registering.

292. **Mr McCarthy**: Thanks very much for your presentation. I have a quick question. Clause 8 requires a business to verbally inform customers of their rating. In your submission, you have noted that that may be difficult to enforce. Would councils plan to do any test purchases to check that businesses are complying? In other words, would you propose to go out and check unannounced that businesses are complying with what they are supposed to be doing?

293. **Mr Dargan**: We acknowledge that that is perhaps the only way to test that. We have some experience of using test purchasing in other areas of work, such as underage sales of tobacco, but that is difficult to do and difficult to plan. I think that it is important that that clause is there and that the onus is on the businesses to give information to a consumer, should they ask for it, but I guess that we have not ever had to do that yet. If we found that we had a problem, we would develop a process to deal with it.

294. **Mr McCarthy**: Or you might telephone to say that you had a concern.

295. **Mr Connolly**: If we got a complaint, we would probably look at our options for enforcing. The fact that it is there and we are dealing with businesses and telling them, "This is a requirement, and you need to address it" is a massive plus for people who are impaired. The fact that it is an offence gives us the option that, if we get a complaint or we think that somebody is not compliant, we can look at the best strategy to enforce that clause. That would give

consideration to the option of a test purchase-type exercise.

296. **Mr Dargan**: Typically, our first reaction — because we hope that councils have established very good relationships with businesses — is that we would simply talk to them and explain it to them. It may be an issue of communication or understanding.

297. **Mr McCarthy**: I will just take this opportunity, as a former councillor for 28 years, unlike my colleague across the table, to pay tribute to you for keeping us all right and keeping us all safe. Keep up the good work.

298. **Mr G Robinson**: You are very welcome to our Committee. Regarding clause 12, in your written submission, you have stated that requiring councils to provide new businesses with information within 14 days is not appropriate. Can you give the Committee any examples of how councils could be prevented from being able to meet that deadline?

299. **Ms McClements**: It is not that councils feel that it is not appropriate for the 14 days; it is that different councils have different approaches. As Damien has said, long before a lot of the businesses are operational — long before the 14 days — that information is already with them because certain work has been done through planning and building control. This was to give councils options for how they would engage and provide that information to businesses. It was not that councils were reluctant to do so; it was that they did not want it to be prescribed as within the 14 days of the businesses being registered. What they wanted was the flexibility to do their seminars to the businesses and to write to them long before they opened. It was to give that degree of flexibility. It was not that they did not feel that the message getting across was inappropriate; it was just about how it was done, because each council, in different areas and for different types of business, has found different solutions and methods of communicating with businesses. That was why; it was not that it was inappropriate. The council and environmental health try to work with businesses to get them as compliant as possible. So, it was not the issue of the communication; it was just how it was done to give that degree of flexibility. Hopefully, I have answered that for you.

300. **Mr G Robinson**: That is grand. Thank you very much.

301. **Mr McKinney**: You say that clause 14 should measure the progress of the scheme in achieving the aims of improving compliance and reducing food-borne illness and should estimate the resource burdens placed on councils. Do you think that needs to be specified in the Bill?

302. **Mr Dargan**: Yes, we do. We note that most of the review refers to detail about time limits, as we have just discussed, but we understand that the rationale for producing a mandatory scheme versus a voluntary scheme, which we have at the minute, is to make long-term improvements in food-borne illness reduction. We think that should be measured in any review.

303. **Mr McKinney**: You said that clause 16 should contain a definition of inspection for rating and rerating purposes. Can you explain the possible areas for confusion if such a definition were not included?

304. **Mr Connolly**: Again, that could be accommodated in statutory guidance rather than the Bill, but the Bill uses the term “inspection” in a couple of places when it means two completely different things. I do not think that it is the intention to confuse; we are just making the point that, for example, an inspection for the purposes of rating is a specific process, as defined in the code of practice. As such, it gathers enough information to totally rate the premises. So, it is quite a significant intervention in the business. That is defined in the ‘Brand Standard’ as what we call an inspection, partial inspection or audit. The Bill’s wording for the purposes of rerating also uses the term “inspection”. We know that inspection

for rerating is a lesser intervention that verifies that they have carried out the corrective action but would not collect enough information to rerate the compliance of the premises. I appreciate that the point is quite technical, but they are two different levels of intervention, as defined in the 'Food Law Code of Practice'.

305. **Mr McKinney**: Does the test not get done again?

306. **Mr Connolly**: No. Currently, under the voluntary scheme, you have to do a thorough inspection that looks at all the aspects of the business to collect enough information to check the various elements of the score. When you get a rerating request, you basically go out and check the things that you have asked them to put right or in place — that they have corrected the non-conformance — and you look out for any other observations, but you do not have to do a complete inspection. It is a much lighter-touch intervention that is primarily focused on the remedial action that they have carried out. That needs to be clarified in the legislation or the statutory guidance, because the Bill uses the same term "inspection".

307. **Mr McKinney**: But it is in the context of a rerating.

308. **Mr Connolly**: Yes.

309. **Mr McKinney**: Therefore, is that not understood?

310. **Mr Connolly**: No. The term "inspection" means two different things, and that is made clear if you look at clause 16. It refers to the fact that inspection for the purposes of rerating is not the same as inspection for the purposes of section 1, which is a rating inspection. A rating inspection is different from a rerating inspection.

311. **Mr McKinney**: Yes. But given that those are two different things, I think that we are getting caught on the word "inspection". In fact, if one is against an initial examination and the other is against rerating, it is surely understood that the secondary one is an inspection because it is an inspection; it just is not the full inspection because it is against the term "rerate".

312. **Mr Connolly**: Yes. Our point is that the guidance should clarify what is meant by an inspection for the purposes of rating and what is meant by an inspection for the purposes of rerating.

313. **Mr McKinney**: OK. I get the point, but I am not sure that we should get entirely hung up about it.

314. I am not a councillor either. I am not entirely persuaded that the council name should go on. This is about establishing, in the public mind, a brand around the nature of public safety and identifying that organisations providing food are complying. That is the exercise rather than additional or other vanity information, potentially.

315. **Mr Givan**: Thank you for your presentation. I note your point that the 14 days should be in guidance. Is that your view in respect of the 21 days that is referred to when it comes to appeals? Should that, similarly, be in guidance rather than in the Bill?

316. **Ms McClements**: The number of days for appeal is more of a procedural deadline. No issues were raised regarding that. It is the same as in the voluntary scheme that councils currently operate. It would also have a defined cut-off for the 21 days for appeal, and it would allow the rating to be displayed.

317. **Mr Givan**: You were of the view that 14 days should be in guidance for the provision of information to new owners as well. I have some sympathy as to the question of why we should be putting 14 days or 21 days in primary legislation and not in subordinate legislation, because, obviously, if we decided that it should be 21 days rather than 14 days, it would be much easier to change a regulation than to amend primary legislation. It is more a technical point: if you are consistent around 14 days, why not have 21 days in regulations as well, rather than in primary legislation?

318. **Mr Connolly**: It is my opinion that as much of the detail that can be left to subordinate regulations and guidelines should be left to them, because, as you said, it is far easier to change that than it is to change an enabling act. An enabling Act should be kept to the bare minimum. That is my opinion.

319. **Mr Givan**: I share that. Currently, an officer who did not carry out the original inspection helps with the appeal. Do you think that the fact that it is a different officer from the same council goes far enough, or should it be someone from a different council?

320. **Mr Dargan**: Currently, I work for the western group of councils. There are five councils in our area. On the rare occasion that there has been an appeal, one of my colleagues who work centrally for all five councils but not specifically at each council has helped with the appeal process. So, there is a removal from the actual inspection and that enforcement scenario. They are able to give an overview. In that situation, it is quite easy, because that office is also charged with a degree of oversight in monitoring and auditing. So, it falls quite easily to that.

321. Councils in Northern Ireland are very comfortable with inter-authority auditing in relation to environmental health. We have lots of peer review processes going on. So, it would not be a problem to ask a neighbouring council. That said, the new councils are much larger than the existing ones, so the danger of getting connectivity between the officer who carried out the initial rating and someone who might look at that in an appeal is disappearing or becoming wider.

322. **Mr Connolly**: If a problem with the appeals process materialised through the review, I would be very supportive of an additional stage in the process to make the independence more robust. An additional process will obviously be an additional administrative burden, and I would be reluctant to implement it unless it was needed, but I am totally supportive of it being kept under review and being a fundamental part of the three-year review of the FSA. If there is a problem, let us put additional controls in place.

323. **Mr G Robinson**: I have one small supplementary question. There is a difference of opinion regarding Ballymoney and Fermanagh councils. I am wondering what it is. Are you in a position to state what the problems are as far as Ballymoney and Fermanagh are concerned?

324. **Mr Dargan**: Can you remind us specifically of —

325. **Mr G Robinson**: The Committee received submissions on the Bill from Ballymoney and Fermanagh councils, which take a more critical stance. Are you aware of a difference in opinion regarding the Bill among the councils? What impact might that have in implementing the Bill?

326. **Mr Dargan**: We collected responses from all 26 councils, through CEHOG, the Chief Environmental Health Officers Group. That was not invited before we constructed our written response to the Committee. So, we have attempted to include everything that was said. To be honest, I am not aware of exactly the nature of the differences in Ballymoney or Fermanagh. I could comment if I knew them specifically, but I am not aware of them.

327. **Mr Connolly**: I looked at them. I remember that there were a few wee differences, but I got the overall impression that most of what they were saying was fairly consistent. Maybe they took a different stance on a few wee areas, but I cannot recall what they were.

328. **Ms McClements**: I think that one of them was payment for appeal, but the majority of the responses were similar to what we have said. There were a few minor differences. I think that one was payment for appeal. That puts a new dimension on things, because what you are doing in the appeal process is appealing the decision of the officer who was out to visit you. There is recourse to appeal in most other issues that you do not have to pay for. If you are not happy and you disagree with the officer's inspection, should you pay for that? Fermanagh has taken a different stance.

That is the only one that I am aware of from memory, but if anybody else has —

329. **The Deputy Chairperson (Ms P Bradley)**: Our main concern is that, if there are differences, especially with those two councils, which, incidentally, we will have in anyway to give us a briefing, do you think that they will impact on the implementation of the Bill, or will we be able to come together on a lot of the issues?

330. **Ms McClements**: All I can say is that, with the work that has been collated for today, the 26 councils were all asked for their opinions. They have submitted them. I can only assume that all were submitted, unless they were later and consideration happened afterwards. I am not aware of any significantly different viewpoints.

331. **The Deputy Chairperson (Ms P Bradley)**: As I said, we will have them in front of the Committee anyway; they will be invited along to give their witness session.

332. Finally, I want to look at clause 20, which is the short title and commencement. From what I gather, you believe that the timing of the enactment date is important. I understand the difficulties with us moving into our larger councils. Do you have a realistic enactment date in mind? When could that take place?

333. **Mr Dargan**: It is terribly hard to visualise that at the minute because we are right in the middle of convergence. With 10 weeks to go, there are lots of uncertainties. In terms of food control, councils have looked very carefully, with the cooperation and instigation of our colleagues in the Food Standards Agency, at things that we should concentrate on in the future. I do not know, at this stage, what that will end up looking like, so I guess that councils will need time to come together, sort out their policies — whether they are two or three — and plan whatever strategic direction they want, before they manage to go through a mandatory scheme.

334. **The Deputy Chairperson (Ms P Bradley)**: OK. There are no further questions. Thank you very much for your time today.

21 January 2015

Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mr Mickey Brady
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Fearghal McKinney
Mr George Robinson

Witnesses:

Mr Colin Neill *Pubs of Ulster*

335. **The Chairperson (Ms Maeve McLaughlin)**: Colin Neill, chief executive of Pubs of Ulster, joins us. Colin, you are very welcome to the meeting. I will hand over to you to make your opening remarks, and then we will open up the meeting for comments and questions.

336. **Mr Colin Neill (Pubs of Ulster)**: Thank you very much, Chair and Committee members, for giving me the opportunity to come here today and present our evidence.

337. I will do a quick recap of who we are. Most people assume that we represent pubs, because we are called Pubs of Ulster, but we are actually a hospitality membership organisation. Our membership consists of pubs, bars, cafe bars, hotels, restaurants and, indeed, a number of the major visitor attractions across the Province. It is also worth noting that, although the Bill is about food hygiene, it is also important for our members who serve only beer, because that is classed as a food that falls within the remit of the Bill. That is why when you go into some pubs you will see a five-star rating for a bag of crisps, because that is one of their lines.

338. As an industry body, and as an industry, we recognise the importance of food hygiene standards. That goes without saying. We do not want to dilute that in any shape or fashion. However, it is fair to say that, initially, we were against the voluntary scheme becoming compulsory. We have moved our position on that. Our reasons for being against it initially included that, as a business organisation, we always start from the point of asking, “Why regulate?”. This is always a challenge to us because regulation can come with costs and complexities. It was also set against the backdrop of DETI’s review of business red tape, which is about taking red tape out of businesses but, here, we seem to be going to put some in.

339. The scheme was also sold initially as being a competitive thing; it was about people competing for better rates. We believe that this is fundamentally the wrong way to go. Businesses should not be competing with one another over food hygiene. It should be top of your list, regardless of where you are going. We had some other issues about how the voluntary scheme was developed initially. The statutory bodies in Northern Ireland engaged with the GB ones and the GB private sector, not us, early on. It is fair to say that that situation has been resolved, and I know that the Food Standards Agency (FSA) is in the Gallery today. I have to commend it because it has engaged with us as the Bill has moved along. That has, in our reckoning, improved the Bill. We have moved our position. We actually now welcome the Bill. We feel that there are a couple of elements in it that still need to be changed, but we welcome the fact that it is now in this format.

340. Briefly, our issues lie in the scoring process and in how the scheme is promoted. It is not just the case that we have taken a bit of a ring-round on this. As part of the DETI review of red tape, the hospitality sector was chosen as a pilot and, indeed, I chaired the review workshops for DETI. So, it was

an extensive consultation, and food hygiene was one of the pilot areas they looked at. So, there is extensive evidence, through DETI and then through our own organisation, on the views of the members. What came through strongly in that process was a real desire for the statutory agencies to work in partnership with the business community to actually deliver stuff like this. Doing things together is much better than having something done to you. We believe that compliance is always better than an enforcement model.

341. If we take the current scheme, then we have concerns about the scoring process. There are two options. Let me put it into the simple terms that our guys use. The hygiene officer will come from the council and give a score; let us say he gives you a 3 rating. You can appeal that; you have 21 days to do so, and while your appeal is going on your score does not change. However, to appeal it is a hard thing to do for many in our industry, so they will just take what they are given. They do not want to be seen to be challenging someone who — as one of the terms you hear goes — could get you in the long grass. They do not want to call such a person into question. So, that leaves people settling for whatever score they get because, if they appeal it, they will be getting into a whole confrontational situation.

342. The other option is that you can ask for a rerating within 21 days; but that can take up to three months and, in the meantime, your score goes down on what it was. The FSA's point is that this is actually a well-promoted and well-recognised scheme. However, for three months, your rating will go down for what was maybe one bad day, when everything was just not coming together for an inspection. This leaves you damaged for three months, if the scheme is as highly popular as we believe it to be.

343. What we would like to see, and where we would like to come from on this, is working together. We believe that the inspection process should come with an incentive to improve, along the lines of a visiting environmental health officer (EHO) coming along and saying: "You are a 3 rating and, if you do A, B and C, you could be a 4 rating. You have got a period of grace of six weeks: go for the 4 rating". This would encourage businesses to improve; this is working together. There is no confrontation; it would be more a case that, "if I want to keep in, I will do those things". There would be an incentive to drive on while, in the meantime, keeping your current score.

344. It would keep an awful lot of the adversarial role out of this, because there is huge evidence that people will just not take on their EHO. The system laid out in the Bill is that it is not even that person who looks at it. So, at the end of the day, the person who scores you will know that you have appealed and will be your EHO long after that appeal is over. We believe that our suggestion will actually incentivise people and drive up the scores within the process, as opposed to people settling for what they get. My understanding is that people are already achieving high scores in this. I think that, if it is there, it should be structured in such a way that it encourages people to actually improve.

345. The other area we have concerns with is customer awareness. In fairness, the FSA says it has the research to say that there is awareness. Our research says that there is confusion about what the rating means, particularly when you go into somewhere that does not do food yet has a five-star rating, because it says "Food hygiene" rather than just "Hygiene". The FSA, which is a UK-wide body, has something like 20,000 followers on Twitter. Twitter is a huge marketing tool: I have five followers, and I am nobody and live in Larne. This is their marketing tool, yet they are sitting with about 7,000 friends on Facebook: my son has more than that. So, they are not engaging to promote the scheme: there is confusion there.

346. We ask, if the Bill goes through, that there is some element put in that which

requires either the FSA or the local authority to promote the scheme. We do not want confusion along the lines of, "Is that five-star food?" or "Is that a rating of five for your food or five for your hygiene?". Remember, these ratings are in the Spar shop, they are in the chip van; they are everywhere. So, it is not as though having a high rating means you have a really upmarket restaurant or that you serve really high level cuisine. We do not want that confusion.

347. That was a very quick summary. In the red tape review and in the pilot in the hospitality sector, there were an awful lot of other elements recommended — not particularly relating to this Bill — that would make the system work better. That will be published soon, and I ask that the Committee takes time to have a look at it.

348. **The Chairperson (Ms Maeve McLaughlin)**: Thank you, Colin. You talked about the issues that cause some concern, some of which you suggest have been advanced a bit.

349. **Mr Neill**: Yes. Chair, we are really down to the scoring bit. Compared to our original submission, we are now pretty much in line with the FSA. We think this is a good idea, but it would work better if it was refined and if the scoring approach was done together in an incentivised way to improve things rather than just saying, "There's your score. Take me on if you want".

350. **The Chairperson (Ms Maeve McLaughlin)**: On the scoring issue, the sense of what I was hearing from you was that there was a concern that businesses may be afraid to appeal.

351. **Mr Neill**: They are afraid. We have evidence of that. We have done work on that, and the DETI report highlighted the same from all of its engagement.

352. **The Chairperson (Ms Maeve McLaughlin)**: That is an issue that it is important for the Committee to reflect on, because this is not about sanctions on businesses that are struggling. We were very clear about the appeal process. I note that the legislation states:

"The appeal must be made in writing to the district council which produced the rating; but no officer of the council who was involved in the production of the rating, or in the inspection on which the rating is based, may be involved in the determination of the appeal."

353. Is that not strong enough?

354. **Mr Neill**: The problem is that a person may do your appeal, but it will be the same EHO who will look after you day on day and year on year after you have called them into question. There is fear in the industry; so, you do whatever the EHO says. You do not take them on: you do not go there. So, straight away there is a barrier, and people will say, "I'm not even going to question him, never mind if the appeal is independent". The appeal process is there, and we accept that. However, if your EHO were saying to you, "Here you are, let's work together over the next four weeks to get you higher", that would incentivise people.

355. **The Chairperson (Ms Maeve McLaughlin)**: It might be useful, as this develops, for your organisation to look at how to strengthen the wording.

356. **Mr Neill**: I am keen to do that.

357. **The Chairperson (Ms Maeve McLaughlin)**: The other thing we picked up on was an indication in your submission that the Bill could result in costs to businesses. Could you give us a sense of that or examples of how that it could cost businesses?

358. **Mr Neill**: There are obviously appeal costs. The bigger cost would be if the scheme becomes widely known and you have that one day, which everyone has, when things do not come together, you are down in numbers etc. It is not that you are a hygiene risk: you are not at a 1 rating going down to a zero and being shut. You are in an area where, although your score is fluctuating, your hygiene standards are still high. If the scheme is promoted heavily, it will reduce costs. People always think of these things in the context of Belfast, but if you go into

a small provincial town, then people talk and know about what is going on in their local pub, restaurant, hotel or whatever. Again, we are against any sort of charges and a process of appeal. Small businesses are struggling. What seems to be not a lot of money, such as £50 a week, can be critical to someone. They are working to really tight margins and tight deadlines.

359. **The Chairperson (Ms Maeve McLaughlin)**: The cost would effectively be from the appeal process.

360. **Mr Neill**: The appeal processes and the negative impact of an unjustified score.

361. **The Chairperson (Ms Maeve McLaughlin)**: I assume there is no cost to the appeal process.

362. **Mr Neill**: Obviously, we have engaged with the FSA, and we are not so worried about that element now. It is more the cost of promotion and customer awareness.

363. **The Chairperson (Ms Maeve McLaughlin)**: Thank you.

364. **Mrs Cameron**: Thank you, Colin, for coming to the Committee today. In your submission you talked about colour-coded stickers. Could you tell me what you see as the purpose of colour-coding as opposed to what is already in place?

365. **Mr Neill**: That came from the DETI research and the working groups involved in that. All trades said they would like differentiation within the system. I am not knocking Spar, but I will use it as an example. If I am Michael Deane and I have a 5 rating, and the Spar on the corner is also at a 5 rating, that degrades what the Michael Deanes of this world are trying to promote, because there is a level of confusion about the meaning. It was just a case of having an orange sticker. I am going to go orange and green: maybe that is a bad place to start! A fast food venue is coming from a different background and is a different entity. We want to try and take away some of the confusion. A lot of that came from the industry submission, which was quite a wide process involving 120 or 130 different businesses.

366. **Mrs Cameron**: You do not think that would cause more confusion.

367. **Mr Neill**: I do not think so. We are still early enough. It is only the people who know about it know about it. It depends how you market and promote this as you go.

368. **Mrs Cameron**: What about the sticker itself? I think it should be visible wherever possible in the premises or the business. I would also like to see it on websites or social media pages — wherever people can order food from. What is your opinion?

369. **Mr Neill**: Some say, “I have a really fancy door, and I do not want to put any stickers on it”. That is a bit of a false argument. If the scheme is right and people understand it, then having the sticker in a prominent place is an advantage. The problem arises from confusion, where people do not understand the scheme, the customer, and the end user. If I scored you at a 3 rating, and we worked together to get a 4 rating, you would almost be keen to put it up somewhere, because you would have just achieved something. It creates that motivation within the system.

370. **Ms P Bradley**: Thank you, Colin. I will go back to clause 3 and the 21-days’ grace. First, Colin, it seems to me that there has been a lot of consultation among your members before you made your submission. How many members do you have roughly?

371. **Mr Neill**: It varies on any given day. As I often say, I represent them all and some of them pay me. About 70% of pubs, 50% of hotels and a significant number of restaurants are members. It rocks round about the 1,000 mark, and that is steadily growing. We are doing OK.

372. **Ms P Bradley**: Then you have consulted a significant number of businesses before making your submission. I understand where you are coming from when you say that the 21 days would encourage restaurateurs and landlords

to look at getting a higher score; and I take it from what you have said, and your consultation, that they would all be very eager. We see many businesses that would be quite happy with a 3 rating or even a 4 rating, but they want to achieve the very highest standards.

373. **Mr Neill**: They do buy in. The hospitality sector in Northern Ireland is changing rapidly and growing. People understand that the quality product is key and that that quality product includes health and hygiene ratings, and the whole cocktail of measures by which you are graded. There is huge buy-in from the industry.

374. If I am honest, the DETI workshops were actually quite good. I went into them with the idea that everybody would want to scrap every law going, but it was the opposite: they wanted to improve how it worked. The FSA bought in during that process and we got closer to them. We are even talking to them now about starting up a regular group to meet together and talk about things coming down the line. That is a much better way to do things, develop new legislation and solve challenges. I just think the alteration comes late. Maybe if we had gotten in early enough — if we had been involved in the trials in England and the talks as a trade — we might have been able to influence it.

375. **Ms P Bradley**: Do we have to worry about businesses that will not pay too much attention until the first inspection, if this goes the way you are hoping for, where they then have a period of grace to make any upgrades? That would be a concern. What do you think of that?

376. **Mr Neill**: We are talking about such a short period of grace. A business may say that its score is down because it was having a bad day. However, such businesses will be fundamentally flawed. A business that scores a 4 or 6 rating will never get its act cleaned up in that grace period. It is an ethos. There is a lot more to the Bill than just carrying out the procedures as a whole. There is also the question; “Is there the right management attitude to running this?”. I would nearly go the other way and say that, if you are down at a 1 rating, you should be shut. You should not even be opening if you are at that level; you should not be there, because you are on the border of being —

377. **Ms P Bradley**: But there is a determination among your members to achieve the very highest standards.

378. **Mr Neill**: Absolutely. I think that that is borne out. The FSA are over my shoulders, and I do not like to talk for them, but they tell me that those who are participating are getting very high scores now. As an industry body, we would like to be on board and encourage this, because we want everyone to be 5 rating and have that really high level of customer experience. Tourism is the growth market for all member sectors, because we cannot sell more food and drink to the same people: we need more people, and that is about — if they put on their business heads — delivering a fantastic experience. It also means that you can charge a premium price, which is where we want to get to. It is about prosperous businesses.

379. **Ms P Bradley**: Finally, the Chair mentioned earlier that your members are nervous about appealing, for fear that they may be penalised. Is there any evidence, at present, that this has happened during the voluntary scheme or any other scheme?

380. **Mr Neill**: The DETI review of red tape is still in draft and has not been released yet. There were workshops across the Province. They were not here but were in Derry/Londonderry. We had workshops all over the place. Everyone who came through that said, “No, I am not going to challenge my EHO. They will get me in the long grass”. Probably, they would not do so. I am not saying they are bad people. It is just that you have to work with them, therefore you do not challenge them. You just take what you are given and accept it. This means you are not encouraging anybody to get better. You are actually encouraging them to stay where they are.

381. **Ms P Bradley**: Most of us have a local council background; that is where most of us started our training. We understand the need for EHOs and the great job they do.

382. **Mr Neill**: We agree. It is not about what they do, it is just that —

383. **Ms P Bradley**: As elected representatives and ex-councillors, we would like to believe that they are doing everything fairly and are not penalising people. I am concerned that you even raised that.

384. **Mr Neill**: It came up time and again right the way through the DETI research. It is a bit like not challenging a policeman. You will maybe not do anything, but it is the old attitude test of not spoiling a relationship, and so accepting things, which means, I suppose, that people just accept a 3 rating rather than strive to improve.

385. **Ms P Bradley**: I suppose it is slightly different if it is your livelihood or your business. This is what is paying your mortgage and everything else. I understand that.

386. **Mr Neill**: Yes.

387. **Ms P Bradley**: Thank you, Colin.

388. **Mr Brady**: Thanks. Once a councillor always a councillor. Thankfully I never was one. Some businesses have been advised that they may not be able to achieve the uprating because of the nature or design of their premises, even though they want to. It seems a bit peculiar.

389. **Mr Neill**: That evidence came up again in the DETI research. When you talk to EHOs and the FSA then, in principle, the premises should not matter, provided you reach the standard; but people are coming to an open workshop with statutory bodies in it and saying that they have experienced that first hand.

390. **Mr Brady**: Have they given any examples of the type of premises that might not get that because of the design?

391. **Mr Neill**: I will not quote particular premises on the record without their permission, but I know of one in Belfast that has a very high ornate ceiling. Unless they were prepared to put in an R-sealed ceiling, they were not getting the rating, which is not really the ethos behind what this is about. The thing is sealed; it is just way up there. We are always left to interpretation. I appreciate that no matter how decent someone is, at the end of the day, everyone interprets the legislation or how they enforce it slightly differently. That is the nature of it.

392. **Mr Brady**: I presume that the ceiling is a feature of the premises and one of its attractions.

393. **Mr Neill**: Yes. The last thing you would want to do is cover it up. There is that process.

394. One of the things that has come up, and it is not particularly for this Bill, but in the research — and I am sorry that I am quoting a report that is not even out yet, but it is not in my gift to put it out or I would do so — in GB, they have primary or principal authority. If there are a number of premises straddling different council areas, they can choose which authority they want to be in. That is your benchmark. We would be keen to see that coming in here, if nothing else to make councils a bit more aware. If owners were to choose one council, the other council could question why they would want to do so, which would help as well.

395. **Mrs Dobson**: Thank you for your briefing, Colin. I note that you talked about gold-plating, which is a bugbear of mine too. You also talked about red tape. Can you give us any further examples of what you feel is too much gold-plating? I know that it has been touched on, but I would like to hear a bit more about the experience of your members regarding the physical size of the premises. You referred to a chip van, a corner shop and a large restaurant and the limitation on the premises impacting on the rating. Can you give an outline of that because that is concerning?

396. **Mr Neill**: I am not a chef, and I accept that there are wiser authorities on this, but my understanding is that the whole scoring system is supposed to be about the methodology and procedures you have in place to ensure that your hygiene is right. What we pick up from our members when we talk to them is that they are told that their kitchen is far too small or their ceiling is too high. You get interpretations. I had premises where there is a very small kitchen. They worked with the EHO to put the ice machine outside and put a rodent guard, or whatever the fancy term is for it, over it. Then their EHO told them that that was totally unacceptable. You have that inconsistency going on, and maybe people reading more into what will be counted in.

397. **Mrs Dobson**: So, it is the inconsistency factor, whether you have a restaurant or a corner shop and not knowing exactly where you stand with it.

398. **Mr Neill**: Yes.

399. **Mrs Dobson**: I know that you are concerned about inconsistencies, and you have a right to be. I was quite concerned when you talked about the potential of leaving a business damaged for three months because of one bad day. Is there any way of getting round that? If you were designing it from the start, what would you recommend?

400. **Mr Neill**: At the moment, you get your score and then you have the whole appeal process or review. If you consent to a review, then your score goes down. I outlined earlier that the EHO could come in and say, “I have gone through this today and your premises scored a 3 rating. However, these are the three things that are keeping you at that level. If you fix them, you will be a 4 rating”. Rather than the score just going down for three months, you would not be taking down their rating or saying, “Well, you are normally a 4 rating. Today would take you to a 3, but if you fix things, I will be back in two weeks and you will stay at a 4 rating”. My understanding is that local authorities would like a six-month period to turn it round because of the workload, but, in the private sector, three days is a long time, never mind three months. Our guys are saying, “What do I need to fix? I will fix it now. Can you wait?”. They are keen.

401. **Mrs Dobson**: You feel that there should be flexibility.

402. **Mr Neill**: Yes. That would be much better. I appreciate that, in our industry, we work across all the regulatory bodies, but I am a great believer, whether it is on the policing side, that it is much easier and you get far better results doing things with people than doing it to them.

403. **Mrs Dobson**: In particular, I want to highlight rural business as well and the fact that £50 in the takings can make the difference between that business still being viable or not. So, those flexibilities are very important. We need the highest of standards, but we want to ensure that the businesses are supported and that people are not being seen as being too heavy-handed. There should be more of a guiding hand, rather than being too heavy-handed with them.

404. **Mr Neill**: I totally agree. I live on the coast near a small village, and if the score of the small pub/restaurant there went down, everybody in the village would know that day, because it is that sort of place: it would probably be the biggest news of the day in the area. However, if the inspector said, “Look, you are at risk of losing your score. You’ve got a couple of weeks, and if you sort out this and that I will be back”, then straight away the business owner would be fixing it. With the greatest respect to everybody, no matter where you are, you get a bad day. You might be short-staffed, you might not have got something right or whatever, but that does not mean you have gone from a 3 rating to a zero rating and endangered people’s health.

405. **Mrs Dobson**: The reputation they have built up over years could be damaged because of that.

406. **Mr Neill**: Absolutely. I appreciate that the document says that the rating is for that day, but it will stay up for 21

days if you formally appeal. The council then has 21 days to sort that out, so you have 40-odd days where that rating could stay up if you are appealing the decision. What we are saying is this; if we are doing this let us do it together. If that happens, I honestly feel that we will be sitting here in a few years saying it has driven up the scores because we have worked together as opposed to having it done to us.

407. **Mrs Dobson**: That makes sense.

408. **Mr McKinney**: Colin, earlier you mentioned the methodology being under examination as much as the kitchen and preparation area. In relation to the grace period that you are talking about, is there not very limited room for failing on the day? This is not about examining the day, it is about examining the whole process: temperature, transportation and all of the issues around how food is prepared and staff are trained. So, is there not very limited room for getting it wrong on the day?

409. **Mr Neill**: The score is based on the day the FSA measures the premises; it is not about what you did before or after it. It also measures management's attitude to hygiene. If you do not have the senior chef there because he is off sick, there could be a younger person in that day who does not quite know where all the log books are, because it is not his thing to do. In a small business, whether we like it or not, that happens. The young person can probably cook to the best and keep everything as hygienic as he needs to, but he is just not sure how to interpret everything.

410. **Mr McKinney**: We spend most of our time on the eating side of the kitchen, but we were invited in downstairs not that long ago. We donned our white coats and got very good instruction on what makes up a test. From that, I formed the opinion that the rating is not based just on the day. Have you done the test or been involved in one?

411. **Mr Neill**: I have seen a couple of them.

412. **Mr McKinney**: I suggest that, given the examination process and the depth to which inspectors go, there is little room for rectifying problems within the short period that you are talking about. Do you agree?

413. **Mr Neill**: There is room. This is not about trying to take somebody from a one to a five. In the voluntary scheme, I have a team of students who will go in and take you from a 2 rating to a 4 rating within six weeks. We charge our members and send them in, so it can be done. It is just about getting it right. I am not talking about trying to take someone who is terrible and saying, "You have six weeks to come up from a one to a four"; I am talking about cases where you are a four and for some reason you have slipped down one score, which could potentially damage your business. Instead, the owner should be told, "We'll work with you, and get you backup".

414. **Mr McKinney**: You talk about encouraging people. Do people not need something more than encouragement? We do not have as many people on the voluntary scheme as we should.

415. **Mr Neill**: The voluntary scheme is not promoted to the level that people see it as being an important part of their business. If it is not a key part of your business and it confuses your customer message, you do not go there. That is why it needs to come with a promotional requirement. It has to be promoted and explained.

416. **The Chairperson (Ms Maeve McLaughlin)**: Colin, thank you very much for your evidence. We will reflect on that. Thank you for your time.

417. **Mr Neill**: Thank you.

11 February 2015

Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Mr Mickey Brady
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Paul Givan
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Fearghal McKinney
Mr George Robinson

Witnesses:

Ms Kathryn Baker	*Food Standards Agency*
Mr Michael Jackson	*Northern Ireland*

418. **The Chairperson (Ms Maeve McLaughlin)**: I welcome from the Food Standards Agency (FSA) Michael Jackson and Kathryn Baker. The Committee has received a range of written and oral evidence that you are aware of. The purpose of today's evidence session is for us to make you aware of the issues and for you to provide us with a response. I advise you that the meeting will be in question-and-answer format, and we will take each clause of the Food Hygiene Rating Bill in turn. The Committee has received the FSA correspondence on the proposed amendments, and I thank you for that. We will deal with that as we come to the relevant clauses.

419. At this stage, I will invite questions from Committee members. I will open on clause 1. The Chief Environmental Health Officers Group (CEHOG) made the point that 'Food Law Code of Practice' encourages the removal of lower-risk premises from inspection programmes or the use of lighter-touch interventions rather than what is called a full inspection. However, lighter-touch interventions would not collect sufficient information to produce a rating. Therefore, CEHOG is concerned that, for some premises, there will be no mechanism to renew their rating, and, over time, it will become outdated. Similarly, Co-operative Food stated that councils are not required to inspect all food businesses, thus some would not have a rating. How do you respond to that?

420. **Mr Michael Jackson (Food Standards Agency Northern Ireland)**: The substantive point in the views expressed by the chief officers is that there are some very low-risk businesses that, when subject to either light-touch interventions or alternative enforcement strategies, will not get an inspection as frequently as they currently do from councils in Northern Ireland. The requirement to conduct inspections is, in essence, the same at the moment through the food law codes of practice in England, Wales and Northern Ireland. Some councils in Northern Ireland have opted not to use the flexibilities. It is not a question of us looking to change and make things more flexible at this point but a question of us using the flexibilities that are there.

421. The chief officers are correct in saying that, for certain businesses, where there is the option to have a light-touch intervention, there may be a visit that will not result in a rating, but the majority of businesses will in due course — the next time around — get an inspection that would result in a rerating. The only businesses that drop out of the scheme altogether are those that are of a very low-risk nature; for example, a clothes retailer that happened to be selling chocolate confectionary for Valentine's Day, or something like that.

422. **The Chairperson (Ms Maeve McLaughlin)**: Does that leave a gap, if some businesses will potentially not have a rating?

423. **Mr Jackson**: It does not leave a gap in how the scope of the scheme is defined.

Businesses that are within the scope of the rating scheme as proposed will, at some point, receive an inspection that will allow a rating to take place. The councils may also decide that they do not wish to avail themselves of the flexibilities to conduct light-touch interventions, and some may continue with inspections that would generate new ratings.

424. **The Chairperson (Ms Maeve McLaughlin)**: Is there any indication of the timescale for businesses not having a rating?

425. **Mr Jackson**: Consider a catering business that is being very well run, has good management systems in place, is keeping on top of maintenance and cleaning, and has good procedures. Through the application of the light touch, as allowed in the code of practice, a very good business of that nature could, if the flexibility were applied, get an inspection once every four years. It would be visited at two-year intervals, but, if the light-touch flexibility were being adopted, the intermediate visit would not necessarily gather information to allow a rerating. The light-touch visit may, if conditions have changed significantly, trigger an inspection to be carried out, thereby allowing the production of a new rating. Look at it in this context: a business is inspected today and gets a rating of 5, and, if the light-touch visit takes place in two years' time, it will determine whether that 5 is still right. The inspection will look at whether there has been significant change in the activities, the way in which the business is being run and the level of compliance. If all is well, there is logic in having that rating continue. If something has gone fundamentally wrong, the light touch, in effect, stops, an inspection will be carried out and a rerating conducted. There is a safeguard in the inspection system.

426. **The Chairperson (Ms Maeve McLaughlin)**: One of the issues that the Co-operative Food raised was that the clause is not necessary. It comes on the back of what you are saying: that there are only two scenarios in which an inspection would be carried out a short time after the previous one. It talked about a rerating if there is evidence of a food hygiene risk but stated that, in both scenarios, the production of an up-to-date rating would presumably be required. I am wondering about your explanation for clause 1(2) being necessary.

427. **Mr Jackson**: The rationale for clause 1(2) is to recognise the fact that, when an inspection is carried out, if the business is found not to be complying, and there are significant issues, irrespective of the hygiene rating system, the council will automatically go back, within a short space of time, and conduct a further inspection to see that the business has done what is necessary. It is to cover that scenario, because, in that situation, quite often it is not appropriate to rerate when an inspection is effectively being conducted to determine whether corrective action has been taken.

428. **Ms Kathryn Baker (Food Standards Agency Northern Ireland)**: I think that it is fair to say that, in circumstances in which an officer does what we would term a compliance revisit, such as in the situation that Michael described, where somebody is not complying to a level that the officer feels that he or she needs to come back quite quickly and is not prepared to wait very long to see that the issues have been rectified, the officer will go back but will probably concentrate only on the issues that need to be rectified. The officer is not going to make a full assessment of everything that needs to be looked at to generate a rating each time; rather, the officer is going in to address the specific non-compliances. It is to take account of the fact that we are not imposing a requirement on councils to have to undertake a large inspection each time to consider everything in order to generate the rating. It is for another purpose. It is to deal with non-compliances and get them sorted out quickly. It is of a technical nature, but

it is just not to catch those particular visits.

429. **The Chairperson (Ms Maeve McLaughlin)**: On clause 1(4), the consumer organisation Which? stated that the legislation should also cover business-to-business supply of food, given that, as it highlighted, that is the case in Wales. I am just looking for your explanation as to why you are not planning to cover business-to-business trade in the first instance.

430. **Mr Jackson**: There are a couple of aspects to that. The first is that our view was that the best approach to getting the scheme up and running on a statutory basis was to work it on the same basis as the voluntary scheme, which is about those businesses to which consumers go directly to purchase food. The primary reason for having the rating sticker displayed is so that people can make that decision. When you are looking at trade-to-trade business, where the consumer is not going directly, that information would not be as meaningful, because it would not be taken into consideration in the decision to purchase trade-to-trade.

431. The other aspect is that, for a business to make an informed decision to buy from another business, it needs a lot more information than just the basics of a food hygiene rating. For example, if you are making a decision to source from a given supplier, you will want to have information about its quality-control systems and testing methods. You would want to have a much more comprehensive picture to make that decision on the trade-to-trade aspect, particularly if you wanted to be able to establish a due-diligence defence in the event of something going wrong, having obtained food from that source.

432. Finally, one of the points that was raised by the chief officers' representation was that they are very mindful of the impending local government reform and the challenges that that is going to present. Again, our view was that the sensible approach would be to work on the same basis and not bring in any new businesses at the outset. What probably would not be apparent is that, when the scheme was launched in the first place — the voluntary scheme — an awful lot of work was done to get to the stage at which you launch the scheme. If we were going to bring in trade-to-trade from day one, another significant amount of work would need to be done with those businesses to get them organised and prepared. In clause 1 as drafted, the option is there. We are not saying that that is not something to be considered, but we will be able to do that in due course, should the timing be right and there is a good case for it.

433. **Ms Baker**: On the back of what Michael has said, I will draw your attention to clause 1(7), which states:

"The Department may by order amend the definition of 'food business establishment'."

434. The amendment has been proposed for that very reason, because the current definition relates only to those establishments supplying food directly to consumers. There would be a possibility to amend that after a period, with the scheme operating as it currently does, which is on a voluntary basis, where it supplies information to consumers. Some evidence could be gathered, and work could be done with the types of businesses that would then need to be brought into scope. That could be done through an order or a subordinate power.

435. **The Chairperson (Ms Maeve McLaughlin)**: You think that clause 1(7) covers that.

436. **Ms Baker**: Yes.

437. **Mr Jackson**: That is the exact reason for having it in clause 1(7).

438. **Ms Baker**: It allows trade-to-trade to be a possibility in the future. It is similar to the way in which it was done in Wales, which did not have it at the outset either but brought it in through subordinate legislation a bit further down the line.

439. **Mr McKinney**: I want to return to the point about the defence of not having business-to-business at this stage. At

least your inspections touch on other businesses. Obviously, any business that you are inspecting has a back door through which product comes. From what we saw in the inspection, you are looking at a business's labelling. You are, in some ways, touching on a business, although you are not inspecting that business's own production.

440. **Mr Jackson**: If a caterer is running the operation in a responsible way and taking its responsibilities properly, checks will take place on the goods arriving, as you say. If there were anything wrong, it would be able to raise that with the supplier. That is a much bigger picture than just the rating of food through the supply chain.

441. **Ms Baker**: You also have to consider that the Bill simply requires businesses to display a sticker voluntarily. You have to ask yourself this: what benefit is there in asking a manufacturer to display a sticker? Manufacturers do not go to each other's doors to buy food. It is done in a different way. They will look at specifications and audit them. They will not go to a door to look for a sticker and make their decision based on that.

442. **Mr McKinney**: I suspect that, through your inspection, if a meat business were presenting at a number of businesses' doors without adhering to the proper standards, the focus from an inspection point of view would go on to that business.

443. **Mr Jackson**: There is another point to note. Although it does not apply to all manufacturers who would ultimately be the source of material that is being sold trade-to-trade, because of the regimes that operate in, for example the meat industry, by which I mean audits and inspections that are carried out by district councils, there is already transparency around the audits' findings. We have a procedure in place whereby, for example, when slaughterhouses and fresh-meat-cutting establishments are audited, a full report is published by the Food Standards Agency. There is not a whole part of the food chain —

444. **Mr McKinney**: — that is not covered.

445. **The Chairperson (Ms Maeve McLaughlin)**: Thanks, Fearghal. CEHOG and the Co-operative Food have both stated that clause 1(5) is not clear on what constitutes an inspection for rating purposes and on how it relates 'Food Law Code of Practice' and the brand standard document. Can you clarify the position for us?

446. **Ms Baker**: When you read the clause on its own, there is a lot of other information that is currently used, if you know what I mean, to determine what an inspection is. We are assuming that that information will all still be relied on. Officers will still be referring to 'Food Law Code of Practice'. What an inspection is will be detailed fully in the guidance that will support the Bill in the way that it is done now, which is through the brand standard document. There is no intention in how the Bill is drafted to be any different under a statutory scheme from what happens now.

447. When we say "inspection" — clause 1(5), as you have pointed out, relates it to being an official control under regulation EC 882/2004 — it refers to certain types of activities that happen that are detailed in 'Food Law Code of Practice'. We refer to those as inspections, partial inspections and audits. It is only those types of visits that councils do, where the full amount of information is gathered, where a rating can be generated. Councils do other visits, but those do not generate the full amount of information. They might go there to do surveillance or sampling visits, but they could not produce a rating in those circumstances. We fully intend to clarify that in the guidance that supports the Bill in exactly the same way as it is done in the brand standard document. There will be no difference from what currently happens.

448. **The Chairperson (Ms Maeve McLaughlin)**: Will it be clarified in the guidance?

449. **Ms Baker**: Yes, very much so. *[Interruption.]*

450. **The Chairperson (Ms Maeve McLaughlin)**: I am sorry, folks. I will have to suspend the meeting; that is a vote.

Committee suspended for a Division in the House.

On resuming —

451. **The Chairperson (Ms Maeve McLaughlin)**: Apologies to our witnesses for the inconvenience and disruption.

452. I am looking at clause 1(6). The Hotels Federation said that hotels should be exempt from the mandatory displaying of a rating because consumers are not aware of what the various ratings mean and that, because hotels are already graded for service and structure, a food hygiene rating would confuse the customer. How do you respond to that?

453. **Mr Jackson**: There is already a scheme in place for the rating of overall quality standards for hotels. We do not believe that introducing a food hygiene rating, which operates on a different basis, is potentially confusing. The hotel grading scheme works on the basis of stars. When we were developing the voluntary scheme, which seems like many years ago, one of the main pilots was a star-based scheme. A lot of people still talk about 5 stars as opposed to the rating of 5. One of the reasons why we opted to go for a numerical rather than a star system was the potential for confusion.

454. The other thing to bear in mind is that the sticker clearly states that this is a food hygiene rating. We do not believe that the fact that it is a number rather than stars creates confusion. Indeed, we engaged with consumers on the development of the current sticker in the context of hotels, and it was not an issue that they raised with us. They find that the food hygiene rating sticker does what it says on the tin, and they understand it.

455. **The Chairperson (Ms Maeve McLaughlin)**: So, it was not picked up through your process that confusion was an issue.

456. **Mr Jackson**: No.

457. **The Chairperson (Ms Maeve McLaughlin)**: OK. On clause 2(1), the Chief Environmental Health Officers Group (CEHOG) was concerned about the requirement for councils to notify a business of its rating within 14 days. It would prefer that the 14 days was included in guidance rather than being part of the legislation. I am looking for your rationale for including that in the Bill.

458. **Ms Baker**: The 14 days is a carry-over from the voluntary scheme, and there is, I suppose, a knock-on effect from the timescales here in determining when a rating becomes valid. We totally take on board what CEHOG has said, which is that it currently does not have any problems responding within the 14 days but wants some flexibility so that when a council faces exceptional circumstances, such as a big food incident or a flood situation, that require it to divert officers to other work temporarily, meeting the 14 days is not an absolute requirement. We are confident that we could consider providing an amendment that would provide that flexibility to it when there are exceptional circumstances.

459. **Mr Jackson**: That would be consistent with the food law code of practice that drives the inspection system. In that, we acknowledge that there can be exceptional circumstances that may require you to do things other than plant inspections. There is already a process that we can agree to vary the inspection programme. Providing flexibility for exceptional circumstances seems a reasonable amendment to consider.

460. **The Chairperson (Ms Maeve McLaughlin)**: So that I am clear, will you confirm that you are considering an amendment?

461. **Mr Jackson**: Most definitely.

462. **The Chairperson (Ms Maeve McLaughlin)**: OK. Thank you for that clarity.

463. Dr Hyde, an academic who carried out some research on food-borne illnesses, suggested that clause 2(3)(g) should also require businesses to be informed by the councils of the penalties for not displaying the rating or not providing information verbally to customers. Do you have a view on that?

464. **Ms Baker**: Yes, we do. We agree that businesses should, at some stage, be informed of the penalties, but we do not think that the information needs to sit in the Bill. With all the legislation that the district councils enforce, it is not routine for them, when they first write out about a requirement, to outline the penalties that would apply. They will work through their hierarchy of enforcement, and, once it gets to the point at which they feel that they want to raise the issue and take more formal enforcement action, they will speak to the operator about penalties and what that means to them. We do not disagree that businesses should know the penalties; we just do not think it necessary for that to be specifically on the list. The information would be passed to businesses at the right stage of the process. Rather than bombarding them with lots of information up front, they would get it at the point at which it would be more relevant.

465. **Mr Jackson**: In conjunction with that, in advance of a statutory scheme going live, there would be significant promotion of the scheme. We will work with the district councils to ensure that the requirements of the scheme and the sanctions are effectively communicated to everybody before we go live so that they understand the consequences of failing to comply. That would be done as a broader package of explaining the statutory scheme and how it is intended to operate.

466. **The Chairperson (Ms Maeve McLaughlin)**: You think that it does not need to be in the Bill; you think that there is enough clarification.

467. **Mr Jackson**: Yes. Introducing it in the Bill would be inconsistent with the approach throughout the requirements for food hygiene and safety. None of the other regulations that stipulate what food businesses must do contain that level of detail about communicating the sanctions for committing an offence.

468. **Ms Baker**: It would certainly sit in the guidance, which will flesh out further details.

469. **The Chairperson (Ms Maeve McLaughlin)**: So, it will be in the guidance. OK.

470. On clause 2(4) and clause 2(5), Co-operative Food pointed out that no timescales were attached for the councils to inform you, the FSA, of a rating or for the FSA to publish the rating on its website. It found from experience that it often takes two and a half months between being inspected and the rating being uploaded to the FSA website. So there is the potential for the FSA website to display an out-of-date rating detrimental to a business that has improved its rating or to give a false impression to consumers when a rating has fallen. Have you considered putting a time frame in the Bill for councils to inform the FSA of a rating?

471. **Mr Jackson**: We have looked at that. How the voluntary scheme operates at the moment is that councils are required to update their data — in other words, to notify us — at a minimum frequency of once every 27 days. If they are adhering to the brand standard, that is how frequently they will notify us. Publication by us happens straightaway because of our IT approach: when the data is uploaded, it is released to the website.

472. We accept this point. Putting a requirement on the FSA to publish would have to go hand in hand with a requirement on the local authority to notify us of the rating so that the two could work together. At the moment, most councils do not find difficulty with being able to notify us in accordance with the brand standard. To ensure

that the system functions and that the ratings are regularly notified to us and updated in a timely fashion, it would be possible to consider an amendment that would put both into the Bill: for the council to notify and for the FSA to publish.

473. **The Chairperson (Ms Maeve McLaughlin)**: One of the issues that came up for us was this: given that many people will use the FSA website to check ratings before ordering food by telephone or even when picking a restaurant, is it not vital from your perspective that you lead by example by making sure that your website is as up to date as possible?

474. **Mr Jackson**: That happens at our end automatically once the information is communicated to us. We need to be mindful of introducing a higher frequency of notification to us that would present a significant burden to the councils. Usually, inspection work is planned on a monthly basis and is conducted, reported and entered into their system etc. There is a logic for allowing what is, effectively, a four-week period for them to notify. There would be significant resource implications in pulling that back to a shorter period. We also have to bear in mind that the latest research that we conducted shows that, in Northern Ireland, 91% of people using the scheme use the sticker rather than the website. The sticker is, by far, the most prevalent way of people informing themselves of the ratings.

475. **The Chairperson (Ms Maeve McLaughlin)**: Is it the case that the Welsh legislation requires the FSA to publish ratings within seven days of receipt from the council?

476. **Mr Jackson**: Yes. The Welsh Act has a stipulation for the local authorities to notify within a certain period and for the FSA to publish within seven days of that time.

477. **The Chairperson (Ms Maeve McLaughlin)**: That is in the legislation.

478. **Mr Jackson**: Yes.

479. **The Chairperson (Ms Maeve McLaughlin)**: On clause 2(6), concerns were raised about the mandatory stickers, which you started to touch on there. The Hotels Federation believes that the current plastic sticker is not in keeping with the standards of a four- or five-star hotel. The Chief Environmental Health Officers Group believes that councils should be able to add their own branding to the sticker so that consumers would know who to contact with a complaint. Pubs of Ulster believes that there should be different colours of sticker for different types of food business. Do you have a response to those views?

480. **Mr Jackson**: I will take those in reverse order and start with the views expressed by Pubs of Ulster on different colours. The important thing to remember is that the information that is of value to the consumer is the rating: it is the number that is important. If you were to introduce different colours for different categories of premises, it would be meaningless and confusing. It would not add anything to informing the consumer. One view that comes across from industry is that the stickers should look different because not every business needs to do the same thing to get a 5 rating. That is true. For a small retail outlet not handling open, high-risk food, the requirements on it — the amount of work that it will have to do and the records that it will have to maintain to be able to comply with the law — are different from the requirements on a hotel, which will need to have much more complex systems in place.

481. At the end of the day, the rating shows that a business, taking into account the nature of it and its activities etc, is complying. If you have a single sticker, whichever colour it happens to be, with the number 5, the message to the consumer, whether it is a corner shop, a restaurant or hotel is this: the business complies fully and has very good standards. That is the message that consumers need to get. Consumers make this decision very quickly. We know from our research that the

food hygiene rating is only one of a number of factors that we all take into consideration when deciding where to buy food or eat out. Having a different colour would, in our view, definitely lead to confusion and not add anything to a consumer's decision-making.

482. **Ms Baker**: Do consumers need to judge what type of establishment they are going into based on the colour of the sticker? They will know when they are in a retail establishment. We do not feel that having different coloured stickers would add anything to the decision-making process that the food hygiene rating is there to serve.

483. **The Chairperson (Ms Maeve McLaughlin)**: What about knowing whom to contact when processing a complaint?

484. **Mr Jackson**: When consulting on the regulations that will detail the prescribed format of the stickers, we will look carefully at the point made by CEHOG about the ability to have branding on them. We fully acknowledge that the district councils are key partners in the delivery of the scheme and understand why they feel that they should have their logo there. A valid point was made about it showing the council involved so that, if you see something that you are not happy with, you know which council to go to.We will have to think carefully about the consequences of that for the cost of maintaining the scheme. We have made some enquiries about costings and the process. The way it works at the moment is that, under the voluntary scheme, councils have the option of using the free stickers provided by the Food Standards Agency, which have the statement:

"This scheme is operated in partnership with your local authority",

485. in which case they get the stickers free, or, if they want their logo on it, they pay for that. Our stickers are now used across England and Northern Ireland, so there are economies of scale, and the cost of providing them is minimised through not having logos. Our current arrangements for the printing of stickers cannot cope with logos, so we would have to look at a different approach. We completely understand the points made by the chief officers' representatives and will look at them when consulting on the regulations about the format of the sticker.

486. **The Chairperson (Ms Maeve McLaughlin)**: You are saying that there is really no need to change the design or colour of the stickers and that doing so might confuse people. You feel that the real issue is the rating, but you will look at and consider CEHOG's view. Is that right?

487. **Mr Jackson**: Yes. When we get to the stage of putting forward our proposals for the prescribed sticker and consulting on the regulations, we will definitely look at the issue of the council logo. We do not believe that it would be appropriate to consider different colours for different categories of business.

488. **The Chairperson (Ms Maeve McLaughlin)**: OK. Thank you for that.

489. **Mr McCarthy**: Thank you very much for your presentation. I want to ask about clause 3. Pubs of Ulster believes that there should be a period of grace after assessment to allow businesses to rectify any issues identified and that this should take the place of the appeal. It also believes that businesses are reluctant to use the appeals process for fear of being penalised at a later date. How do you respond to those concerns? Have you considered having a period of grace rather than an appeals process?

490. **Mr Jackson**: Again, I will start in reverse order. On the concerns raised by Pubs of Ulster about a lack of willingness to use the appeals process, we understand why some people may be reluctant to go down that route. They may have been less likely to use the appeal route in a voluntary scheme that did not require them to display a sticker. However, the fact that it will be a legal requirement to display the sticker would reasonably lead you to believe that, if people felt that an officer had awarded the wrong rating, they would be more

likely to appeal. We understand that some businesses want to work with their environmental health departments and not fall out with the enforcer. When looking at the implementation of the scheme, we will certainly consider ways to encourage businesses to avail themselves of the appeal process.

491. The period of grace is a matter that, we believe, goes to the heart of the scheme, and we do not feel that it would be appropriate. I go back to what we are trying to achieve through the mandatory display. It not only provides consumer information but is a tool that is, in effect, deregulatory in nature rather than an additional regulatory burden, in that it lives on the back of the existing inspection system. In other words, the inspections are being done anyway because they are required, so the rating is produced. It encourages and drives self-compliance and self-regulation.

492. If a scheme allowed you to wait for an inspector to come out and tell you what was wrong so that you could you put it right, there would be absolutely no incentive to comply with the legislation. We have to remember that the food hygiene law requires compliance with the legislation at all times. You, as a responsible food business operator, should be doing your best to comply, and you should not be waiting to be told what is wrong. We must also remember that we will use this rating as a likely predictor of future compliance so that consumers can have confidence. If a scheme was operated on the basis of a period of grace, the rating given would be driven by officers telling businesses what to do. It would no longer be a prediction of future compliance and would, in our view, make the scheme meaningless.

493. **Mr McCarthy**: Right, so it is a no to that one.

494. I want to ask about clause 3(2) to clause 3(10). Fermanagh District Council queried whether clause 3(2) allows a line manager who did not conduct the inspection but signed off on the original rating to be involved in the appeal. Would that be the case? Are you satisfied that councils will have the resources to be able to find suitable people to conduct the appeals?

495. **Mr Jackson**: Yes. On a line manager being involved, clause 3(2) as worded refers to an officer:

“who was involved in the production of the rating”.

496. That would mean that, if you signed off the rating, you were involved in its production, so the line manager would not be an appropriate person to deal with the appeal. The appeal is very much about considering matters of fact. Therefore, someone above the line manager, who may not be intimately familiar with the evidence of the scheme, should be able to challenge whether the proper process has been followed. We think, bearing in mind local government reform and the fact that councils will be significantly larger, that it is perfectly reasonable that someone not involved in the production of the rating would be in a position to consider the evidence and decide whether the right decision had been made. It might have been more challenging had we been staying with 26 councils, but this is where having 11 councils will work in our favour.

497. **Mr McCarthy**: Do you reckon that the councils will have sufficient resources to find suitable people to conduct appeals?

498. **Mr Jackson**: We do not envisage difficulties. The reason for coming to that view is that we have been liaising closely with our colleagues in Wales on their experience of operating the Act for a year. There is always a worry that there will be a deluge of appeals and requests for rerating visits, but the experience is that the number is not massive. Colleagues in Welsh local authorities have been able to cope with the appeals within the prescribed time limits, which are similar to what we propose. It has not placed a massive burden on the councils.

499. **Mr McCarthy**: I move on to clause 3(7). Fermanagh District Council suggests removing the text:

"(and in so far as the operator of the establishment permits it to do so)".

500. It makes the point that, if a business has requested an appeal, it should accept that a council needs to take all steps necessary to establish that the rating was correct. Why is this text included in the clause?

501. **Ms Baker**: We agree with Fermanagh that it is possible that a council may need to carry out an inspection to consider an appeal. We do not think, however, that we need a right or a power of entry as such in the Bill, which is the converse of the wording there. If an operator decides not to let somebody come in to make an assessment for the appeal, the appeal just does not go ahead, and the operator retains their current valid rating. There is no need to provide a power as such because, by virtue of the fact that the business has asked for the appeal, they need to let the officer make that decision.

502. **Mr McCarthy**: OK, right. I move on to clause 3(10). Fermanagh has raised concerns about the possible cost implications for another district council investigating an appeal and whether data protection issues could arise. In your opinion, would there be data protection issues?

503. **Ms Baker**: I think they are alluding to the provision for a review of the process. At consultation stage, some people asked whether the appeal would be sufficiently independent. In the Bill, we commit to looking at that when the scheme has been operating for a period. I think they are thinking ahead, and, yes, the consequences could be another local authority looking at the appeal.We do not see that there would necessarily be issues with this. It currently operates in the voluntary scheme in England, where some local authorities will operate as a peer review where they do not have independent persons in their own council to do that. Again, however, we would look at the evidence at the point of review, consider the possibilities and options and consult on those with any subordinate regulations.

504. **Mr Jackson**: If, in future, through the review that we will be obliged to conduct, we established that there was an issue with appeals and their independence and who does it and how it is done, we would have to look at all aspects of changing the mechanism, which would include issues around data sharing and how that would happen. That would be very much at the point of considering options down the line. It is not an issue for the appeals mechanism as proposed in the Bill at the moment.

505. **Mr McCarthy**: I will move on to clause 4(2). The Chief Environmental Health Officers Group (CEHOG) has queried the way in which the term "inspection" is used in this clause and state that it has a different meaning from how the term "inspection" is used in clause 1(1). Can you clarify that position?

506. **Ms Baker**: Yes. Again, we anticipate providing further clarity on that in the guidance. This is around a rerating inspection, and it is different in the sense that it is not an inspection driven by the programme of inspections that they do under regulation EC 882/2004. It is not one of the routine and planned inspections that they do that falls out of their programme; it is in response to a request for a food business operator to come in and provide them with a rerating. In that sense it is not an EC 882/2004 official control inspection but a rerating inspection for the purposes of the Bill. We will provide that clarity and level of detail in the guidance.

507. **Mr Jackson**: It is a duty to inspect, rather than an inspection. Earlier in the Bill we talk about an inspection, and this is requiring them to inspect to be able to generate the rerating that is being requested.

508. **Mr McCarthy**: The Chief Environmental Health Officers Group is concerned that the right to a rerating within three months might encourage temporary improvements, which would defeat the

purpose of the scheme. However, on the other hand, Co-operative Food believes that businesses should be entitled to a rerating within three months. What is your rationale for suggesting a time period of three months?

509. **Ms Baker**: You are quite right. This has always been one of the points that has resulted in very divergent views from stakeholders. The councils have always preferred the period by which they can do the rerating to be longer because they can plan it into their planning better, and it gives them a longer time to do that. They also think that it will mean that businesses really have to commit to maintaining those improvements and showing to the consumer that there will be long-term improvement and not a quick fix. The converse of that, as you say, is that businesses clearly want the rerating inspection to happen as quickly as possible, for obvious reasons.

510. This is an area that we discussed long and hard with all the stakeholders. It is currently in a voluntary scheme. The situation is that once an inspection has been carried out, a business cannot ask for a rerating inspection until three months has passed. Then they can they ask for it and it can be completed within three months, so you are really looking at a maximum period of six months. In response to the industry's views and looking at this in the round, the fact that businesses will now pay for the rating and the councils will get that resource back in, which will help with their planning, we agreed that that period should be reduced to three months. That is the reason that we have the three-month period in the Bill.

511. **Mr McCarthy**: Finally, the Chief Environmental Health Officers Group is concerned that there is currently no limit on the number of times a business can request a rerating, and believes that this should be limited to once every six months. What are your views on this suggestion?

512. **Ms Baker**: We think that this may end up being a possibility. As is the case with the appeal, we have proposed in the Bill that this area should be reviewed once the scheme has been operating. Again, in the consultation, councils expressed concerns that a business might make lots of rerating requests. We really think that they should put their houses in order after the first one. So we do accept this point, and we have committed to looking at what will actually happen when the scheme is statutory. At this point, we can look to Wales because their scheme has been operating for over a year now. We have asked them this particular question: are you finding issues where businesses are asking for multiple rerating inspections? That has not been borne out in the Wales example, so we do not think it may be as much of an issue as CEHOG thinks it will be. However, we will review it and look at it. If a limit needs to be imposed, we will obviously look at options for that, consult all the stakeholders and take a view on what that should be.

513. **Mr McCarthy**: OK. On clause 4(5)(c), Co-operative Food believes that there should be a set fee for a rerating which applies across all council areas. It would like this requirement to be specified in the Bill. What are your views on that suggestion?

514. **Ms Baker**: We entirely agree with the Co-op that it should be a single flat fee. That was a very strong preference that came out of the consultation. We do not think that it should be on the face of the Bill. We have provided in the Bill that a regulation can be made to specify a single fee, so we have already said that there will be a single fee in Northern Ireland, but once you put it in the Bill it is very difficult to change it, because it is primary legislation. Obviously, over time, we might want to go back and review what the fee is and look at what the actual costs are. That is why it is contained in regulations.

515. **Mr McCarthy**: Finally, with regard to clause 4(6), Co-operative Food believes that businesses should be allowed to apply for a rerating immediately, rather than wait for the 21 days in which an appeal could be made to expire. It

states that some businesses will accept that the rating they received was fair and will not want to appeal it, but will want to make improvements as quickly as possible and seek a rerating. It suggests removing clause 4(6)(a). What are your views on that suggestion?

516. **Ms Baker**: Again, I go back to the point that this whole issue of the period in which a re-inspection actually happens after the first inspection is an area which has been greatly contended by everybody. We worked really hard with stakeholders to agree a compromise, which was that once a business receives its rating, it can appeal within 21 days, and only once the appeal is over can it then move into the next safeguard procedure, which is asking for the rerating. They get that within three months. Looking at the period as a whole, the councils felt that although they really would have preferred the maximum period to have stayed at six months plus the appeal period, we were reducing that by half by moving it to three months plus the appeal period, so taking the appeal period out as well as reducing that further again. I do not think that we would want a situation in which somebody may ask for a rerating and then appeal afterwards. We think this is consequential in the process and that really the appeal needs to be dealt with first off before moving into the next phase.

517. **Mr Jackson**: Sometimes businesses can get a little bit confused about appeal and rerating and what the two things are. If you have a situation where the rerating can actually happen within the appeal period, you are likely to introduce even more confusion. In addition, this balance that Kathryn has described about an overall period and the fact that it is sequential is also logical, so that people know at any given time that they are either in an appeal period or they are not, or they are in a period when they can get their rerating done. The key thing from an industry perspective is that this period has been significantly shortened from what we have in the voluntary scheme.

518. **The Chairperson (Ms Maeve McLaughlin)**: I just want to remind members to check their phones, because there seems to be interference with the recording.

519. **Mr McKinney**: Moving on to clause 5, and particularly 5(2), in Dr Hyde's evidence, he made the point that a council's power to edit representations or to refuse to send them to the FSA is limited and would be subject potentially to judicial review, and that this should be made clear in the legislation. Have you views on that?

520. **Ms Baker**: That is a very technical one.

521. **Mr McKinney**: It is the right of reply.

522. **Mr Jackson**: On that very technical view of the issue of right to reply, we have considered that and we do not believe that it is actually necessary. There were concerns around why you would refuse to publish a right to reply and whether that was appropriate. The main reason why this clause is worded in the way it is to ensure that anything which is published by way of a right to reply is accurate and not slanderous or defamatory. That is the rationale for its being the way it is. On the detailed point that was made by Mr Hyde, we did not feel that that was necessary.

523. **Mr McKinney**: Even with refusing to send them on to you? Would that not invite judicial review?

524. **Ms Baker**: It would, and we think that is OK. That is what judicial review is there for. If somebody feels that due process has not been followed or they have a concern about how that is being applied, I suppose, a member of the public or another person can ask for a judicial review.

525. **Mr McKinney**: Would it not make the process more robust if you were to receive information on those who feel potentially that they have been wronged in any way? If councils do not bring that forward, are they potentially sealing their own processes, and you do not have sight of them? You have overall charge of this process.

526. **Mr Jackson**: The difficulty here with regard to a right to reply is that only the council can make the decision as to whether what the food business operator has put forward is an accurate and truthful representation, because only the council is in possession of the full facts. We do not have that information on the detail of every inspection. We would not want to introduce a requirement of that nature, because that would put an additional burden on both the councils and ourselves.

527. It is also worth reflecting on the fact that the right to reply, whilst there as an additional safeguard for businesses, is not something which is widely used in the voluntary scheme. We do not see that becoming particularly more prevalent in the statutory scheme. We do depend upon the professional judgement of councils to be able to decide whether a proposed right to reply from a food business operator is an accurate statement, just as we depend on their professional judgement to conduct the inspections.

528. **Mr McKinney**: Yes, but obviously I am thinking that, with regard to the right to reply, this is an assessment now not just of the food establishment, but of how the council is operating. Where an individual council is receiving potentially a disproportionate amount of questions over its process, you will not necessarily learn that if you do not receive that information and it refuses to send it to you.

529. **Ms Baker**: Would it help if we were able to consider this? We have discussed this with legal counsel. It is quite technical, and I am not sure whether I have entirely got my head round it. If we were to provide some further written information around this, just to clarify exactly the point that Richard Hyde is making —

530. **Mr McKinney**: It is about how you would learn about your own system if the information is not coming back to you. You could find that in one particular geographic area or one particular range of assessments or tests, there was in fact a constant issue coming back, and you might learn better.

531. **Ms Baker**: I think that the point that Richard Hyde is making is that councils do have a power to edit the replies that they get or to refuse to post them on the website at all. What he is saying is that it should be clear in the legislation that that must be a reasonable decision, and that the fact that the decision must be reasonable should be placed on statute to make it clear to councils that their power to edit or refuse is limited to its being reasonable. I think maybe —

532. **Mr McKinney**: Who decides? It is a bit like the police policing themselves. You just have to make sure that there is proper scrutiny and oversight.

533. **Ms Baker**: In all cases, the only person who could decide would be if it went to judicial review. It would be the courts.

534. **Mr McKinney**: But that is post fact. I am talking about how you learn about your own processes. A robust complaints process which allows flows of information is better than one where information is kept to one side. You would not necessarily know then.

535. **Mr Jackson**: I am not entirely clear on what it is you think would not flow, because if a food business decides that it wants to make a reply and sends a council information, the only circumstances in which the council would edit or refuse would be if it were inappropriate for that information to be put on the FSA's website. They would not be failing to do it. They would not do it just because they did not want to, if you understand me.

536. **Mr McKinney**: But it gives them the power to refuse to send them to the Food Standards Agency in any form.

537. **Mr Jackson**: Yes, so if you —

538. **Mr McKinney**: Can you point out to me where it says upon what basis they are refusing to send it?

539. **Mr Jackson**: You are correct that clause 5(2)(b) does not state the basis on which they should submit it.

540. **Mr McKinney**: We are saying it is a reasonable basis, but it is not in the Bill. Whether it appears in guidance or here, I take it you will look at that.

541. **Ms Baker**: Yes, we will look at it and see if the wording can have some reference to the reasonableness of them refusing.

542. **Mr McKinney**: OK, thank you. Similarly, Co-operative Food objects to councils having the power to edit representations. It does not exist in the Welsh legislation. Is that the case?

543. **Ms Baker**: Sorry, can you ask me that again?

544. **Mr McKinney**: Yes, they are making the same point but arguing that it does not exist in the Welsh legislation.

545. **Mr Jackson**: We would need to check on the exact wording. There are differences in wording.

546. **Ms Baker**: Yes, there will be drafting differences because different people have drafted them. The Bills are also structured slightly differently, which will affect the fact that they will look a bit different.

547. **Mr Jackson**: I imagine that before the Co-operative, as a multinational and responsible company, sent in a reply, the chances are it would be its legal department, so it would not see a need to edit that. That is a reasonable way of thinking for a business of that nature. However, there is a rationale for editing being necessary when it comes to a small, independent operation that is trying to mislead, deceive and pretend that things are not right. We also have to make sure that nothing defamatory is published. It is very different depending on the type of business.

548. **Mr McKinney**: The outcomes have to be satisfactory to all. While that might be satisfactory for your purposes, we have to consider the business itself.

549. **Ms Baker**: I do not want to labour this, but the brand standard provides guidance on when a district council can or cannot refuse to edit a reply. We want to continue that in the guidance that is produced for the statutory scheme. It is not going to be any different.

550. **Mr McKinney**: An associated point at clause 5(3), which was a point that Ballymena Borough Council made, is that there is no deadline set for the FSA to publish representations on its website. Why are you not setting a time frame?

551. **Mr Jackson**: We did not include a time frame because, as I mentioned, a local authority notifies us by way of an electronic file, which goes onto an IT platform. Once businesses are outside their appeal periods and the ratings are therefore valid, those files are automatically released onto the website. It is not as if you have someone sitting in the Food Standards Agency going, “Hmm, I think I need to upload some data onto the website.” The system does it automatically. In considering the point about introducing a requirement on the local authorities to notify us within a time period to ensure that that disjoint between the rating on the door and on the website is minimised, it would be possible to include a time scale for us, albeit that the technology that we use means that it would never be an issue.

552. **Mr McKinney**: Yes, and of course we must all welcome new technology and all the rest of it, but in the absence of that new technology — say there was some issue that meant that the new technology was not available, or there was a surge and you found yourself in a long-term situation where you did not have the technology and no timeline — you would then be saying, “Now we do not have the new technology but something should be in there of a timely nature.”

553. **Ms Baker**: The timing probably relates more to when a council gets the reply from the business and the time by which it has to let us know of that. As Michael said, it is a bit of a moot point about

how long it takes us, because it just happens immediately. It just happens automatically. That is the upload done. The council has done the upload, not really the Food Standards Agency, although it is published on our website. The question then is more about the timeliness of dealing with the reply once you receive it.

554. **Mr McKinney**: Is there a red flag on the computer system that would indicate that something is being assessed elsewhere? That is outside of this, of course.

555. **Ms Baker**: No. Once a council receives its reply, it will go through the process of considering that. It may need to visit the premises to consider that. Somebody may claim that they have completely rebuilt their whole business and done all these wonderful things. Obviously the council will need to validate that those claims are true and do not mislead people. They will go about the business of that and, as soon as they have made their determination, it will be published immediately, as Michael said, through the 27-day uploads. The information just appears with the uploads, and it will automatically go on to the website. There will be no pause in time for that part of the process.

556. **Mr McKinney**: I know that it might be a bit of a technical question about the software, but is there nothing about "under appeal"? Would that go on your website?

557. **Ms Baker**: It does for an appeal, but not for the right to reply.

558. **Mr McKinney**: OK. I am happy with that.

559. Can I go on to clause 6? CEHOG believes that businesses that are awaiting an appeal should be forced to display the rating being appealed or a sticker advising the business is awaiting a new rating, rather than their previous rating. That is a variation of the Pubs of Ulster view, but there is the potential that that could mislead the customer.

560. **Ms Baker**: Yes. Let us say that, for example, a five-rated business gets a new inspection. If the inspector feel that the conditions are poorer than before and wants to give them a reduced rating, CEHOG is concerned that, the way the Bill is drafted, a business cannot chose which rating to display — their existing rating or the new rating — in that 21-day appeal period only. CEHOG is concerned that, if the rating has gone down, the business will obviously chose to display the better rating. That works conversely, too. A business may have an improved rating and will want to display that.

561. The 21-day appeal period is a safeguard for businesses, and they have that 21-day right to query their rating. They may feel that the new rating does not reflect the standards and may not agree that it should go down. From the business's perspective, we see that it would be detrimental if they had an appeal and the appeal went in their favour, but they had to display a rating that was not valid in that period. We propose that, during the appeal period, the business can chose which rating to display. That is only for a 21-day period, at which point the appeal will be determined, and then they will display the valid rating.

562. **Mr Jackson**: In the context of how long a business is going to have a rating, that 21-day period is a very short period.

563. **Ms Baker**: Another thing that CEHOG said was that a business could instead display an "awaiting rating" sticker. We need to think carefully about that. If you send out a rating, you do not know whether a business will appeal or might want to put that sticker over the new rating sticker that you provided. That would mean that, in effect, every time you wrote out to a business, you would have to provide two stickers, one of which might never be used in many instances. The other thing that you could do was that, once the business has appealed, you could send them an awaiting inspection sticker, but there would only be a 21-day period anyway, so what benefit would there be in doing that over such a short period?

564. It works both ways. You can argue that the consumer is being misled because

the council's rating of the business has gone down . Conversely, the business may feel that they do not get to show their good rating when it has gone up.

565. **Mr McKinney**: OK. An issue of ownership was raised about clause 6(2). Dr Hyde, who was referred to earlier, expressed concern that there is a lack of clarity in that subsection about whether the rating would be valid — this is technical — if the corporate owner of the premises remained the same but the ownership of the shares of the corporate owner changed hands. Have you considered those legal technicalities?

566. **Ms Baker**: Yes. We have asked our legal drafter to consider Richard Hyde's comments, and he is of the view that this is a moot point. We are considering food business establishments and, in European legislation, the establishment is a unit of a business. You are dealing with the conditions in the establishment, irrespective of whether there are shareowners or other people. So, we feel that it does not impact on the Bill.

567. **Mr McKinney**: You may have answered my next question in making your last point. Co-operative Food is concerned that a business with a poor rating could transfer ownership to avoid displaying a sticker. It therefore recommended that the Bill should require councils to conduct initial inspections of any new food business establishments within 14 days of their registration.

568. **Mr Jackson**: I will pick up that point and take it back to clause 1. There was maybe some concern amongst members about businesses not being inspected. I want to make it clear that, when a new business comes along — it could be a completely new build or simply a change of food business operator, which in the eyes of the law is the person with responsibility — under the 'Food Law Code of Practice', councils are obliged to conduct an inspection within 28 days. Every new business that comes along, either a completely new build or one with a change of owner, will get an inspection that will give them a rating, so there will always be a rating. If the food business operator changes, there will be a new inspection and a new rating.

569. **Mr McKinney**: OK. You may have answered my next question. What are the arrangements for time periods for providing a rating for new businesses or when a business has changed ownership? Will that happen within —

570. **Mr Jackson**: In that situation, again, it would be back to the system of inspection that is driven by the 'Food Law Code of Practice'. Basically, when a council has been notified of a registration or becomes aware of a new business, it is obliged to conduct an inspection within 28 days. Irrespective of what type of business it is, it must always have an inspection. That first inspection sets the system in place for subsequent inspections, interventions and how often they happen.

571. **Mr McKinney**: OK. Hopefully, I have picked up on that point OK, but Co-operative Food recommended a period of 14 days.

572. **Ms Baker**: As Michael said, there are existing arrangements outside of the food hygiene rating scheme that deal with how a council will react when a new business comes along. We have detailed the arrangements for councils when they receive a registration for a new business or become aware of a change of ownership. In the case of a change of ownership, the rating cannot be transferred. It will be treated as a new business and will be reassessed from scratch. The period stipulated in the 'Food Law Code of Practice' is 28 days. We think that is fair and reasonable, and it gives councils time to plan their work around receiving registrations. We do not consider that reducing it to 14 days would assist.

573. **Mr Jackson**: If you were to reduce the requirement to do that initial inspection from 28 days to 14 days, it would have to be changed through the 'Food Law Code of Practice'. That would be of serious concern to the councils because

of the impact that it would have on their ability to do their planned work.

574. The four-week period has been part of the regime for many a year, including since I was inspecting many moons ago. It is still quite a challenge for some councils to meet that 28-day requirement at times depending on the level of business churn. In some areas, a lot of businesses change hands, and meeting the 28 days can be challenging enough for local authorities. If that were to be moved to 14 days, it would be a serious concern and would have the potential to distract them from delivering their risk-based inspection programme.

575. **Mr McKinney**: Finally, Co-operative Food proposed that in the context of somebody with a poor rating transferring ownership to avoid displaying a sticker.

576. **Ms Baker**: That is incorrect, because the rating would not transfer. A new owner would get a new rating. I think that was just a misunderstanding.

577. **Mrs Cameron**: The duty to display rating is covered in clause 7. Co-operative Food raised the issue of whether businesses will receive new stickers before the legislation comes into force in case they have lost their old sticker. Is that the intention of the Food Standards Agency?

578. **Ms Baker**: Absolutely. That would have to happen in any case because of the very point that it makes. The scheme is currently voluntary, so there is nothing to say that a business will actually have its sticker. We anticipate that, in the implementation period coming up to the scheme, all the businesses will receive their new statutory sticker, if you like.

579. **Mrs Cameron**: On clause 7(2), Dr Hyde has raised a technical point, which is that the clause does not seem to prevent a business displaying two stickers at the same time, which may confuse the consumer. Have you considered this?

580. **Ms Baker**: Yes, we have sought clarity again from counsel drafting the Bill. The Bill is drafted so that, in the appeal period, where they can display either sticker, they can only choose to display one of them. They cannot display both, so only one will be a valid sticker in that period of time. By that very nature, they are failing to comply with the requirement to display a valid sticker. Our legal view is that that is not an issue and is covered by the way that the Bill is currently drafted.

581. **Mrs Cameron**: Members of this Committee, including me, are concerned that the Bill does not require businesses to display their rating on their website, if they have one. Can you explain your rationale for taking this position?

582. **Mr Jackson**: Yes, we touched on this previously. The basis on which we know the scheme is currently used is that, despite the technological era that we live in, 91% of people who use the hygiene rating scheme to make a decision do so through the use of the sticker. The first point of the sticker is the way that the scheme is being used.

583. **Mrs Cameron**: Could that be because the sticker is there and the rating is not always displayed on the website? I have seen that some websites do already display it.

584. **Mr Jackson**: I am not suggesting that some people do not use it. I personally use it online as well as on the door, but you would expect me to say that. I go back to the principle that we have tried to put forward a scheme that is as resource-neutral as possible. If you were to introduce a requirement to display a rating on a website, that would have financial consequences for the food businesses and also for the councils. If you had that as a requirement, you would have to be able to police it. That would be extremely difficult and time-consuming for councils. Given the nature of food courts and one thing and another, it is challenging enough to decide where a sticker should be displayed in a conspicuous place so that it is easily visible from outside the business. There would be all kinds of issues around where physically you would display this on a website and

on what page it would appear. It would be very time-consuming to try to figure out the flexibility around that. Policing it would distract councils from getting on with doing inspections, which is the important thing for them to do in protecting public health.

585. There is also the fact that, with the drive within government more widely, we look to the private sector to make use of information that is gathered by government. For example, on the food hygiene rating website, we have an open data source, which means that any commercial business can lift the current data immediately, and it can start to use it to publish ratings. Increasingly, as the profile of the food hygiene rating scheme increases, we are seeing that more and more other companies are taking the information about the rating and are packaging it with other information that consumers want to make a decision. The market makes that rating available to people who are making fundamental decisions about buying online.

586. We recently became aware of a website that is operated by a company that is promoting the pub industry. It lifts our open data, and, on its website, you can select a pub anywhere in the UK; you can find out whether it has a restaurant, what facilities it has, whether it is child-friendly, and you get the food hygiene rating. The market is taking that forward for the businesses where it is something more meaningful.

587. We also touched on the aspect of the complexity around multinational companies, such as the major supermarkets, which is about where that transaction takes place. When you are using the Internet, does that happen for Northern Ireland when you go online? It is about which store the food happens to be coming from on a particular day. I go back to the point that we made: in those situations, people who are purchasing online from supermarkets are comfortable with that particular technology. If those consumers are concerned about what the Tesco, the Sainsbury's or whatever in the geographical region happens to look like, they can quite easily go to the website to see what the ratings are.

588. **Ms Baker**: A point to make more generally is that the Bill is trying to fill a gap where there is one currently: when you physically go to an establishment, you have no information on the rating because it is not displayed. If you are purchasing food online, the information is available; it is all on our website. It is not as though there is a gap; it is just not right at the page where you currently are, but the information is potentially a few clicks or a google search away. The purpose of the Bill is to fill a void where there is a gap. For the reasons that Michael has given, a lot of cost is involved. It is about weighing up whether it is proportionate to what you get out of it. You could require everybody to have the ratings on their website, but that would pull in a lot of cost and resource from the businesses and the councils to enforce. The information is collated, and it is easily searchable through our website.

589. I entirely take your point. We can do more to publicise the fact that we have the website so that, when consumers are online, they know that they can click onto it. It is very easy to search with just the name of the business. There is more that we can do. Perhaps there could be a requirement in the Bill for us to publicise the scheme. We could try to build on what Michael said is already happening: some businesses that you phone up or order a takeaway from online have sites that have a link directly to our website. We are working with those providers to get them to understand how to use our open data so that they can click on a link that takes them to our website. There are lots more things that we can do that, from a proportionality and cost point of view, are probably better uses of people's time. We could maybe try to push them a lot more with the commercial providers. They are taking the data and using it quite widely. There are quite a lot of apps on the market now, so people can get the information through their phones and tablets. You might

want to consider whether there should be a requirement on us to do more work around publicity so that people online know that the ratings are there to look at; they are not absent.

590. **Mrs Cameron**: That is useful. It is a massive hole in the legislation if the rating is not immediately accessible, as it would be if you turned up physically to any food establishment. You would expect to be able to see that. It would be interesting to see statistics — I do not know whether you have any — of how much of it is done online. One particular pizza outlet has said that over half its sales are online; people never go near the shops. It is a gap that needs to be filled, whatever way you do it. I understand the complications behind that, but, as I said, some establishments are already volunteering to put their information up. They probably feel, especially as it becomes statutory, that it is a good thing for them to show their good rating. I think it will come to that. What is the position for that under the Welsh legislation?

591. **Ms Baker**: The online aspect? The Welsh Act had a provision to pick that up and consider it in regulations, and they have done a lot of consultation around it. In terms of requiring the rating to be in places other than where the statutory sticker is, they have got to a point where they are requiring it to be, if I am right, on menus.

592. **Mr Jackson**: Promotional information.

593. **Ms Baker**: It does not deal with the website issue. It is dealing more with promotional hard copy material such as menus and promotional flyers. It does not require that the rating needs to appear on the material but a statement that says that you can find out the rating of the business by going to www.food.gov.uk. They have, I think, unearthed a lot of complications with the website issue, and that is why it has not been progressed at this time. I do not think that they have any immediate plans to do so.

594. **Mr Jackson**: It was certainly given detailed consideration because it is understandable that people will wonder why it is not put on the website. For some of the reasons that I referred to, when they went into that in detail and had discussions, there was a real appreciation of the complexity of this, most importantly about whether it would be good legislation to have something that is very difficult to prescribe how it would happen and be policed and the resources that it would take. As Kathryn said, for those reasons, colleagues in the Welsh Government are looking at routes other than the website.

595. **Mrs Cameron**: I will move to the duty to provide information about rating, which is at clause 8(2)(b). Dr Hyde suggested that, in terms of determining who the relevant employee is, the test should be more objective rather than it being left to the opinion of the operator of the business. Fermanagh District Council suggested that there needs to be more guidance on what constitutes a “relevant employee”. What are your views on that?

596. **Ms Baker**: I will pick up on Fermanagh District Council’s point first. We agree that further guidance will be needed, and obviously that level of detail would not appear in the Bill. We anticipate providing additional guidance, like Wales has done, around what “relevant employee” means. I suppose that we are thinking of somebody who it would be reasonable to expect may be asked the question. We put “relevant employee” in specifically rather than just “anybody” because, in a very large business like a supermarket that employs 300 people on any day, it would not really be reasonable for the business to have everybody trained and ready to answer that question. It would be applicable to people on the customer services desk, for example, or to people serving at the deli counters because somebody may want to know because they are watching the food being handled. We agree that that needs to appear in guidance.

597. The other question was about Richard Hyde's point.

598. **Mr Jackson**: Again, we referred that point to our legal counsel who have been involved in the drafting of the Bill. The view was that, because we have put in "relevant employee", the element of reasonableness is already implied by the clause as drafted. Fundamentally, the food business operator has a wider responsibility for ensuring compliance with food law. There are many statutory requirements imposed on him, and it seems perfectly logical and reasonable to add this one in a similar way. It should not be any more prescriptively prescribed in a Bill.

599. **Ms McCorley**: Go raibh maith agat, a Chathaoirligh. Thanks for the presentation. In relation to clause 10(5), Dr Hyde made the point that the Welsh legislation made it clear that it is not an offence to deface a sticker in the process of removing it and that consideration should be given to including that in the Bill. How do you view that?

600. **Ms Baker**: When somebody removes a sticker, it would be because they received a new one. We did not think that it was necessary to specify when that is an offence or not because, again, the councils being reasonable will not take action against somebody for removing their old sticker and putting a new one on. We do not feel that it would add anything above and beyond —

601. **Mr Jackson**: If the sticker is no longer valid, what happens to it in the process of removing it is not relevant because you just want a sticker that is no longer valid to be removed and disposed of.

602. **Ms McCorley**: Why, then, did the Welsh put that into their legislation?

603. **Ms Baker**: It just comes down to a drafting point and the drafter's view. I suppose that they wanted to have as watertight a case as possible that did not suggest that you cannot remove a sticker. In the Welsh legislation, it is an offence to alter or deface the sticker, but that will naturally happen when you take it down. You do not want to create an offence for somebody who is doing something that they are required to do, which is to take a non-valid sticker down. We do not feel that anybody is going to be taking any action on this point. Although, technically, it may be correct, it is unnecessary, and that would be the view of legal counsel as well.

604. **Ms McCorley**: Are there no circumstances where somebody might try to remove a sticker and then put it back, for example, if they wanted to clean windows or something?

605. **Ms Baker**: If they remove it and deface it or damage it accidentally, they can simply phone the council and get a replacement sticker. We do not see anybody wanting to take action against them for that.

606. **Mr Jackson**: Clause 10(5) is very much about intentionally altering, defacing or otherwise tampering with a valid sticker. Clearly, as Kathryn said, if something went wrong and happened because of cleaning or refurbishment or whatever and the sticker was damaged, the new sticker would be made available by the council. The key thing is that, when there is a valid sticker, there is an offence to alter, deface or otherwise tamper with it. That is the important thing: what happens to a sticker that is no longer valid. Fundamentally, that cannot be legally displayed, so what happens to it when removing it is a moot point.

607. **Ms McCorley**: I want to ask about clause 10(7). The maximum fine for the various offences under clause 10 is a level 3, which is £1,000. Some organisations, such as the NI Hotels Federation, are not supportive of fines, whereas 'Which?' supports strict fines to act as a deterrent. What is your rationale for picking a level 3 fine and do you think that it is a sufficient deterrent?

608. **Mr Jackson**: In considering the level 3 fine, one of the first things that we took into consideration was the level of fine that has been introduced through the legislation in Wales, and we were looking

at proportionality and consistency. The fine has been set at level 3 in Wales. We have also been in discussions with colleagues in the Department of Justice, and they have indicated that the level of fine that we have proposed is consistent with similar offences in Northern Ireland statutes. That said, there are a couple of points to flag up. The first one, which I previously referred to in the Committee, is that the fines associated with the different levels in England and Wales will, in the very near future, be changed, and a level 1 fine in Wales will become £4,000. When we put forward our proposals for the Bill, that was not known, so we did not know that the levels were going to change only in England and Wales. Again, we have consulted the Department of Justice in Northern Ireland on that, and there is no proposal at the moment to review the levels of penalty associated with each of the fine levels in Northern Ireland, so that is not happening here.You may also wish to reflect on the fact that we have had discussions with our colleagues in the Trading Standards Service about consumers potentially being misled by the use of incorrect ratings other than through an invalid sticker. The Bill deals with offences of displaying the wrong sticker. We were exploring a situation in which, for example, people voluntarily put a rating of 3 on their website when it is 5. That type of offence falls under the remit of the Trading Standards Service and legislation for which it is responsible: the Consumer Protection from Unfair Trading Regulations 2008. In the event that someone was found to have breached that legal requirement, the maximum penalty under those regulations is £5,000. That is the maximum for wilfully and intentionally misleading consumers other than through a sticker. Our rationale, however, at the outset was consistency with the level of penalty in Wales and proportionality with similar offences of failing to display something so that this will be consistent with other statutes in Northern Ireland.

609. **Ms McCorley**: My final question is on clause 12(2). The Chief Environmental Health Officers Group believes that the requirement for councils to provide new businesses with information within 14 days should not be specified in the Bill but be in guidance. Why have you decided that the time frame should be specified in the Bill?

610. **Mr Jackson**: The timing is specified in the Bill to make sure that the system works fairly and equitably for all food business operators and that those people who start up and register a new business will get that information. The key point that the Chief Environmental Health Officers Group was making is that the duty to provide information within 14 days of making a registration or receiving an application is absolute in its nature. Quite often, however, a council will become aware of a business through a planning application or building control application and will be engaging with the business long before it gets round to registering. The group is looking for the flexibility to be able to provide that information at any time after they have started to engage. We propose that an amendment be considered to introduce the flexibility for the information to be given at any stage before registration and, at the outside, within 14 days of the registration form being received. We see an opportunity here to provide additional flexibility to reflect the key point that the Chief Environmental Health Officers Group is making. It is important, however, to retain the 14 days to ensure that the Bill provides for a fair and equitable scheme that will operate in a sound way for all food businesses.

611. **Mr McKinney**: I have one point about clause 10(5). Might it be in order to add in just three simple words, such as “save for its replacement”? That would allow for a defence whereby a replacement was on its way or available, but not if there was no replacement process in place, of course. It would make it clear to employees that they were to do it when instructed if an employer said, “Look, there is a new one on its way, or it is here. So you take that one off”.

612. **Mr Jackson**: That is for a valid sticker under clause 10(5).

613. **Mr McKinney**: Yes. The clause prohibits tampering with a valid sticker, and I propose adding in "save for its replacement". It might be petty point.

614. **Mr Jackson**: Clause 10(5) states:

"intentionally alters, defaces or otherwise tampers with a valid sticker".

615. Those words very much convey the intent. If you were taking down a valid sticker because it was a bit dog-eared, and the council had given you a new one, you would not be intentionally altering, defacing or tampering. Your motive — to replace the sticker with a new one that is not dog-eared — would be sound.

616. **Mr McKinney**: I take that point.

617. **The Chairperson (Ms Maeve McLaughlin)**: On clause 14, Fermanagh District Council stated that more clarification was required for how councils are expected to keep the operation of the Act under review. It asks about the information that it is expected to collect. In your view, does that place a greater administrative burden on local councils?

618. **Ms Baker**: No. We do not expect that it will be any different to what a council currently does. With the voluntary scheme, the brand standard has guidance about what a council needs to do — for example, to ensure that it operates the scheme in a consistent manner. Councils are to assess that and other things such as determining the number of appeals and so on. We already collect that from councils. We do not anticipate councils doing anything in the statutory scheme that they do not do in the voluntary scheme. The accompanying guidance will cover that issue. We do not anticipate that level of detail to be in the Bill, but we will put it in guidance.

619. **The Chairperson (Ms Maeve McLaughlin)**: So the requirements for councils will be in the guidance.

620. **Ms Baker**: Yes.

621. **Mr Jackson**: That is consistent with the approach in other food law. We will stipulate a general requirement, but, when details are needed about what is involved, we will provide guidance. Through review, we will look to minimise the burden on councils. Our stakeholder group will run for the foreseeable future as the scheme is rolled out, and we will discuss with it the way in which the guidance should be framed and the type of information that is needed and useful for councils to ensure that the scheme is operating fairly and equitably in their area.

622. **The Chairperson (Ms Maeve McLaughlin)**: The Committee had particular concerns about the wide-ranging powers in clause 14(8). That feeling was shared by the Examiner of Statutory Rules, who recommended that that clause be removed, as it effectively allows the Department to make amendments to the Bill by subordinate legislation, following the FSA's review of the Act. The Examiner indicated that that is an inappropriate delegation and sets a dangerous precedent. As an alternative, the Examiner suggested that clause 14(8) could instead include an order-making power to allow the Department to alter time limits in the Bill. However, that should be subject to draft affirmative procedure rather than negative resolution as envisaged in clause 18(6). The Committee understands that the FSA has taken on those comments and proposes an amendment. Maybe you could talk us through that amendment?

623. **Ms Baker**: As you say, it is proposed to omit clause 14(8), which would include the omission of clause 18(4)(c) and clause 18(6), because they are consequential and based on clause 14(8). In place of clause 14(8), much more limited powers would be inserted, one of which, as you mentioned and the Examiner of Statutory Rules touched on, is to provide a power to limit the number of occasions. It is about the time period. There will be a new clause, which will allow the Department to

amend the time periods specified by substituting a different time period — as you mentioned, that would be by draft affirmative procedure — and also to input the power to limit the number of occasions for a right to request a rerating to be specifically put into clause 4, because it had been covered in clause 14(8), which is now being removed. It had been anticipated that that more general power would be used to do that. An amendment will link the reviews detailed in clause 14. That now links the review to the FSA, stating that, having conducted a review, whether it intends to exercise any of those draft affirmative order-making powers, and if so, to explain why, and if not, why not. They are tied into making a declaration at the point at which we carry out a review whether we intend to exercise those powers.

624. **The Chairperson (Ms Maeve McLaughlin)**: Dr Hyde suggested that clause 14 should also specify that the operation of clauses 10 and 11 be part of the review, particularly as to whether the fixed penalty notices were working. Do you have views on that suggestion?

625. **Ms Baker**: There is currently no specific requirement in clause 14, but clause 14(3) details when specific things will be conducted on review. They are there because issues were raised at consultation, and people felt that it was necessary to look at those, so we have specified them in the Bill: appeals, limiting reratings and time periods. However, the requirement to carry out a review is wide-ranging. It just states that the Food Standards Agency must review the operation of the Act, so there is nothing to stop us from reviewing anything in the operation of the Act and making proposals about whether any changes are needed.

626. **The Chairperson (Ms Maeve McLaughlin)**: What about clauses 10 and 11? I hear what you are saying that there is nothing to stop you, but does it need to be more specific?

627. **Ms Baker**: We can certainly consider looking at that and whether order-making powers specifically need to provide for any changes that would need to be made to clauses 10 and 11. We certainly do not see an issue with that. We expect that we will look at them on review, so we can consider that a bit further.

628. **The Chairperson (Ms Maeve McLaughlin)**: On a similar line, the Chief Environmental Health Officers Group believes that clause 14 should specify that the review look at whether businesses were complying with the scheme, whether food-borne illnesses had decreased and what had been the resource burden of the legislation on councils. Do you have views on that?

629. **Ms Baker**: We anticipate that the review will do all sorts of things. We will look at compliance levels. We do that now, and Wales is doing it as part of its review. As part of the voluntary scheme, we have already been looking at the impact of food-borne illness. We do not anticipate that we would not do any of those things and will probably want to do a lot more.

630. We will want to look at how the appeals process is being used, how many appeals were received, what businesses felt about the appeals process and whether they found it easy to understand. We do not feel it necessary to have to stipulate every circumstance that the review would cover because, as the scheme opens up and things come to light, it may not address everything that a review should consider. It is to keep it open enough to consider every possibility.

631. **Mr Jackson**: In essence, because of the way in which clause 14 is framed, the requirement on us under clause 14(2) is to review the operation of the Act throughout Northern Ireland. That does not preclude anything that needs to be considered in the review from being considered, but, in clause 14(3), there are issues that we know, from experience and concerns that were raised, that will definitely need to be looked at to make sure that they are functioning correctly, and there will then be associated powers to amend those.

632. **The Chairperson (Ms Maeve McLaughlin)**: The Chief Environmental Health Officers Group believes that clause 16 should include a definition of "inspection" for the purposes of rating and rerating. Are there views on that?

633. **Ms Baker**: We touched on that. CEHOG brought that theme through in other clauses in which it is mentioned. We entirely agree that further clarity is needed in the guidance.

634. **Mrs Dobson**: Obviously, public awareness is essential. Some stakeholders have stated that a public awareness campaign is needed to promote consumer awareness before the legislation is brought in. Can you outline your intention in this regard?

635. **Mr Jackson**: I will pick up on a point that Kathryn raised earlier, and Pubs of Ulster also brought up the issue. At the moment, there is no requirement in the Bill for the FSA to promote the scheme. That is a requirement in the Welsh legislation. Certainly, with that wider requirement on us to take the scheme forward, promote it and ensure that it does what we intend it to do, we are happy to consider an amendment.

636. The consumer campaign would not necessarily happen before the scheme goes live, because we would have to see how councils want to roll out the statutory scheme. If all the councils decided that they were prepared to put the resources in to go with what we call a "big bang approach", the consumer campaign would happen close to that. The timing of the consumer campaign needs to be appropriate to when voluntary stickers will be displayed. As we have done throughout the life of the voluntary scheme and as recently as this week when we ran a campaign through social media on Valentine's Day and checking ratings, we intend to ensure that consumers are made aware of when the new statutory scheme is going live.

637. **Mrs Dobson**: It is imperative that consumers are aware that it is changing, which is why I want a time frame to be outlined. You said that you will do an amendment, but it is important that we have a time frame for consumers being made aware. You obviously have previous experience of promotion and public awareness. I was not aware of the Valentine's Day campaign, but maybe that says more about me than you.

638. Michael, you spoke about responsibility for promoting the change in the law, and you said that you will work with district councils before it goes live. The onus will then be on district councils. How will we get to that point before it goes live, as you say?

639. **Mr Jackson**: Clause 17 allows for current ratings in the voluntary scheme to be notified and reissued as the ratings under the statutory scheme. There is flexibility. We need to sit down with councils to talk through the implications of how we go about the move from the voluntary to the statutory scheme, the reason being that, once you start to issue the statutory ratings, all your safeguards kick in, so you have to be able to deal with that.

640. What we do not want to do is to go out with a consumer campaign at a point when bringing the statutory scheme in has not had an effect with regard to stickers being displayed. Once we are at a stage when we know that the statutory scheme is at the point of being operated widely — live from the point of view that the new statutory rating stickers have been issued to businesses and are available for them to display — that is when we will put the effort into saying to everybody, "You need to know that this is now a requirement, and, if you do not see a sticker, this is what you should do about it".

641. We intend to do it — 100%. We have to get the timing right relative to the implementation of the scheme. Before the scheme goes live, the big thing is to promote it with businesses and for councils to work with businesses to help those that do not have a top rating at present to get to a better position. A lot of the effort before go-live day will go into making businesses aware of

their obligations, what they have to do and what they cannot do, stickers, the obligation to notify verbally and so on. We will do all that in advance of going live. Once we have made it happen out there in businesses, we will get the message out to consumers.

642. **Mrs Dobson**: The timing is crucial.

643. **Mr Jackson**: The timing is crucial.

644. **Ms Baker**: With timing, I will use Wales as an example. As Michael said, a transitional period will be needed to allow councils and businesses to migrate from the voluntary scheme to the statutory scheme, because those ratings need to be reissued for 15,000 businesses in Northern Ireland. In Wales, through the consultation that dealt with the duration of the transitional period, it was agreed that that should be set at 18 months. That was agreed with stakeholders, businesses and councils. We want to do something similar here. We get a sense from the councils that they might want to try to bring in a statutory scheme as quickly as possible, provided their resources allow them to do that. It may be that the transitional period in Northern Ireland will be shorter; it could be 12 months, but we really do not know until we speak to them about what they can actually achieve.

645. As Michael said, it will be critical that, once the transitional period is over, there will be the consumer campaign, because, at that stage, every business within the scope of the scheme will have been given a new statutory rating.

646. **Mrs Dobson**: It will need to happen very quickly after that.

647. **Ms Baker**: Yes.

648. **Mrs Dobson**: I note that Co-operative Food believes that the Bill should contain sanctions for councils that do not meet the time frames laid out in the Bill. What are you views on that suggestion?

649. **Mr Jackson**: We have sought legal advice on that. It is not established, normal or good practice for legislation from one Department to have sanctions against another arm of government. If at any stage people feel aggrieved that any arm of government — the Food Standards Agency, district councils or whatever — has failed in its obligation, there is the remedy of judicial review, by which they can seek to be recompensed for the damage that they believe that they have suffered in relation to a body not fulfilling its obligation. The fact that this is not contained in the Food Hygiene Rating Bill is totally consistent with other legislation, and it is not the practice to put that in for an offence to be committed by another Department.

650. **Mrs Dobson**: Is it in the Welsh Bill?

651. **Mr Jackson**: No.

652. **Mr McCarthy**: Michael, in your earlier answers, you said that, if something goes wrong, there will be a notice that states that you should report it to your local authority. I said to myself, “Should that not be reported to your local council?”. Not everybody knows what their local authority is; that could be the health authority rather than the local council. Is that written down somewhere?

653. **Mr Jackson**: At the moment, our sticker states, “in partnership with local authority”. We tend to use that terminology across the UK. I accept the point that, in Northern Ireland, local authorities are, de facto, district councils. In external communications about what should happen and where people should go, we are careful to refer to “district councils” rather than “local authorities”, because we know that the average consumer or member of the public in Northern Ireland thinks about district councils rather than local authorities, so we are aware of that. Given that we work as a UK organisation, I have a tendency to talk about local authorities in the wider sense, so I apologise for that.

654. **Mr McCarthy**: I am only saying that, if people want to report something being wrong, they might think that the local

authority is their local health authority, and they will be all round the houses before they get to where they should be.

655. **Mr Jackson**: We will say “district councils”.

656. **Mr McCarthy**: That is grand. That is fine.

657. **The Chairperson (Ms Maeve McLaughlin)**: Thank you both. That has been a useful session and has given us clarity, and we will reflect on today’s evidence.

4 March 2015

Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mr Mickey Brady
Mrs Jo-Anne Dobson
Mr Paul Givan
Mr Kieran McCarthy
Mr Michael McGimpsey
Mr Fearghal McKinney
Mr George Robinson

Witnesses:

Ms Kathryn Baker — *Food Standards Agency*
Mr Michael Jackson — *Northern Ireland*

658. **The Chairperson (Ms Maeve McLaughlin)**: Michael and Kathryn, you are no strangers to the Committee. You are both very welcome. I advise you that we have considered the Hansard report of the evidence on 11 February and the correspondence received. Thank you for that. We discussed it last week, and we now have an agreed list of clauses that we think merit further discussion with you. I propose today to go through each of those clauses in turn. I will ask you to comment, and we will open it up to members if they have any questions or comments. That is the proposal for the way forward today.

659. We will go straight to clause 1(7). It would be useful to have clarification on whether the power to amend the definition of a food business establishment can be done at any time or only after review of the Act. Maybe you will clarify that for us.

660. **Mr Michael Jackson (Food Standards Agency NI)**: There are various powers in the Bill that allow changes to be made, one being the definition of a food business establishment as in clause 1(7). The intention is that we would not always conduct a review before making such changes, because there could be situations in which information or evidence may come to light through other means that would give us what we need to say that there was a strong case for taking it forward. It would also be a financial burden on the Department of Health, Social Services and Public Safety (DHSSPS), the Food Standards Agency (FSA) and the councils to have to carry out a review every time we needed to make a change linked to those specific provisions. Obviously, when any changes are considered, we will undertake a full impact assessment and full formal consultation.

661. **The Chairperson (Ms Maeve McLaughlin)**: What I am hearing is that it will not always be the case that you have to conduct a review.

662. **Mr Jackson**: That is correct.

663. **The Chairperson (Ms Maeve McLaughlin)**: On clause 2(1), the councils were concerned about the requirement for them to notify businesses of their rating within 14 days in case there are exceptional circumstances — that is the key issue — that prevent them from meeting the deadline. You certainly seem to have taken that concern on board and are proposing an amendment to deal with situations in which compliance with various timescales in the Bill could be reasonable due to exceptional circumstances. Will you talk us through the detail of that amendment, which, I understand, comprises a new clause, “Adjustment of time periods”? Why have you decided not to define in the Bill what constitutes exceptional circumstances?

664. **Ms Kathryn Baker (Food Standards Agency NI)**: You are quite right. The Chief Environmental Health Officers Group (CEHOG) raised the issue of needing some flexibility for exceptional circumstances. It has been put into effect by amendment 26 in the list of amendments, which are in the appendix that is attached to our letter of 26 February. As you mentioned, it will be

a new clause entitled “Adjustment of time periods”. Subsection (2) of that new clause provides for an extension of seven days over the Christmas period. That is because some councils may completely close for seven days, so it gives them that period of time back. Subsection (3) deals with exceptional circumstances. If a council cannot comply within 14 days because of exceptional circumstances, it will need to do it as soon as is reasonably practicable. What do we mean by exceptional circumstances? We are talking about events that are very unusual and certainly not typical — for example, a district council might be required to investigate a major food poisoning outbreak. I remind you of the E. coli outbreak that was associated with a restaurant in Belfast a few years ago. That was very significant, and the council’s food safety department had to divert its efforts to that for a prolonged time. It is not a common occurrence, but, when it happens, the impact can be quite major. Another instance that I draw your attention to is when the Food Standards Agency might request a district council to do particular things. I will take you back a few years to the horsemeat scandal, which was a high-profile incident, when we requested councils to undertake certain work. We asked them to conduct inspections of all the meat-processing establishments under their control within a defined time to allow the incident to be managed and brought under control. That was additional work that had a significant impact on their routine, business-as-usual work.

665. The councils deal with issues that are outside their control. We have flooding situations in Northern Ireland, for example, and, when that happens, all staff in the environmental service will be diverted temporarily to get those situations under control. There may be IT failures that take a short time to put right, and there might even be issues that are completely outside the control of the district councils and the Food Standards Agency. There could be a postal strike, for example, so the need to notify people by post within a certain time could be affected. All we are trying to say is that, in those very exceptional circumstances, the requirement is not absolute. We will clarify in guidance what those exceptional circumstances are. It allows some flexibility, so when new exceptional circumstances arise that we have not seen before, that could be reflected in the guidance rather than the Bill.

666. **The Chairperson (Ms Maeve McLaughlin)**: You talked about exceptional circumstances and very exceptional circumstances. Surely that would need to be very clear. If someone was on long-term sick absence, maybe among a council’s environmental health officers, would that be exceptional circumstances?

667. **Ms Baker**: It may be for a short time. The amendment says that councils must deal with a situation as soon as is reasonably practicable, but I think that those issues are foreseeable. Every department has to imagine that one or two people may take sick leave from time to time, so the department should have arrangements in place to pick up work. We are talking about bigger, more major events whereby resources have to be diverted for a time. We will detail that quite clearly in the guidance.

668. **The Chairperson (Ms Maeve McLaughlin)**: Why would you not define in the Bill what constitutes exceptional circumstances?

669. **Ms Baker**: That might be quite confining, and, if something else were to come forward at a later stage, amending primary legislation would not be easy. We want the Bill to be able to adapt, within parameters, to situations that we do not foresee at this point. We can be very clear on what constitutes exceptional circumstances and put such situations, which may change and alter, in the guidance.

670. **The Chairperson (Ms Maeve McLaughlin)**: One person’s exceptional circumstances may be very different to another’s or to an organisation’s.

671. **Mr Jackson**: In the first instance, the idea is that the examples that Kathryn outlined will be in the statutory guidance to accompany the Bill. In developing the guidance, we will engage with district council representatives and say, "Here are what we believe to be exceptional circumstances. They are out of your control for one reason or another". Through discussions with the representatives, we will see whether, from their experience, they know of anything else that would mean that they would not be able to address their obligations under the Act, and we would refine the list. If a district council came across a scenario that did not fit with what we had detailed in the guidance, we would expect the council to liaise with us to see whether it is an exceptional circumstance. We think that we can build a list of issues that are outside councils' control in agreement with the councils, and we can ensure that they make use of the flexibility with time only in those circumstances.

672. We will talk to you later about the right to reply, the general powers of the agency and how we ensure that councils do things the way that we expect of them through other powers that we have related to audit. To make sure that any aspect of the scheme is being operated appropriately, we have other powers that we do not need to put in the Bill that will allow us to make sure that councils are behaving responsibly and in accordance with statutory guidance.

673. **The Chairperson (Ms Maeve McLaughlin)**: In short, you think that a definition of exceptional circumstances in the Bill would be restrictive, and you are prepared to look at the guidance and will offer up definitions.

674. **Mr Jackson**: Most definitely, yes.

675. **Ms P Bradley**: I can fully understand that, as can Mickey. We had the same issues with the Welfare Reform Bill and had lengthy debates, with other parties putting forward things that they thought should be in the Bill, but it made more sense to have them in the regulations or guidance. That is not only to protect this establishment but to protect the people affected, because, as you said, it is much easier to change something that might not necessarily have been working well or if something better comes up. It is much easier to do it through regulations and guidance than to try to amend a Bill, which is extremely difficult. We want to see some things in the Bill, but that leaves us room for manoeuvre afterwards and to be able to ask whether it is really working out for the people whom we are trying to help or whether we need to change it.

676. **Mr Jackson**: We are fortunate that, in developing the first iteration of the guidance, we can build on the experience of the operation of the food hygiene rating scheme since 2010, but the guidance will be very much a live document. We will review it as frequently as we need to, as and when something new needs to be included, changed or amended. It will not be a one-off document that we do not make sure is delivering what we need it to deliver.

677. **The Chairperson (Ms Maeve McLaughlin)**: That probably leads on to the next point, which is about monitoring. How do you propose to do that? How often will monitoring happen? Why are you and the councils relying on exceptional circumstances for not meeting deadlines set out in the Bill? How do you propose to monitor whether councils are applying different definitions of exceptional circumstances? Will you clarify that?

678. **Mr Jackson**: I will go back to my point about agreeing what constitutes exceptional circumstances at the start of the process. We have regular engagement with the district councils. We set up an implementation group specifically to look at bringing the statutory food hygiene rating scheme into play. That group will always have a role, as will the other liaison mechanisms that we have with the councils, to make sure that, in essence, there is consistency in interpreting and applying any legislation, not just the Food Hygiene Rating Bill.

679. We also have powers to audit district councils. At an appropriate time after the scheme is embedded, we intend to conduct a focused audit of the district councils, specifically looking at how they are fulfilling their obligations under the Food Hygiene Rating Act and how they are applying guidance that relates to that Act. Post implementation, we will undertake an exercise to make sure that the councils are doing what they are supposed to be doing.

680. **The Chairperson (Ms Maeve McLaughlin)**: You are saying that it will be reflected in the guidance so it will not appear in the Bill. There is no requirement for a clause on exceptional circumstances to be removed or amended as situations are redefined. Your view is that the guidance is sufficient.

681. **Mr Jackson**: Our view is that we explain from the outset what exceptional circumstances are, and we keep that under review in conjunction with the councils, with the clear expectation that, if they think that they have a situation which does not fit the guidance, they should discuss it with us before deviating.

682. **Ms Baker**: Some of the exceptional circumstances relate to the times by which councils have to notify the FSA about certain things. That is easy for us, because we maintain the website, so we know how frequently we are getting information from the councils and when time periods have been exceeded. It is easy for us to look at those times through our IT software and identify where they are not being met. We can then ask the question: why was the time period not met? Was it an exceptional circumstance, and what was it? We will specifically know what is happening. It will be timely and regular information.

683. **The Chairperson (Ms Maeve McLaughlin)**: Let me come at this from a slightly different angle. Who monitors you in the process about exceptional circumstances?

684. **Mr Jackson**: Nobody monitors us because, in the world of food safety, we are what is known as the central competent authority for the United Kingdom. If you imagine the system as a pyramid, we sit at the top. We are responsible for making sure that all competent authorities, including district councils, discharge all their obligations under food law correctly and in accordance with codes of practice and statutory guidance to ensure that the systems work as intended. There are times when the overall performance of a country is subject to scrutiny by the Food and Veterinary Office (FVO) of the European Commission, but, because this is domestic legislation, the FVO is not interested in it. In effect, nobody checks what we are doing.

685. As for how we operate as a department, you will be aware that we are non-ministerial and independent, and one of our core values is transparency. When we undertake any activity on an audit and so on, all reports are published in the public domain. We make our findings known and easy to access so that others can see what we are finding and learn from it when they need to.

686. **The Chairperson (Ms Maeve McLaughlin)**: I move on to clause 2(3), which specifies the information that a council must send to a business when notifying it of its rating. The councils made the point that they send some of that information well in advance of when they send notification of a rating. They want the clause to recognise that. I think that you have taken that on board and have proposed an amendment to allow for some of the information to be provided at an earlier stage and the remainder to be provided within the 14 days as part of the notification of a rating. Will you talk us through that amendment?

687. **Ms Baker**: The way the Bill is drafted, it reads that all the information must be given to the food business operator at the same time. The councils quite rightly pointed out that that is not how the system currently works. We have brought forward amendment 1, through which

that would be effected. The purpose is to ensure that the information that is listed in clause 2(3) does not necessarily have to be provided all together at the same time. Let me give you an example. A council will inspect a business, and, in some instances, it may leave a written report on the premises that covers clauses 2(3)(b) and 2(3)(c) at the time of the inspection. The council official may then go back to the office, and there will be internal checks, whereby other people will look at the way in which he or she derived the rating and agree that it has been done correctly. The rating, the sticker and explanations of some of the safeguards will maybe come in a letter after that. The wording of the amendment will allow for those instances. The information will always be provided within 14 days but not necessarily at exactly the same time. That is what the amendment does.

688. **The Chairperson (Ms Maeve McLaughlin)**: The amendment allows for those instances that you outlined.

689. Clause 2(4) has no timescale for councils to inform the FSA of a business rating, which could mean that there is a significant time-lapse for businesses being inspected and the new rating being displayed on the FSA website. You are taking that on board and have proposed an amendment. Can we have a bit more detail on the amendment?

690. **Ms Baker**: The timescales within which councils must notify the Food Standards Agency of a rating will be put into effect by amendment 2. It requires councils to inform the Food Standards Agency of a new rating within 34 days from the date of inspection. That is the maximum period; they can do it earlier, but they have to do it within 34 days. The purpose of setting that time limit is to enable the FSA to publish the rating on the website, once the appeal period is over. It puts a framework on when the information will be published. It is important to state that the new rating will be published online only after the appeal period is over. That is because, during the appeal period, as we have discussed, food business operators can decide whether to display their new or existing rating at their premises. During the 21-day appeal period, we do not necessarily know which of the two they have chosen to display. For that reason, during the appeal period, the existing rating will remain on the website, but it will be updated as soon as the appeal has expired. Once a business has decided that it does not want to appeal and that it is happy with its rating, that will pop onto the website. If a business decides that it wants to appeal the rating, once that has been determined and the FSA has been notified, that will pop onto the website.

691. You may wonder how we arrived at 34 days. Let me explain where that came from. It relates to the 14-day notification period. From the point at which a business gets an inspection, within 14 days, it should have received its rating, and added to that is the 21-day appeal period, because the business has that time to decide whether it wants to appeal. That gives a total of 35 days. We have just taken one day off to make sure that we get the information in a timely manner so that we can publish it as soon as the appeal period ends.

692. **The Chairperson (Ms Maeve McLaughlin)**: So it is the 14-day notification period plus the appeal process period, minus one day.

693. **Ms Baker**: Yes.

694. **The Chairperson (Ms Maeve McLaughlin)**: Let us move to clause 2(5). The issue here is the timescale for the FSA to publish a business rating on the website. You explained that, currently, when a council notifies the FSA of a business rating, it is automatically uploaded, and you have referenced that on the website. You also accept that there should be a requirement on the FSA about publication. We all accept that IT systems can change, so perhaps this is future-proofing the legislation. There is now a proposed amendment. You are talking about the introduction of a deadline of seven days after the end of the appeal period. Will you give us a bit of reflection on that?

695. **Ms Baker**: Certainly. This is amendment 4. As you mentioned, it provides a new requirement on the Food Standards Agency to publish a rating online no later than seven days after the end of the appeal period. As we explained, if we get that information within the timescales that are now on the councils — 34 days — it will appear immediately. It will appear as soon as the appeal period is over. We probably will not need the additional seven days. However, it is in keeping with the provisions in the Welsh Bill, and it allows for any slight IT technical difficulties. We are all aware that IT difficulties can occur, so this is a reasonable amount of time to make sure that such difficulties are sorted out, and it allows for the rating to be put on the website.

696. **The Chairperson (Ms Maeve McLaughlin)**: We move to clause 2(6), which is about the format of the sticker. Again, an amendment has been proposed. Will you talk us through that?

697. **Ms Baker**: Certainly. That will be effected by amendment 6. The wording has been enhanced to ensure that the regulation-making power already provided in the Bill will allow for more than one form of sticker. That is in response to CEHOG's concerns that the sticker should be available bearing council logos. The amendment details that the regulations will provide clarity on who would bear the costs of producing the sticker. The FSA currently provides the generic sticker for free to the councils to give to the businesses. If councils want to apply their own council logo, they can do so, but they will have to buy the stickers themselves.

698. The amendment also ensures that we explore the forms of sticker and who provides the various stickers during consultation when we produce the regulations. At that time, we will seek stakeholders' views on stickers, whether the logo should be applied and who will bear the costs. It is to make sure that that regulation-making power is wide enough to allow that to happen, should stakeholders want it to happen.

699. **The Chairperson (Ms Maeve McLaughlin)**: On clause 3, Pubs of Ulster suggested that there should be a grace period after an inspection to allow businesses to remedy or fix any issues that had been identified. You previously advised the Committee that you were opposed to the idea of a grace period because it goes against the purposes of the scheme, and you clearly saw that as encouraging self-compliance by businesses. You thought that, if businesses were allowed a grace period to fix issues, there would be no incentive for them to maintain hygiene standards continually. We have discussed it further, and, as a Committee, we understand the arguments on both sides, but will you talk us through your rationale for not providing a grace period?

700. **Mr Jackson**: That is one of the most difficult issues that we have to deal with. I am going to take some time to try to go through it in detail to give members a good appreciation of why we are so opposed to the suggestion.

701. I want to take you back to what it is that we are trying to achieve through the scheme. The purpose of the food hygiene rating scheme is to provide meaningful information to consumers about food hygiene standards and to help them to make informed choices. That in turn provides the incentive for businesses to achieve and maintain compliance with food law and to produce safe food. The fact that the scheme as designed at the moment promotes self-regulation has proved to be a massive benefit to district councils, because most businesses now want to comply and have raised their standards. That in turn allows district councils to focus their resources on the worst businesses that are not taking their obligations to comply with food law seriously.

702. How did we get to the policy position in the Bill, bearing in mind that we started with a voluntary scheme? You will be aware that we conducted a 12-week consultation between February and April 2013. That was widely distributed to all interested parties, and we organised briefing sessions to inform stakeholders

of the consultation. In this instance, we had one session with the enforcement stakeholders and another session specifically for the food industry, and we arranged a number of one-to-one meetings with interested parties. We afforded people lots of opportunities to come around the table and discuss the policy that we were putting forward, which was based on the voluntary scheme, which we know works and delivers the policy objectives.

703. **Mr G Robinson**: For clarity, does Pubs of Ulster include hotels and restaurants?

704. **Mr Jackson**: Yes. We received 29 responses to the consultation. That was outside the discussion sessions that we had around the table. Of those, five responses came from trade associations, including Pubs of Ulster. At the time of its response to the consultation, there was no suggestion of a radical change to the scheme, such as a period of grace.In the responses, there was overwhelming support for the appeals mechanism. You may recall that Pubs of Ulster was talking about the period of grace possibly replacing an appeals mechanism because of a reluctance on the part of some businesses to use appeal. Through the consultation, it was very clear that industry does support the concept of the appeals mechanism, and the biggest issue there was the fact that, in our initial policy position, we were proposing only 14 days in which to make an appeal. The policy was revised in light of the consultation, and, indeed, when the Bill first came before you, that had been moved to 21 days, so we had already responded to industry around the length of time for an appeal.

705. The other issue that was discussed that is relevant in the discussions with industry and with the enforcers was the issue that, under the voluntary scheme, you can have to wait up to a maximum of six months before you can get a rerating inspection carried out. That is, in essence, because we have what is known as a three-month standstill period. Once you have been notified of the rating, no matter what you do to improve conditions, under the voluntary scheme, you cannot even ask for a rerating inspection for three months. Then the councils have, under the brand standard, a further three months to conduct that. In the voluntary scheme, you have that six-month window. Industry was very concerned about this, in the context of a scheme where businesses were going to be required by law to display their sticker, particularly if they had done the necessary work to improve conditions. This was an issue that the district council representatives felt very strongly about, and we had several meetings with the chief officers group, which was very robust in trying to maintain the six-month period in order that they could be satisfied that, when a business did take the necessary action, it was properly committed to changing its ways and had secured long-term improvements. However, we recognised the point that industry made that this could be potentially damaging in the context of having to display stickers, and we agreed a compromise position that the standstill period of three months would be taken away and businesses could request a rerating inspection that would be carried out within three months. In effect, we halved the period of time that any business would have to wait before it could get a new rating. This was quite difficult for the district councils to accept, but the reason for flagging it is that I wanted to make it clear that, on this issue, which is fundamental to industry, there has already been significant compromise in getting to this position.

706. I will flag again the numerous meetings and discussions that we had with stakeholders. Those who came to the table were able to see how the current voluntary scheme and the basis on which it operates delivers and the rationale behind it, so everyone came trying to refine the policy proposals, and we did not at any stage receive any suggestions about doing something radical such as a period of grace. I want to make it clear to the Committee that this was not an idea that had ever been discussed before and that

the first time that it came to light was when Pubs of Ulster suggested it to the Committee earlier in January. The stage at which this has been tabled means that there has been no opportunity for other stakeholders to be consulted on the principle and, indeed, the wider implications that it would have for the scheme.

707. I will now look in a little bit of detail at what this would actually do to the scheme. First, it is actually very difficult to understand what has been proposed by Pubs of Ulster because there is a lack of information as to how the concept of a period of grace, as is suggested, could operate in the context of the provisions of the Bill, specifically that in clause 3 for appeal and also in clause 4 for a request for rerating. It appears to us that, in proposing a period of grace, Pubs of Ulster has conflated these issues into one issue. It was suggested to the Committee that the period of grace should replace the provision for an appeal, but what we are clear on is that such a mechanism could not replace either the appeal in clause 3 or the request for rerating in clause 4. The reason for saying that is that the appeal provision provides a mechanism for the food business to challenge incorrect decision-making. A period of grace, when you would be accepting the findings of what an officer said and putting things right, is very different. We need to make sure that there is the provision to challenge when what the officer said is incorrect in your eyes.

708. Secondly, if, after six weeks, the business, which had been found to be not very good on the day of inspection and did not get a five, was being inspected after a period of grace, it is highly unlikely that the business would, on that occasion, be able to get the top rating, even though it had put things right. I will come back to that in detail, but the reason for flagging it here is to make it clear that, because of that, the rerating provision in clause 4 would still be required. The idea of a period of grace cannot get away from the fact that there is a sound rationale, and there would still be a rationale, for appeals and reratings.

709. The bottom line is that a period of grace would result in a scheme that did not meet the primary policy objectives. In the current voluntary scheme, and in the principles that we are proposing to bring forward through the Bill, the incentive for businesses to comply with food law comes from the fact that if they do not do what the law requires them to do, they will be forced to display a poor rating. That is a fundamental aspect of the scheme. A period of grace would entirely remove that incentive and drive perverse behaviours where, in effect, a business would put things right only when it was told to do so. I am not suggesting that all businesses would act irresponsibly and take that attitude, but we know that there are businesses that, for one reason or another, do not comply, and it is perfectly reasonable to expect that they would adopt that sort of behaviour.

710. We also have to bear in mind that the law requires food businesses to comply on an ongoing basis. The real achievement of the food hygiene rating scheme is that it provides the incentive to do that. We are now in a position where 87% of businesses in Northern Ireland are good or very good, and a further 10% are generally satisfactory. Our research has demonstrated that the food hygiene rating scheme has played a key role in achieving that. We know that the mechanism that we have, whereby there is the incentive to comply and a motivator to continue to do so, is effective in maintaining standards of hygiene and, ultimately, in ensuring that businesses produce safe food.

711. Under the current scheme, a business owner does not know when a food safety officer is going to inspect. However, I know that, if I have not got my house in order, I am going to be forced to display that rating, which will potentially do my business harm. I have a motivator to say, “Actually, it makes more sense for me to try to keep on top of these things and be sensible and run the business in accordance with the law.” Then

whenever that inspection happens, I will not have anything to worry about. I will get a good rating; my business will not be damaged; and things will be good.

712. If we look at it from the perspective of the consumer, the reason we are looking for the mandatory display of stickers is to provide consumers with meaningful information. It is our view that introducing a period of grace would completely devalue the scheme, because a rating that was determined only following action or intervention by the district council would not be a reflection of how the business is managing food safety on a regular business day. It is at least questionable whether consumers would consider such a rating to be providing meaningful information if it was prepared only after a business was allowed six weeks to fix its failure to comply with the law, which is an ongoing one on a day-to-day basis.

713. If you think this through logically, the next repercussion is that it would result in a lack of transparency for consumers because the worst ratings based on unannounced inspections would never be displayed. Consumers would never know how a business, without the intervention of the district council, was performing. They would not see the bad ratings; they would disappear. We would no longer have a scheme that provided meaningful information for the consumer. If you think that through to the next step, it would bring into question the merits of having the six-tier scheme that we currently have, which moves from “urgent improvement” to “very good”.

714. The other thing related to the consumer is that, if you had a six-week period of grace, it would have a significant impact on the length of time that consumers would not have accurate and up-to-date information about hygiene conditions at establishments. It would add six weeks to all the other time-bound requirements in the Bill. For example, you would then be talking about eight weeks from the time of the initial unannounced inspection before the business’s new rating would be available by way of a sticker, and then, potentially, another period on top of that before it would appear on the website. That is the impact that it would have on consumers.

715. Think about the impact that it would have on district councils. I make no apologies for speaking on behalf of district councils; I have the benefit of the experience of enforcement and working with colleagues throughout food hygiene rating from when it was first devised as an idea. The idea of a period of grace would be totally unacceptable to district councils for a number of reasons, but primarily because the scheme would no longer provide an incentive for businesses to comply on an ongoing basis, as required by law, which is what the current scheme has very successfully delivered since it was introduced. The fundamental concept of producing and publishing ratings that are determined based on the findings of unannounced inspections has proved to be a very significant tool in driving and maintaining compliance by food businesses. That is what makes the scheme to value of distinct councils. The current approach has had a very positive impact for the councils, in that they do not need to inspect good businesses as frequently as they would have done when they were not complying. That allows them to target more resource at dealing with businesses that persistently fail to comply with food law. That is an increasingly important point in the context where councils are going to face increasing financial challenges. Fundamentally, the fact that the scheme is driving standards up, with the motivator to self-regulate, is good for the safety of consumers.

716. If we look at the practicalities of a grace period, we cannot be certain about how it would work because the proposal that has been put to the Committee is an idea without detail. For example, apart from any business that did not get a 5 on the day of the unannounced inspection, would every business have to get a revisit after the six-week period of grace? We do not know. Would that be an automatic right? If it were not

an automatic right, how would that work with the provisions in clause 4 for rerating inspections? If it were an automatic right, that would clearly have massive impacts on district councils; it would divert scarce resources away from conducting their planned inspections, which is critical to ensuring that businesses are complying and that the public are being protected. It would also present a burden on businesses if they were automatically required to get a further inspection.

717. The other thing that there is no detail on is whether industry would be required to pay for the inspections at the end of a period of grace, similar to the proposal that we have in clause 4, whereby businesses will pay for the rerating inspection. We were not exactly clear about whether Pubs of Ulster was talking about a six-week grace period. At times, when it was presenting to the Committee, it referred to 21 days and six weeks. If we assume that it is the longer of the two — a six-week period — that would not always be sufficiently long to allow food businesses to put right all the things that were found to be wrong at the time of inspection. Obviously, some minor things can be fixed just like that; sometimes before the officer even leaves the building. However, if, for example, the business had to address significant structural work, or had to source new equipment that would have to be delivered and supplied, or if food hygiene training was required that had to be delivered by an external provider, six weeks would not, in many cases, be sufficient time to allow that to happen. Fundamentally, we believe that it would not be a sufficient time in which to demonstrate that changes to food safety practices and procedures had been properly implemented and that the business had demonstrated a sustained commitment to improved practices and management of those on an ongoing basis.

718. I want to go back to the point I made earlier about the concession that has already been made to reduce the rerating period from six months to three months. If we were talking about a six-week period, I am certain that the district councils would find that extremely unacceptable, on that issue alone, never mind the impact that conducting all of the inspections would have. Finally, on that point, I highlight the fact that the rerating provision in clause 4 works on the basis of a request. It is up to the business to decide when the time is right to make the request, depending on how long it knows it will take to put things right. That approach, which is already in the Bill, minimises the burden of re-inspections on district councils and on the businesses. That seems sensible to us.

719. I will now deal with something that goes right to the core of this: why, if we use the current scoring mechanisms for the food hygiene rating scheme, a period of grace would not work. I take you back to the visit that we arranged for the Committee to the kitchen in Parliament Buildings and the explanation that we provided about how a food hygiene rating is calculated. You will recall that there are three elements of the intervention rating system in annex 5 of the ‘Food Law Code of Practice’ that are used to calculate food hygiene ratings. One of those elements is confidence in management. That is where the officer is making a judgement on the likelihood of satisfactory compliance by the business being maintained in the future. Several factors are taken into consideration when scoring that element, but a fundamental factor is the track record of the company and its willingness to act on advice and enforcement actions. That is the element that means that a rating is not based just on the findings on the day of inspection, as has been suggested by Pubs of Ulster. In fact, the compliance over time is being taken into account in producing the rating. Take, for instance, a situation where a business was not proactively complying with the law and was waiting to be told what to do when the food safety officer came along, which is what could happen with the period of grace. That would result in a poor score for confidence in

management, even after the six-week period of grace, because the six-week period is not relevant to the confidence in management score. The confidence in management is about how the business was being run when the inspection was carried out, and the history in the period in the run-up to that. That would, in fact, mean that, at the end of a period of grace, it would be virtually impossible for a business to achieve a score of 5, because the limiting factor would be the score for confidence in management. Your hygiene may have improved, your practice and procedures may have improved, and your scores there could have moved to 5 or indeed 0, but the chances of you getting a score of 0 or 5 for confidence in management would not be possible because of what the confidence in management is. So, that is going to the core of the scheme and why we believe that it would not work as a concept. If you wanted to bring this type of approach in, you would have to rebuild the complete scheme and have a different way of rating the businesses and working out the scores.

720. We also have to remember that there are businesses that take their obligation to comply with food law very seriously and behave responsibly on an ongoing basis. They value the fact that that results in them achieving a good rating that they can proudly display and use to commercial advantage. If there was no incentive for businesses to comply, as would be the case with a period of grace, some of those who currently comply would be less likely to do so in future, and the scheme would become pointless. We also have to remember that many businesses spend a significant amount of money on ensuring that proper hygiene standards are maintained and that food safety is properly managed in their business. A period-of-grace approach by businesses that do not put in the effort to comply until they are told to do so by the food safety officer would, therefore, be unfair and unacceptable to responsible businesses.

721. Hopefully, that has given you an insight into the complexities and difficulties that exist around the period of grace. If you were to bring in the period of grace, we would end up having to have a hygiene rating scheme that is operating on a basis that is fundamentally different from those that currently operate in Northern Ireland, England and Wales. We would have to completely redesign and rebrand the scheme, and, ultimately, the food hygiene rating scheme as we know it would not have the same meaning as the current FHRS does across the three countries. When you see the sticker with the number in England, Wales or Northern Ireland, irrespective of whether it is a voluntary scheme or a mandatory display scheme, it means the same thing to the consumers. So, we do not think that it would be good for consumers if we had to have a totally different scheme in Northern Ireland. Our research has demonstrated that the awareness of the current scheme is high, consumers can easily understand it and value it, and it can be used across the three countries with confidence that it is providing a consistent and meaningful message.

722. Finally, at this stage, we do not propose to bring forward an amendment to introduce a period of grace or further compromise on this aspect of the scheme, having made clear that compromise has already been made as regards the period for a rerating inspection. Because it goes to the very heart of the scheme and would, in effect, pull the scheme apart, as we currently know it, we suggest that it would be necessary to engage with all stakeholders who would be impacted, before it would be possible to get to a position of change on something of this nature.

723. **The Chairperson (Ms Maeve McLaughlin)**: OK, thank you. That has been very detailed. What I am hearing is that your view on the introduction of a period of grace is that it would not meet the policy objectives of the Bill.

724. **Mr Jackson**: That is correct, yes.

725. **The Chairperson (Ms Maeve McLaughlin)**: Ultimately, it would not provide the challenge function that would be provided for in an appeal.

726. **Mr Jackson**: That is correct. The appeal is a very different thing and would still need to be there.

727. **The Chairperson (Ms Maeve McLaughlin)**: You have been very clear on it. It is very useful. Do members have any comments on that clause or need any more information? OK.

728. On clause 3(6), you suggested an amendment that required the council to inform FSA of the outcome of an appeal or if the appeal has been abandoned. It also specifies that if the rating has been changed as a result of the appeal, the FSA must publish the new rating online within seven days. We have touched on some of that. So, briefly talk us through the amendment.

729. **Ms Baker**: It has been put into effect by amendment 7 on the list of amendments, and it follows on from what we discussed around clause 2(5). It is, in effect, to ensure that the FSA can publish ratings speedily and as soon as possible. The amendment places a requirement on the FSA to publish ratings online no later than seven days, but, to do that, they would need to have received the information from the councils. The amendment proposes that, within 21 days, at the same time that the district council notifies the operator of the decision of the appeal, they would also let the Food Standards Agency know, and if the rating has changed as a result of appeal, the Food Standards Agency would publish that within seven days.

730. **The Chairperson (Ms Maeve McLaughlin)**: OK. Are members comfortable enough? Do you need any more information? No.

731. On clause 3(10), it would be useful to have clarification on whether the power to provide for an appeal to be determined by a person other than the council that produced the rating can be done at any time or only after review of the Act.

732. **Mr Jackson**: First, we would conduct a review to attempt to address any issues around how the appeal mechanism works. This is one of the provisions in the Bill where we said that we will conduct a review to determine whether or not the appeal mechanism is working. Again, going back to the point that I made at the start, it would not necessarily, on all occasions, be a review, because we may be able to gather information about the appeal process working through a different approach on a more informal basis.The bottom line is that, in the first instance, we will conduct a review in accordance with the legislation, but, after that, we would not always want to be tied to having to have a review to change that mechanism.

733. **The Chairperson (Ms Maeve McLaughlin)**: So, it is similar to clause 1(7) that we looked at; it is not necessarily a review.

734. **Mr Jackson**: It is exactly the same, yes.

735. **The Chairperson (Ms Maeve McLaughlin)**: The proposed amendment to clause 4(3) is to require a council to notify the FSA of the outcome of a rerating within 34 days. It will also require the FSA to publish the new rating online within seven days of the end of the appeal period. That mirrors the arrangement in clause 2. What is your rationale for that amendment?

736. **Ms Baker**: As you said, it mirrors the arrangement in clause 2. The amendment to require the council to notify the FSA of a rerating is put into effect by amendment 9, and it just replicates the requirements in clause 2 by inserting two new subclauses, 4A and 4B. The periods are exactly the same as those detailed in clause 2, so, within 34 days, they would notify us of the new rating, and the FSA would publish within seven days.

737. **The Chairperson (Ms Maeve McLaughlin)**: It would be useful to have clarification of whether the power

in clause 4(10) to limit the number of times that a rerating can be requested can be used at any time or after the review of the Act. Is it similar?

738. **Mr Jackson**: It is exactly the same.

739. **The Chairperson (Ms Maeve McLaughlin)**: Clause 5(2) sets out the arrangements for a food business to respond in writing to the rating that is to be published on the Food Standards Agency website. You propose an amendment to clause 5(2) to specify a period of 21 days in which councils must deal with the right of reply. Will you give us a sense of that proposed amendment?

740. **Mr Jackson**: This is put into effect by amendment 13, which requires councils to deal with a right of reply and notify the FSA within 21 days. We went for 21 days because we consider it a reasonable period in which to consider a right of reply. It may be necessary to visit a business to have a discussion with the food business operator, and it could take a bit of time to set that up. Ultimately, the 21 days is consistent with the period for considering an appeal, which is why we went for that.

741. **The Chairperson (Ms Maeve McLaughlin)**: It is consistent with the appeals process.

742. **Mr Jackson**: That is correct.

743. **The Chairperson (Ms Maeve McLaughlin)**: Clause 5(3) deals with the arrangements for a food business establishment to make a written reply to the rating to be published on your website. You propose an amendment to clause 5(3) to specify a period of seven days in which the FSA must publish a right to reply. You also propose an amendment that ties publication of the representation to publication of the rating. Will you give us a sense of that?

744. **Mr Jackson**: Consistent with the other obligations on the agency to publish the rating within seven days, we have gone for the same period for the publication of the right to reply. However, I flag to the Committee that, in normal circumstances and given the current technology used, it will happen virtually as soon as it has been received by the Food Standards Agency.

745. Amendment 17 provides additional clarity to confirm that a right-of-reply representation would be published only after the rating to which it relates has been published. We cannot have a situation of someone trying to publish a right of reply before the rating has been published. I will explain that. If an inspection conducted at a business results in a new rating of 3, and the food business operator provides a right of reply to the council for publication, the 3 rating will not be published until the appeal period has expired. During that period, the right of reply cannot be published. Once the rating is published, the right of reply will also be published. Amendment 17 ensures that we link the right of reply to the rating to which it relates. It just keeps the two together.

746. **The Chairperson (Ms Maeve McLaughlin)**: There were questions about clause 5(2)(b) and 5(2)(c), which gave councils powers to edit representations before forwarding them to you, or to refuse to send them to you in any form. The Committee was concerned that those arrangements would mean that the FSA, as the ultimate owner of the scheme, would not be aware of representations that had been edited or that councils decided not to send on. As a result, the FSA would not be aware of any patterns emerging in particular councils. You have drafted an amendment to clause 5(3), which would require councils to inform the FSA when they edit a representation or decide not to forward it. However, I understand from your letter of 26 February that you want to discuss this further with the Committee. Will you outline your current thinking?

747. **Mr Jackson**: You are correct: amendment 13, as currently drafted, provides for a new clause 5(2). The new elements are in 5(2B)(c) and 5(2C)(b) and would require councils to notify the FSA when they edit or refuse to send a right-of-reply representation to

us. However, having thought about it, we do not believe that it is a necessary provision. I would like briefly to explain why we think that that is the case. We trust district councils to discharge all their statutory obligations in a responsible and reasonable manner, including implementation of the food hygiene rating scheme, as currently specified in the brand standard. Most importantly, as I mentioned earlier, we already have the power to audit district council performance under the Food Standards Act, the primary legislation that created the Food Standards Agency. At any time, we have the power to check what a council is doing and how it is applying any scheme or legal obligation, so we do not see the need to draft a provision that would place a burden on district councils, given that the power to gather the information already exists. As I said earlier, it is our intention to conduct an audit, in due course, that will focus on the operation of the food hygiene rating scheme to ensure that it is being implemented in accordance with the Act, the associated regulations and guidance.

748. I would also like to point out that the brand standard, which currently governs how the councils go about their business in relation to the scheme, is clear on the circumstances in which the text of a right-of-reply representation should be edited, namely, to remove any offensive, defamatory, clearly inaccurate or irrelevant remarks. If the text is edited, a copy of the revised text has to be provided to the food business operator who made the representation, and the district council has to provide an opportunity to comment on that prior to publication. So, there is transparency in any amendments to or editing of a reply and any refusal to publish a reply, and the food business operator always knows what is going on. We envisage that the guidance currently in the brand standard will be replicated in the statutory guidance for the scheme. To strengthen that, we could also include a requirement in the guidance that, before a decision to edit or a refusal to forward a right-of-reply representation to the FSA is made, it must be discussed with or approved by the line manager or head of service responsible for the officer making that decision. So, we could build an additional layer of control into the guidance to make sure that the decision-making is correct.

749. We have also to remember that the Bill already requires councils to fully inform the food business operator of a decision to edit or refuse to forward a reply to the FSA. Although that safeguard is little used under the voluntary scheme, in the event that the food business operator is unhappy about the decision, there are existing remedies. If an operator thinks that their comment was not defamatory and does not agree with the council removing it, there are mechanisms available. The operator could make a complaint under the district council's complaints procedure or, if they felt strongly about it, consider a judicial review against the council for abuse of process.

750. Clause 14 requires each district council to keep the operation of the Act in its district under review. Guidance on that requirement, specifically on right-to-reply representations, could be included. We could also include it when we conduct the review that we are obliged to carry out. We could look at how the right-to-reply provision was being implemented and, at that stage, identify whether there were any issues.

751. District councils are required to have internal monitoring practices in place to ensure that service delivery is in accordance with the 'Food Law: Code of Practice' and other relevant guidance. Decisions on right to reply could be included in the monitoring that takes place of all activities to make sure that the job is being done correctly, and that could be written into the council's procedures.

752. Finally, notification of such actions would make FSA aware that the action has been taken, but there is no power in the Bill to require the FSA to take action against a district council, so, even if we required them to give that information

to us, we could not do anything about it. However, the existing powers available allow us to monitor the council performance and address any issues of concern. So, we are quite confident that it is not likely to be abused by councils and that we would be capable of finding out what is happening, even though we would not require them to tell us every time they edited or refused to send us a representation. In effect, we would prefer not to proceed with the proposed subsections (2B)(c) and (2C)(b) in amendment13. If we do not proceed with those, amendments 15 and 20, which are consequential to amendment 13, will also not be required.

753. **The Chairperson (Ms Maeve McLaughlin)**: So, effectively, you are saying that the existing powers would allow for the appropriate monitoring, and it is your view that councils would not abuse it or be in a position to abuse it.

754. **Mr Jackson**: One simple way of looking at it is that, if a food business operator feels sufficiently strongly about making a right to reply, the council will deal with that in a responsible manner because the person who has raised it as an issue will not let it disappear. Councils will not be able to forget about it or say that they are not publishing it. Indeed, there would be no motivation for them to do so. The clear guidance is that editing is to remove defamatory or inaccurate remarks and once they have been removed, and it is right that they have been removed, the responses would be published.

755. Fundamentally, internal checks and monitoring within the council — we can detail this again in guidance — and our audit function and monitoring of the performance and review of the scheme give us sufficient mechanisms that we do not think that we need to put in the Bill this additional burden on councils.

756. **The Chairperson (Ms Maeve McLaughlin)**: On clause 6(4), the proposed amendment is because the end of the appeal period is now covered in the amendment to clause 2. Is that correct?

757. **Ms Baker**: That is right.

758. **The Chairperson (Ms Maeve McLaughlin)**: I just wanted to clarify that.

759. On clause 7, Committee members raised concerns that the Bill does not require businesses that have a website to display their rating on it. You will be aware of that. We have discussed the issue at length and want to hear more detail on the rationale for that.

760. **Ms Baker**: OK. Later, I will refer to the paper detailing the scheme timeline, which you now have a copy of. When the issue was raised in Committee previously, we explained that the Bill as currently drafted is designed to fill the gap in the current voluntary scheme's requirement for food businesses to display their rating at their establishment. As members are aware, the Food Standards Agency currently publishes on its website all the food hygiene ratings for businesses that are in the scope of the scheme. We are of the view that, when consumers make an online food purchase, perhaps on their computer, laptop, tablet or even phone, they will have access to that information. That will either be directly, by going on to the FSA's website, or through the many apps that are now available and are provided by third parties.We accept that a rating may not be visible directly on the web page, but it is easily accessible and just a few clicks away. This is clearly not the case, however, for a consumer who is purchasing food at an establishment where the rating is not displayed. This is the gap that the Bill as currently drafted is trying to fill.

761. In considering whether to require operators to provide their rating online, a fundamental question that needs to be asked is this: where on the Internet would we require a rating to be published? How food businesses use the Internet can be complex and multifaceted: for example, some have an official website that offers online ordering. Others have an official website that promotes their business but does not offer an online food-ordering facility, so would the rating go there, too?

Increasingly, smaller businesses and others use social media channels to advertise their business, as we often see on Facebook. Would the rating go there, too?

762. We now have third-party online providers that offer the services of many businesses together. There is, for example, a raft of takeaway sales websites, such as Just Eat, from which consumers can order food online from one of many outlets in their area. Would the rating go there? Other third parties compile general directories of businesses, so there will be instances when a food business might not even be aware that it has an online presence. We also need to take into account that the Internet and how people use it is changing all the time. There is an increasing trend towards the use of social media channels to market and promote services, so we would need to consider how to future-proof any requirement in order to reflect the fact that this environment is changing quite quickly.

763. Members asked for further clarity on possible technical or other difficulties that would be presented should the Bill require online publication of the rating. In addition to the initial question of where on the Internet a rating should go, issues were raised by people who responded to the consultation in Wales and from Welsh Government officials. They told us that the sales parts of their websites are generic and contain the information that consumers need to decide what to buy. Generally, however, the delivery will come from a large local store, where the goods will be selected for delivery. In other words, the consumers would need to know which store the products were coming from, but that could change depending on business demands on any given day. How could meaningful ratings be made available in those circumstances? For some businesses, the order may come from a warehouse or distribution system rather than from one of their consumer stores. That would not be within the scope of the scheme, and, therefore, it would not have a rating.

764. Multinational retailers operate a single online ordering facility across the UK. During the consultation in Wales, they put forward comments that the Welsh Government could be exceeding their powers by introducing a requirement that would apply to companies with websites that related to food premises outside Wales as well as companies or businesses in Wales. The same question would need to be answered for Northern Ireland. When ordering food online, the transaction may not take place in the jurisdiction of Northern Ireland. Would the requirements of the Act in Northern Ireland extend in those circumstances? On what page would the rating appear for it to be useful? Some websites are very large and have many, many pages, and it would not be proportionate to expect them to put their rating on every page. So, where exactly, even on a food business's own website, are we talking about?

765. The other really big challenge that we see for online publication is enforcement. It would be resource-intensive for district council officers to police. In the first instance, they would need to determine whether a business had an online presence. As I said, an official website could have multiple pages, and it would require some resource to check through all the pages to ascertain whether the requirement was being complied with. We know that district councils would not have the resources to carry out those additional checks. In fact, we would not want that to divert from their planned programmes and the work that they do in dealing with poorly complying businesses. Unless significant resources are put into policing the requirement, there is the potential for many online ratings to be out of date, which could, ultimately, undermine the scheme.

766. Mechanisms would be needed to ensure that ratings were kept up to date and renewed in a timely fashion so that there were no misleading ratings for consumers. We would need to think about the time frame stipulated for

businesses to update any ratings that they had online.

767. The current position in Wales is that Welsh Assembly Government officials concluded that the resource required for district councils to enforce the provision would be disproportionate to the benefits gained.

768. When we appeared before the Committee previously, we proposed to table an amendment that would require the Food Standards Agency to continue to do more to promote the scheme. We think that that would have a number of effects. The promotion would be aimed at consumers and inform them of the scheme, not just the new mandatory requirement to display ratings at establishments but as a means to promote the use of the Food Standards Agency website when people are making online purchases. We have already been doing a lot of work in this area over the last number of years. To give you an idea of the kind of promotion we are talking about, we put together a timeline and have circulated it to members. It shows some of the promotions that the Food Standards Agency has taken forward since the scheme's launch in 2011. When the scheme was launched, we ran quite a large publicity campaign, with television ads, which some of you may have seen, and billboard posters. That was a very successful campaign.

769. We have carried the promotion on since then. What you see in front of you is not everything that we have done; it is an example of something that we have done every year. We have had poster campaigns, and, increasingly, we are moving very much to promoting the scheme through social media. You can see some of our most recent campaigns, one of which was on Valentine's Day, when there was a lot of social media promotion of the scheme.

770. The Food Standards Agency now makes ratings available through open data, and we will continue to do that. That allows third parties to download the ratings and use them in apps and other ways to continually make the information more easily available online. The FSA will also continue to work with third-party providers to encourage them to use the ratings when food is sold online. We have already worked with, for example, Just Eat, which is an online takeaway ordering service. Members can go on to the website, identify the area they live in, select a type of takeaway and get a list of premises from which they can order. There is already a link on every business page that customers click to take them directly to the place on the website where they can find the food hygiene rating of an establishment. Businesses and third parties already use that information, and we will continue to work with new providers that come into the marketplace to encourage them to do the same. We will continue to provide toolkits for businesses. These provide them with the necessary artwork and branding to enable them to use their rating on any promotional material and online. We will continue to give them the information that they need to do that.

771. If Committee members think that there should be a requirement for mandatory online ratings, we suggest further consultation with stakeholders to fully assess the costs and benefits and seek agreement on questions that they have raised with us. Stakeholders may have more questions about how the details of the proposal would work in practice.

772. **Mrs Cameron**: Thank you, Chair, and apologies for being late. I have raised this a number of times. I understand the complexity of the issue, but I am still of the mind that it is almost unfair that some people or some companies will not have to display the rating because they operate online, or, maybe they operate predominantly online or make half their sales online. I do not think that it is fair on the consumer who orders online that they do not have the same access to ratings. However, I understand the complexities and all the issues. That is why I wonder whether you have looked at having a link to the ratings. The rating would not be displayed, but there would be a link to it to take you to your site where, regardless of whether it applied,

the information would be available on your site. Is that an answer? Would that not be preferable to throwing the baby out with the bath water and saying that it was too complicated and that you could not do it?

773. **Mr Jackson**: It would simplify some of the technical difficulties that Kathryn explained, but I do not think that it would get around the issue of businesses that operate on a UK-basis, for example, and where the decision may be made outside the jurisdiction of Northern Ireland, where the food is being supplied from. It would still be very difficult to provide the specific and meaningful information and not step outside what would be legally acceptable for companies trading on a UK-basis.

774. **Mrs Cameron**: But, instead of coming up with a rate of zero to five in those cases, could you not simply have “No rating available” or “Not applicable”?

775. **Mr Jackson**: The point that I am trying to make is that for us to make any requirement related to a rating that could take us outside the jurisdiction of Northern Ireland could mean that there was an issue of competence. We would need to be very careful about that, even if it was not an actual number related to a particular business. We need to be very careful that there is the competence in the Assembly to do anything required to be done in law.

776. **Ms Baker**: We still want to work directly with providers and businesses that have an online presence and which sell food online to encourage them to put the link on. We can take that up and do more, although we have not done a huge amount, it has to be said. We have worked with some third-party providers, such as Just Eat. We can do a lot more to provide businesses with know-how, even with applying the link and making it work. Once you make it a requirement in the Bill, you will, in its drafting and for it to be meaningful, have to have some of the answers to the questions that we have asked about where it would be. That is very important for enforcement, because a very general requirement would be difficult to enforce. Quite a lot of effort would go in to seeing that it happens.

777. We can do a lot more on promotion. If the scheme is mandatory, its profile will be much higher and people will know that they now need to see it on a door. So we can do a lot more in our promotion at that stage to say, “What about when you’re online?” and to make people aware of our website. We will have to let them know that they just open another window on their computer, put the name of the business in, and they will get it. It is not that it is not there; it is just not as accessible as it could be. However, we could do more than we are doing at the moment to make it more accessible and to encourage businesses to do it. You see it with third-party providers. There are apps appearing on the market through which this can be quite easily accessed through phones. So third-party people are picking it up and using it in inventive ways — ways that we do not know about yet.

778. **Mr Jackson**: The great benefit of that approach is that when the marketplace and tech companies are driving it, they do so at their cost to drive their business model. There is no cost to government; there is no cost to district councils to enforce something that would be very difficult to enforce. So, the market, in effect, occupies the space. IT and the Internet have evolved in recent years, and it is clear that that will continue to be the case. We talked about official websites. Outside the major supermarkets that have a well-defined business model that can operate on that basis, many businesses, particularly smaller ones, are not going for the website route. As Kathryn said, a lot of places are using Facebook and so on, so to put something very prescriptive in the legislation as to how a rating should be displayed on the Internet would be extremely difficult.

779. We know that only a small proportion of consumers use web ratings. What will become even more prevalent will be using the rating at the point of purchase in establishments.

780. **Mrs Cameron**: I know that there are many complications, but it does not need to be as complicated as it is being made. It could be as simple as turning up at a restaurant or food outlet to order or receive food and seeing the rating. Surely when it comes to online, it could be as simple as having access to the rating on the page on which you order food, whether the rating itself or a link to the rating. It is too important a factor to be left out.

781. **The Chairperson (Ms Maeve McLaughlin)**: I sense that you are not convinced, but we will reflect on what we have heard today. I get a sense that there is more that the FSA could do on this issue, but we will reflect, Pam, on what we have heard.

782. Councils expressed concern about the requirement in clause 12(2) for them to provide certain information to food businesses in the 14 days after they registered. Councils made the point that they provide a lot of information prior to registration and they wanted flexibility in being able to provide information at various stages of the process. You accepted that concern and are proposing an amendment. Again, this is just to get a sense from you of that amendment and the detail.

783. **Mr Jackson**: That is exactly the case. On reflection, when we looked at what was in the Bill, we had not taken into consideration how that information would be provided to new businesses. The councils are perfectly correct that they will be working with a business for a long time, quite often before the business registers.

784. Amendment No 22 provides additional words to clause 12(2) to ensure that councils can continue to provide the information before the 14-day period following registration if they wish. That is a pragmatic approach that reflects current practice. It is similar to what we said about providing information following an inspection. Sometimes that happens at the time of inspection, but, in any event, it has to happen within 14 days. There is the outside point in time by which the information must be provided, but it can happen sooner.

785. **The Chairperson (Ms Maeve McLaughlin)**: OK, that is clear enough. Are members clear on that or do they need more information?

786. We touched on some of clause 14 and related amendments to clauses 4 and 18, and the introduction of the new clause about the adjustment of time periods, which we touched on at the start of this process. The Committee expressed concern about the wide-ranging powers in clause 14(8), which was shared by the Examiner of Statutory Rules, who believed that it was an inappropriate delegation that set a dangerous precedent. The FSA has now accepted the Examiner's points and has proposed the amendments set out in the letters to the Committee dated 5 and 26 February 2015. Can you provide some detail about the amendments? It would be useful to have clarification on whether the power to substitute different time periods under subsection 1 of the new clause can be done at any time or only after review of the Act. Maybe that has been dealt with, but if you would just clarify that.

787. **Mr Jackson**: Because the amendments are very technical, it is quite difficult to explain it. We have fully taken on board the points made by the Examiner about clause 14(8). In essence, we now have five powers in prescribed situations where we can amend the regulations. Those are very tightly defined in the Bill, and they would all be subject to affirmative procedure in relation to the powers. That wide-ranging ability to change primary legislation has been completely removed. If we wanted to propose amendments not covered by the provisions now listed, we would have to do so through seeking amendments to the Act in the Assembly. That area has been completely addressed to be very clear as to the five powers when we can amend through regulations.

788. We mentioned review. In the case of the provisions that we propose that we would be able to change through

the regulations, they would, in the first instance, be linked to the review that will be carried out. Thereafter, they would not always be linked to a review because of other ways that the evidence may come to light that we need to change those provisions.

789. **The Chairperson (Ms Maeve McLaughlin)**: Yes, but not always linked to the review.

790. **Mr Jackson**: No.

791. **The Chairperson (Ms Maeve McLaughlin)**: Do members want any clarification or do they have any comments on that?

792. OK, folks. Thank you very much. It was certainly useful. We will reflect on the evidence that we heard today. Thank you for your time and detail.

18 March 2015

Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mrs Pam Cameron
Mr Paul Givan
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Fearghal McKinney

793. **The Chairperson (Ms Maeve McLaughlin)**: I refer members to the Committee Clerk's paper in your meeting pack. It summarises the discussions that we have had on each clause of the Food Hygiene Rating Bill. An updated list of proposed amendments from the Food Standards Agency (FSA) is also in the pack. Last week, members indicated that, as a Committee, we are content with the majority of the FSA proposals, and we just need to iron out a few issues.

794. As agreed at last week's meeting, the Clerk has sought legal advice about the website issue. We will receive that legal advice and consider the issue further at our meeting on 15 April. Since our meeting last week, the FSA has again written to the Committee on the issue, and that letter is in your tabled papers. They propose a further amendment to clause 14, suggesting that we can consider it further in light of our discussions on the same issue on 15 April.

795. The purpose of today's meeting is for the Committee to consider each clause and ascertain whether we need any further information before our formal clause-by-clause consideration at our meeting on 22 April. I emphasise that we are not taking any formal decisions today. I will take each clause in turn. Officials are in the Public Gallery and are available to come to the table if required on any clause.

796. A number of technical issues were raised about clause 1 and the definition of an inspection. We also discussed the fact that the Bill does not cover business-to-business supply of food. However, clause 1(7) allows that to be changed, if necessary, at a later date. The FSA is not proposing any amendments to clause 1.

797. Are members content to move on to the next clause?

Members indicated assent.

798. **The Chairperson (Ms Maeve McLaughlin)**: The FSA is proposing a number of amendments to clause 2, which deals with the notification and publication of a rating. There will be an amendment to allow councils to provide some information at an earlier date than the notification of a rating. All information, however, is still required to be provided within 14 days. There will be an amendment to introduce a timescale of 34 days, within which councils must inform the FSA of a rating, and a timescale of seven days after the end of the appeal period within which the FSA must publish the rating online. An amendment is also proposed to define the end of the appeal period.

799. The FSA is proposing an amendment on the regulations that will be required for the format of the sticker. That will allow the potential for different types of stickers, such as those with council branding, and will specify who will pay for the different types of stickers.

800. Are members content to move on to the next clause?

Members indicated assent.

801. **The Chairperson (Ms Maeve McLaughlin)**: The FSA is proposing an amendment to clause 3 requiring a council to inform the FSA of the outcome of an appeal or whether an appeal has been abandoned. If a rating has

changed as a result of an appeal, the FSA must publish the new rating online within seven days. The amendment is consistent with the amendment to clause 2(5).

802. We had discussions about the Pubs of Ulster proposal, which is in favour of the Bill being amended to allow for a period of grace within which businesses would be allowed time, after an inspection, to fix issues without their rating being downgraded. Pubs of Ulster had a lengthy discussion with the FSA on the matter, and its position is that a grace period would be a radical change to the scheme and would undermine one of its key purposes, which is to encourage self-compliance by businesses. The FSA also pointed out that clause 4 contains a right to rerate. The period within which a rerating can be requested has been reduced from six months to three months to recognise the right of businesses to make fairly swift improvements to achieve a higher rating. Given those reasons, members indicated last week that they were content with the FSA position.

803. **Ms P Bradley**: That is a fairly good compromise.

804. **The Chairperson (Ms Maeve McLaughlin)**: Thank you. Are members content to move on to the next clause?

Members indicated assent.

805. **The Chairperson (Ms Maeve McLaughlin)**: The FSA is proposing an amendment to clause 4 to require a council to notify the FSA of the outcome of a rerating within 34 days. It will also require the FSA to publish the new rating online within seven days of the end of the appeal period. That mirrors the arrangements in clause 2.

806. An amendment is also proposed to allow the Department, through subordinate legislation, to limit the number of occasions on which a business can request a rerating. This amendment is a consequence of the FSA's decision to remove clause 14(8), which the Committee believed gave powers to the FSA that were too wide-ranging to be able to change the Act after review. This amendment to clause 4 on the number of reratings is much more limited in nature.

807. Are members content to move on to the next clause?

Members indicated assent.

808. **The Chairperson (Ms Maeve McLaughlin)**: The FSA is proposing a number of amendments to clause 5, which deals with the right of reply. It is proposing an amendment to specify a time period of 21 days within which councils must deal with the right to reply. The FSA is also proposing an amendment to specify a time period of seven days within which it must publish a right of reply online. There is also an amendment to link the publication of the right of reply to the publication of the rating to which it refers.

809. Members were concerned about the councils' power to edit representations or to choose not to send them to the FSA, and about the fact that the FSA would have no way of knowing this. We have been advised by the FSA, however, that guidance for councils on the reasons for editing or refusing to send representations will accompany the Bill. As with the operation of other parts of the scheme, there has to be an assumption that councils will carry out their responsibilities in a professional manner and in line with law and guidance. The FSA also has the power to audit the way in which councils are operating the scheme. Given those reasons, members indicated last week that they were content with the FSA position.

810. Are members content to move on to the next clause?

Members indicated assent.

811. **The Chairperson (Ms Maeve McLaughlin)**: The FSA is proposing a technical amendment to remove clause 6(4).

812. Are members content to move on to the next clause?

Members indicated assent.

813. **The Chairperson (Ms Maeve McLaughlin)**: The FSA is not proposing any amendments to clause 7. Members are concerned, however, that the Bill does not require businesses to display their rating on their website, because food orders may be placed directly through a website. The Committee has sought legal advice on the matter, and, as I said, we will discuss it further on receipt of the legal advice on 15 April.

814. Are members content to move on to the next clauses?

Members indicated assent.

815. **The Chairperson (Ms Maeve McLaughlin)**: The FSA does not propose any amendments to clauses 8 to 11. Are members content to move on to the next clause?

Members indicated assent.

816. **The Chairperson (Ms Maeve McLaughlin)**: The FSA has proposed an amendment to clause 12 to allow councils the flexibility to provide information to businesses at different stages of the registration process.

817. Are members content to move on to the next clause?

Members indicated assent.

818. **The Chairperson (Ms Maeve McLaughlin)**: The FSA does not propose any amendments to clause 13. Are members content to move on to the next clause?

Members indicated assent.

819. **The Chairperson (Ms Maeve McLaughlin)**: The FSA proposes a number of amendments to clause 14, which deals with the review of the Act. The amendments take on board the concerns of the Committee and the Examiner of Statutory Rules that the clause as drafted is too wide-ranging. The FSA proposes to remove clause 14(8). It also proposes an amendment to clause 14 to require it to promote the scheme. It has acknowledged, for example, that it could do more to publicise the fact that all ratings are available on the website for consumers' information. While the amendment does not deal with our concerns regarding the website issue, I do not think that the Committee would have any objection to its being part of the Bill.

820. The FSA proposes a further amendment to clause 14 in the letter dated 16 March, which is in members' tabled papers. Again, this is about the website issue. As I mentioned, it would make sense for the Committee to consider this proposed amendment at our meeting on 15 April, when we have received the legal advice.

821. Are members content to move on to the next clause?

Members indicated assent.

822. **The Chairperson (Ms Maeve McLaughlin)**: No amendments are proposed to clause 15. Are members content to move on to the next clause?

Members indicated assent.

823. **The Chairperson (Ms Maeve McLaughlin)**: A new clause is proposed: “Adjustment of time periods”. It will allow the Department to amend the time periods specified in the Act by substituting a different time period; for example, the 14 days within which a council must notify a business of its rating could be changed through subordinate legislation. That power can be exercised at any time and not just as a result of carrying out a formal review of the Act, which is consistent with other clauses. The new clause will also allow councils and the FSA flexibility on meeting various timescales in the Act, because of Christmas closure of council or FSA premises and exceptional circumstances. The guidance accompanying the Bill will clarify what will constitute exceptional circumstances, and the FSA has the power to audit the way in which councils apply the exceptional circumstances rule. In light of that explanation, members indicated last week that they were content with the FSA position.

824. Are members content to move on to the next clause?

Members indicated assent.

825. **The Chairperson (Ms Maeve McLaughlin)**: The FSA proposes a technical amendment to clause 16.

826. Are members content to move on to the next clause?

Members indicated assent.

827. **The Chairperson (Ms Maeve McLaughlin)**: No amendments are proposed to clause 17. Are members content to move on to the next clause?

Members indicated assent.

828. **The Chairperson (Ms Maeve McLaughlin)**: The FSA proposes an amendment to clause 18 on powers for limiting the number of reratings through subordinate legislation. That reflects the amendment to clause 4.

829. Are members content to move on to the next clauses?

Members indicated assent.

830. **The Chairperson (Ms Maeve McLaughlin)**: No amendments are proposed to clauses 19 and 20. Are members content to move on to the schedule?

Members indicated assent.

831. **The Chairperson (Ms Maeve McLaughlin)**: No amendments are proposed to the schedule. Are members content to move on?

Members indicated assent.

832. **The Chairperson (Ms Maeve McLaughlin)**: Members have no further issues that they wish to raise.

833. I advise members that, at our next meeting on 15 April, we will consider the legal advice on the website issue. We will then move to the formal clause-by-clause consideration of the Bill on 22 April, when we will, I stress, take formal decisions on each clause.

15 April 2015

Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mrs Pam Cameron
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Fearghal McKinney
Mr George Robinson

Witnesses:

Ms Kathryn Baker — *Food Standards Agency*
Mr Michael Jackson — *Northern Ireland*

834. **The Chairperson (Ms Maeve McLaughlin)**: Michael and Kathryn, you are very welcome. You are part of the furniture at this stage.

835. The Committee wants to discuss the proposed amendment in your letter of 1 April. We have discussed the proposed amendment to clause 7 and are generally content with the approach outlined. We note that, in your cover letter, you state that the power will be exercised in the first set of regulations drafted after the legislation comes into operation. We want to drill down to that issue with you, as we would like the proposed amendment to be tied down more firmly. Therefore, the Committee requests that you seek written assurance from the Minister that that will be the case. We seek that assurance before we begin our clause-by-clause scrutiny, which will be next week. On behalf of the Committee, I ask that you pursue the matter with the Department as a matter of urgency. If Committee members are content with that request and have no comments to make, can I get agreement that you will do that?

836. **Mr Michael Jackson (Food Standards Agency Northern Ireland)**: That is not a problem. We are happy to do that. The Minister was made aware of the proposed amendments and has already agreed to them. It was always our intention that, where regulation-making powers are required to bring any aspect of the scheme into implementation, that would all happen at the same point in time. Therefore, there will be no difficulty in including that as part of the initial regulation process.

837. **The Chairperson (Ms Maeve McLaughlin)**: OK. Has the Minister already given his approval for the proposed amendment?

838. **Mr Jackson**: Yes, he has.

839. **The Chairperson (Ms Maeve McLaughlin)**: Do you envisage there being no issue with seeking that assurance that it will be activated and that we can turn it around before next week?

840. **Mr Jackson**: That should not be a problem.

841. **The Chairperson (Ms Maeve McLaughlin)**: OK, great. That is all that we needed to hear from you. Thank you for your time.

22 April 2015

Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mrs Pam Cameron
Mr Paul Givan
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr George Robinson

842. **The Chairperson (Ms Maeve McLaughlin)**: I advise members that the Committee carried out its informal clause-by-clause scrutiny on the majority of the clauses of the Bill on 18 March. The Committee indicated that we were generally content with the approach that the Food Standards Agency (FSA) was taking to amend clauses in response to issues raised by the Committee and that no further information or discussion was required, except in relation to clause 7 and the issue of displaying ratings online. The Committee discussed the issue last week and discussed the proposed amendment from the Food Standards Agency. We were generally content with the amendment; however, we sought assurance that the powers would be exercised in the first set of regulations drafted after the Act comes into operation. We asked the FSA to seek written assurance from the Minister on that point. We now have that assurance at page 3 of your tabled pack. Are members content with the assurance from the Minister and that we require no further discussion of the issue before we move into formal clause-by-clause scrutiny? I will give members a minute to reflect on that.

Members indicated assent.

843. **The Chairperson (Ms Maeve McLaughlin)**: I just remind you that this is the formal clause-by-clause consideration and is a vital part of the Committee's duties and is needed for the preparation of the Committee report. It is the final opportunity for the Committee to propose amendments.

844. I will formally put the Question on each clause, and the Committee is required to vote that it is content with the clause as drafted; that it is content with the clause, subject to departmental amendments; that it is not content and wishes to amend; or that it is not content and wishes to oppose the clause. I refer members to the black-and-red copy of the Bill in front of them, so that we can go through each of the clauses.

845. The Department does not propose any amendments to clause 1. I just remind members that the Committee indicated that it was generally content with the clause.

Question, That the Committee is content with clause 1, put and agreed to.

Clause 2 (Notification and publication)

846. **The Chairperson (Ms Maeve McLaughlin)**: The Department proposes a number of amendments. These are to allow councils to provide some information at an earlier date than the notification of a rating; to introduce a timescale of 34 days within which councils must inform the FSA of a rating; to introduce a timescale of seven days after the end of the appeal period in which the FSA must publish the rating online; to define the end of the appeal period; to allow for the potential of there being different types of stickers, such as those with council branding; and to specify who will pay for the different types of sticker. We considered this and were generally content with the clause and the proposed amendments.

847. **Mr McCarthy**: Chair, I presume the red writing is the amendments.

848. **The Chairperson (Ms Maeve McLaughlin)**: It is, yes.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 3 (Appeal)

849. **The Chairperson (Ms Maeve McLaughlin)**: The Department proposes amendments to require a council to inform the FSA of the outcome of an appeal or if the appeal has been abandoned. If the rating has changed as a result of the appeal the FSA must publish the new rating online within seven days. We considered this and were generally content with the clause and the proposed amendments.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 4 (Request for re-rating)

850. **The Chairperson (Ms Maeve McLaughlin)**: The Department proposes a number of amendments to clause 4, which will require a council to notify the FSA of the outcome of a re-rating within 34 days; to require the FSA to publish the new rating online within seven days of the end of the appeal period; and to allow the Department, through subordinate legislation, to limit the number of occasions on which a business can request a re-rating. We considered this and were generally content with the clause and the proposed amendments.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 5 (Right of reply)

851. **The Chairperson (Ms Maeve McLaughlin)**: The Department proposes amendments to specify a period of seven days in which the FSA must publish a right of reply online and to link the publication of the right of reply to the publication of the rating to which it refers. We considered the clause and proposed amendments and were generally content.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 6 (Validity of rating)

852. **The Chairperson (Ms Maeve McLaughlin)**: The Department proposes a technical amendment to remove clause 6(4), given that the end of the appeal period is now covered in the amendment to clause 2. We considered the clause and the proposed amendment and were generally content.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 7 (Duty to display rating)

853. **The Chairperson (Ms Maeve McLaughlin)**: The Department proposes an amendment to provide for a regulation-making power to require businesses supplying food by means of an online facility to ensure that the establishment's food hygiene rating is provided online. The manner of display will be specified in the regulations and will include a requirement to provide a link to the Food Standards Agency's website. We have received written assurance from the Minister that the powers will be exercised in the first set of regulations drafted after the Act comes into operation. We considered the clause and proposed amendment and were generally content.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

854. **The Chairperson (Ms Maeve McLaughlin)**: The Department is not proposing any amendments to clauses 8 and 9. We considered the clauses and were generally content.

Question, That the Committee is content with clauses 8 and 9, put and agreed to.

Clause 10 (Offences)

855. **The Chairperson (Ms Maeve McLaughlin)**: The Department proposes an amendment that is a consequence

of the amendment to clause 7 and will mean that a failure to comply with the duty under clause 7 would be an offence. I remind Members that the Committee indicated that it was generally content with the clause and the proposed amendment.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

856. **The Chairperson (Ms Maeve McLaughlin)**: The Department is not proposing any amendments to clause 11. I remind Members that the Committee indicated that it was generally content with the clause.

Question, That the Committee is content with clause 11, put and agreed to.

Clause 12 (Provision of information for new businesses)

857. **The Chairperson (Ms Maeve McLaughlin)**: The Department proposes an amendment to allow councils the flexibility to provide information to businesses at different stages of the registration process. I remind Members that the Committee indicated it was generally content with the clause and the proposed amendment.

858. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

859. **The Chairperson (Ms Maeve McLaughlin)**: The department does not propose any amendments to clause 13. I remind members that we considered and were generally content with the clause.

Question, That the Committee is content with clause 13, put and agreed to.

Clause 14 (Review of operation of Act)

860. **The Chairperson (Ms Maeve McLaughlin)**: The FSA proposes amendments to the clause to take on board the Committee's concern that the clause as drafted is too wide-ranging. The FSA proposes to remove clause 14(8) and include an amendment to require the Department to publish its response to the FSA report on the review of the Act. The FSA also proposes an amendment to require it to promote the scheme. I remind members that we considered this and were generally content with the clause and the proposed amendments.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

861. **The Chairperson (Ms Maeve McLaughlin)**: The Department does not propose any amendments to clause 15. The Committee indicated that it was generally content with the clause.

Question, That the Committee is content with clause 15, put and agreed to.

New Clause

862. **The Chairperson (Ms Maeve McLaughlin)**: This new clause, concerning the adjustment of time periods, will allow the Department to amend the periods specified in the Act by substituting a different period. The new clause will also allow councils and the FSA itself flexibility in meeting various timescales, for example because of Christmas closure of council or FSA premises or because of exceptional circumstances. The Committee discussed this and indicated that it was generally content with the new clause.

Question, That the Committee is content with the new clause, put and agreed to.

863. Clause 16 (Interpretation)The Department has proposed an amendment in relation to the definition of the end of the appeal period. We had considered that and were generally content with it.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

864. **The Chairperson (Ms Maeve McLaughlin)**: The Department does not propose any amendments to clause 17, and the Committee had indicated that it was generally content with the clause.

Question, That the Committee is content with clause 17, put and agreed to.

Clause 18 (Regulations and orders)

865. The FSA proposes amendments to take account of the amendments made to clauses 7 and 14 and to specify how subordinate legislation will operate in relation to the new clause on the adjustment of time periods. Again, the Committee has considered this, and we were generally content with the clause and the proposed amendments.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

866. **The Chairperson (Ms Maeve McLaughlin)**: The Department does not propose amendments to clauses 19 or 20, and the Committee was generally content with the clauses.

Question, That the Committee is content with clauses 19 and 20, put and agreed to.

Question, That the Committee is content with the schedule, put and agreed to.

Question, That the Committee is content with the long title, put and agreed to.

867. **The Chairperson (Ms Maeve McLaughlin)**: I thank members for co-operation on that.

Appendix 3

Written Submissions

Written Submissions

Table of Contents

Ballymoney Borough Council

Belfast City Council

Chartered Institute of Environmental Health

Chief Environmental Health Officers Group

The Consumer Council

The Co-operative Food

Dungannon and South Tyrone Borough Council

Fermanagh District Council

Lisburn City Council

North Down Borough Council

Northern Ireland Hotels Federation

Northern Ireland Local Government Association

Pubs of Ulster

Dr Richard Hyde

Which

Ballymoney Borough Council

Our Ref.: BS/3171/14(FC) 9th December 2014

Fao Dr. Kathryn Aiken,
Clerk, Committee for Health, Social Services and Public Safety,
Northern Ireland Assembly,
Room 284 Parliament Buildings,
Ballymiscaw,
Stormont,
BELFAST,
BT4 3XX.

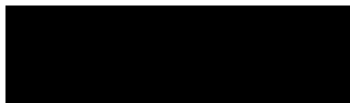
Dear Madam,

The Food Hygiene Rating Bill

Your letter dated 12th ultimo to this authority's Chief Executive in respect of the above matter refers. Following Council's consideration of the proposed Bill, it would ask the Committee for Health, Social Services and Public Safety to note and satisfactorily address its concerns –

- The Bill relates to the introduction of a mandatory food hygiene rating scheme for relevant Northern Ireland food businesses.
- As such the Bill represents a 'new burden' on both businesses and local government.
- The Bill is overly prescriptive as regards Councils (who are expected to undertake most of the work in respect of implementing the scheme) with deadlines set out in the Bill (and not as is more normal practice in associated guidance). The same approach is not followed in respect of the FSA(NI), the other scheme partner.
- As the Bill represents a 'new burden' on Councils and is overly prescriptive in its requirements in respect of Councils, is FSA(NI) intent on resourcing Councils to the extent required to undertake this additional work? There is no indication of this to date.
- The proposals as currently drafted don't represent a partnership approach as the proposed scheme is to be solely under the FSA(NI) branding and unlike the present voluntary schemes Council co-branding is not to be permitted. This unsatisfactory situation must also be addressed.

Yours faithfully,



Director of Borough Services.

JCM/hm

Iris McCleery BA Director of Central & Leisure Service
John Dempsey BSc (Hons), MBA Chief Executive
John Michael BSc (Hons), MBA, MCIEH, MRSH Director of Borough Services
RIADA HOUSE, 14 CHARLES STREET, BALLYMONEY, CO. ANTRIM BT53 6DZ
TELEPHONE: 028 2766 0200
FAX: 028 2766 0222
E-MAIL: info@ballymoney.gov.uk
www.ballymoney.gov.uk

Belfast City Council

Chief Executive's Department

Your reference
Our reference SW/JB

Date 12 December 2014

The Committee Clerk,
Committee for Health, Social Services & Public Safety
Room 144, Parliament Buildings
Ballymiscaw, Stormont
Belfast BT4 3XX

Dear Dr Aiken

The Food Hygiene Rating Bill

I welcome this opportunity to make a submission of written evidence to the Committee for Health, Social Services and Public Safety in relation to the Food Hygiene Rating Bill.

I welcome the Department for Health, Social Services and Public Safety proposals to introduce a statutory food hygiene rating scheme which will require businesses to display food hygiene ratings and I recognise this Bill has the potential to better inform consumers whilst encouraging business to comply with the hygiene requirements.

A specialist working group of the Chef Environmental Health Officers Group (CEHOG), including Belfast City Council's Food Safety Manager, have carefully considered the detail of the Bill and taking on board the views of the district councils drafted the written evidence attached which I fully endorse. The members of that working group, at the Committee's invitation, will present oral evidence on behalf of CEHOG on 14 January 2015.

It is my intention to take this response to Belfast City Council's Health & Environmental Services Committee on the 7 January and subsequently to full Council on 2 February for ratification. Should Council amend the response I shall notify you at the earliest opportunity.

I trust this information will assist the Committee. If however you require any further information or clarification please contact Mr Damian Connolly, Environmental Health Manager.

Yours sincerely

Suzanne Wylie
Chief Executive

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 of 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 FHRS 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 –

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.

Chartered Institute of Environmental Health NI

Food Hygiene Rating Bill for NI

Comments on proposed bill submitted to Committee on Health, Social Services and Public Safety

December 2014

The CIEH supports and endorses the aspirations of this bill and believes that the proposed legalisation will be of benefit both to consumers when selecting food premises from which to purchase food and in further improving hygiene standards in food premises across Northern Ireland.

However, we are also aware, through discussions with colleagues and members working within the Environmental Health Service in Northern Ireland, that there are some concerns about the detail within this Bill from within the Local Authority Environmental Health Service within Northern Ireland. These have been articulated within the CEHOG response which we would support, with the following further/additional comments.

1 Food Hygiene, which seeks ultimately to ensure that food intended for human consumption is safe to eat at the point of delivery, has been, and remains, an important element of health protection. Since the introduction of the Food Safety Order in 1991, and indeed prior to that, the District Council Environmental Health Service in Northern Ireland has been at the forefront of efforts to improve food hygiene standards. This has required the commitment of resources, skills, and expertise and those efforts have largely been a significant success. Overall compliance with food hygiene requirements within NI is high.

However, there are other significant public health areas related to food that arguably increasingly require addressing, and which the EH service is potentially well placed to contribute to. These include food standards (i.e. the composition and labelling of food), which are directly related to dietary health; food fraud (and the implications of the recent Elliott Review); and food sustainability and security.

2 We are aware that CEHOG and the EH Service is currently undertaking a review of its food function in light of the priorities alluded to above, and also in light of pending local government reorganisation. Whist the service, like CIEH, is supportive of the FHRS and proposed bill, it is uncertain what impact a mandatory scheme will have on resource demand. It is important to bear in mind that the view of many environmental health practitioners (EHPs) working within the public service, is that the current scheme is effectively a "compliance" scheme. In other words a score of 5 represents full compliance. – not, as may be believed by the public, "excellence". This view, we believe, explains, and in many respects, justifies the views and comments expressed within the CEHOG response.

3 The committee will be aware that major local government reorganisation is currently underway within NI. Whilst CIEH has not been directly involved in the recent deliberations nor are we privy to the details in terms of proposals for future operational arrangements, what is fairly clear is that, although

there is a recognition and acceptance that the sector as a whole across NI will need to collaborate and work together, there are, in effect, no statutory mechanisms to ensure this.

With regards to the EH service specifically, and indeed food control, it is not yet clear how, if at all, previous roles and capacity, particularly the resources and capacity required to allow CEHOG and its associated subgroups to operate effectively that were inherent within the previous 26 council and Group model, will be accommodated within the new councils. If the capacity to deliver the work of CEHOG and its sub groups is not maintained, then we believe this has the potential to detrimentally affect the operation of this scheme – particularly the issue of consistency. Consistency of approach will, in our view, be vital to the effective and equitable implementation of this bill.

4 Bearing in mind comments from the preceding section, and also comments articulated within the CEHOG paper, how the scheme might affect resources is clearly an understandable concern. Experience from Wales would suggest that there may be additional strain placed on existing resources in the lead into the commencement of such a Bill. CEHOG have articulated concerns in this regard and particularly how this may potentially skew resources away from other equally important public health protection and improvement food related issues.

Whilst we would support the concept articulated within the CEHOG paper that Councils, and indeed the EH Service, should decide the priorities for the health and wellbeing of its citizens we believe that the food hygiene rating scheme must be applied across Northern Ireland as a whole or not at all. Although there is no suggestion otherwise, we do not believe it would be appropriate for individual councils to opt out.

5 We would encourage consideration of innovative flexible arrangements, in meeting additional resource demands that the scheme may generate – particularly in terms of revisits/re ratings. This could include for example the use of professional contractors or consultants that could be engaged if existing council resources are insufficient, for example due to either other priorities, emergencies, outbreaks etc.

The Chartered Institute of Environmental Health

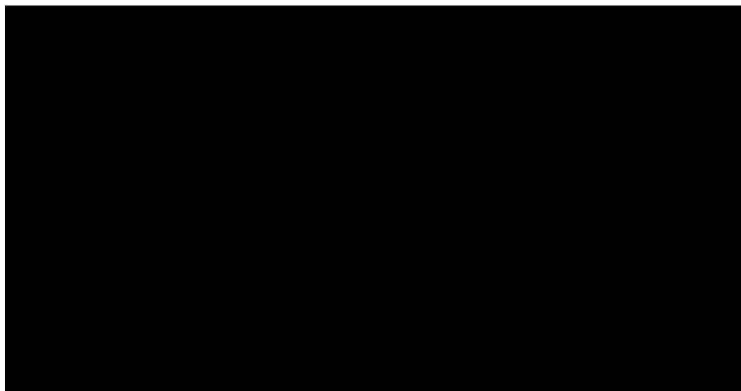
As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.



Chief Environmental Health Officers Group

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 reassessed 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 FHRS 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 wish 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 –

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.

The Consumer Council

Telephone/Textphone: 028 9067 2488
Complaints Telephone: 0800 121 6022
Fax: 028 9065 7701
E-mail: info@consumercouncil.org.uk
complaints@consumercouncil.org.uk
Websites: www.consumercouncil.org.uk
www.consumerline.org

Chairperson
Rick Hill
Deputy Chairperson
Mandy Patrick MBE
Interim Chief Executive
Aodhan O'Donnell

The Consumer Council

Elizabeth House
116 Holywood Road
Belfast
BT4 1NY

Dr Kathryn Aiken
Clerk, Committee for Health, Social Services and Public Safety
Room 284, Parliament Buildings
Stormont, Belfast BT4 3XX

1 December 2014

Dear Kathryn

The Food Hygiene Rating Bill

The Consumer Council for Northern Ireland (CCNI) have a duty to represent consumers' needs and concerns and this is underpinned by our mission statement ***'making the consumer voice heard and making it count'***.

As part of our statutory remit, CCNI promotes and safeguards the interests of consumers in relation to energy, water, transport and food. Recognising the role of the Food Standards Agency in Northern Ireland, our strategic focus on food centres on food prices; particularly in light of the rising cost of living and also consumers' experience of food shopping. We are therefore interested in and supportive of the Bill as we believe this will greatly assist and improve consumers' confidence and decision-making in relation to eating out or buying food in.

In March 2013 the Consumer Council responded to the FSA's public consultation to assess the impact of mandatory display of food hygiene ratings in NI. We used the 7 Consumer Principles1 to guide our response, which supported the mandatory display of ratings stickers. This submission uses the Principles approach again and applies them to the following clauses contained in the Bill.

Clause 7 Duty to Display a Rating

Clause 7(1) provides a duty on the operator of a food business to ensure that a valid food hygiene ratings sticker is displayed. Elsewhere in the Bill (Clause 10) creates a number of offences which include failure to display, intentionally altering, defacing or tampering with a sticker.

These duties fit with the Principles of:

Information: The mandatory use of rating stickers, which must be displayed prominently in all food establishments, will provide consumers with reliable information about the hygiene standards in place. This is information that a consumer would otherwise be unlikely to have access to.

1 The 7 Consumer Principles were first established in the 1970s and allow public and private sector bodies to assess how consumer focussed a service or initiative is. The 7 Principles (sometimes referred to as Tests) are: Information/ Access / Redress / Representation / Fairness / Choice / Safety.

Another advantage of the proposed mandatory display of rating stickers is the expected increase in consumers' familiarity with the scheme, helping it to become a trusted tool which will help consumers shop around[2].

Choice: The scheme will provide consumers with information they need to make an informed choice about where to eat out or purchase food.

Safety: There is a clear link to safety and indeed the Bill's primary aim is to reduce the incidence of foodborne illness.

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.

Access: The provision made in this Duty ensures that the information is accessible to consumers who are unable to see the ratings sticker i.e. blind or partially sighted people or people making a telephone booking or order.

Fairness: The above Duty by its nature also fits with the Principle of fairness, ensuring that all consumers are able to make use of the food hygiene rating information.

Other comments:

How and where the rating is displayed will directly impact on the scheme's visibility and usefulness to consumers. In addition to displaying the rating sticker on site and having the rating available for checking on the FSA website; CCNI would also support any moves to instruct food establishments to display their rating prominently on their own company website where applicable.

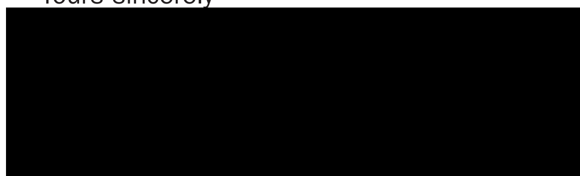
In terms of increasing the scheme's impact, we also support the view of consumers participating in the Citizen's Forum[3] that for the scheme to be even more effective, there must be a public information campaign.

Finally, CCNI welcomes the definition "food business establishment" used in the Bill as this will provide flexibility in the future to widen the scheme to include business to business trade. It seems fair that a business striving for a high rating in food hygiene should have the ability to check a supplier's rating; and we will watch with interest the developments taking place in Wales where the scheme has been extended to include food producers and wholesalers.

According to research conducted on behalf of the Consumer Council following the horsemeat scandal in February 2013[4], NI consumers in general were found to have a favourable view of local farmers, producers and processors. CCNI feel that applying the rating scheme to other food establishments will succeed in driving up standards further and increasing consumer confidence in our local agri-food sector.

Should you require any further information please do not hesitate to contact me.

Yours sincerely



Aodhan O'Donnell, Interim Chief Executive

2 CCNI are heartened to learn that research has shown NI consumers to have higher levels of recognition of the scheme than in England and Wales, but share the concern that consumers did not notice where ratings were not displayed as part of an observation exercise they were asked to complete.

3 Four consumer panels independently conducted across NI in February 2013

4 http://www.consumercouncil.org.uk/publications/–food-supply-chain-issues-and-the-horsemeat-scandal—the-consumer-view—/

The Co-operative Food

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.

Dungannon and South Tyone Borough Council

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

Fiona McClements
Director of Environmental Services

Dungannon and South Tyrone Borough Council Comhairle Dhún Geanainn agus Thír Eoghain Theas Rathgannon Sooth Owenslann Burgh Cooncil

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 FHRS 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 wish 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 –

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.

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.

Lisburn City Council

LISBURN
CITY COUNCIL

Island Civic Centre, The Island, Lisburn, BT27 4RL Tel: 028 9250 9250
www.lisburncity.gov.uk
Norman Davidson *Chief Executive*
normand@lisburn.gov.uk

Our Ref: Environmental Health
MW/ED

20 November 2014

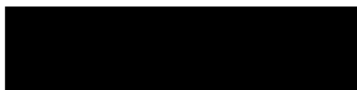
Dr Kathryn Aiken
Clerk Committee for Health, Social Services and Public Safety
Room 284 Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Dr Aiken

Re: Food Hygiene Rating Bill

Thank you for the opportunity for Lisburn City Council to make a submission to the Committee for Health, Social Services and Public Safety on the Food Hygiene Rating Bill. The Council will not be making a submission on this occasion but I can advise you that we would subscribe to the comments submitted by the Chief Environmental Health Officers Group which we have been involved in compiling.

Yours sincerely



Maurice Woods
Assistant Director of Environmental Services

Adrian Donaldson MBE DL
Director of Corporate Services
adriand@lisburn.gov.uk

Colin McClintock
Director of Environmental Services
colinm@lisburn.gov.uk

Jim Rose
Director of Leisure Services
jimr@lisburn.gov.uk

North Down Borough Council

Your Ref:
DGY/JB
Our Ref: (229)

27th November 2014

Dr Kathryn Aiken
Clerk
Committee for Health, Social Services & Public Safety
NI Assembly
Room 284 Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Dr Aiken

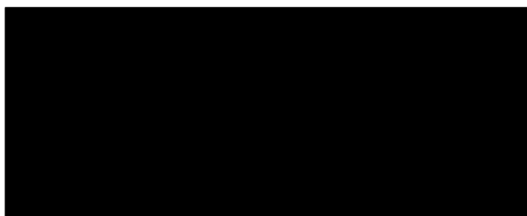
RE FOOD HYGIENE RATING BILL

Thank you for your letter dated 12th November 2014 welcoming comments on the above Bill, which is now at its Committee Stage.

I wish to advise that I am content for the comments of the Chief Environmental Health Officers' Group to represent the views of this Council in this instance.

As the Bill progresses, you will of course appreciate that North Down and Ards District Council will assume interest in this legislation from April 2015 onwards.

I hope this is helpful.



Trevor Polley BA MBA
Chief Executive and Town Clerk
North Down Borough Council
Town Hall The Castle
Bangor, Co. Down BT20 4BT
Tel: (028) 9127 0371
Fax: (028) 9127 1370
E-Mail: enquiries@northdown.gov.uk
Website: www.northdown.gov.uk

Northern Ireland Hotels Federation

Northern Ireland Hotels Federation
The McCune Building, 1 Shore Road, Belfast BT15 3PG
Tel: 028 9077 6635 Fax: 028 9077 1899
www.nihf.co.uk

Committee for Health, Social Services and Public Safety
Food Hygiene Bill

A response by the Northern Ireland Hotels Federation to Food Hygiene Rating Scheme

December 2014

The Northern Ireland Hotels Federation (NIHF) is the representative trade body for the hotel and guesthouse sector. The Federation and its members are committed to delivering an excellent customer experience. The Federation and its members are committed to high standards and adhere to all the legal requirements in the provision of food.

The NIHF is responding to the The Food Hygiene Rating Bill that was introduced to the assembly on the 3rd November 2014. The system of rating hotels and food premises on a star rating is welcomed by the hotel industry who feel that hygiene and the provision of safe food is an imperative part of any food service operation. Hotels have scored highly in the rating system and the NIHF has worked with the FSA to raise awareness and standards.

However, the Federation has real concerns about the introduction of a mandatory displaying of the hygiene rating based on the following:

1. The scheme has no international /national standing and would need to have considerable investment to raise awareness at consumer level. The consumer has no awareness of what a three star rating means nor to our knowledge are they referring to the rating when making their food choices. Hotels are already graded in terms of service and structure. There would be concerns that another displayed rating scheme would only add confusion for the consumer. Indeed, we would add that after considerable consultation, hotel grading is not mandatory in terms of display or participation.

2. The dawn of digital reviews, such as Tripadvisor, considerably reduces the consumer reliance on government led rating schemes. Consumers use these methods on a regular basis and now base their choices on other customers ratings.

3. There already is a substantial level of bureaucracy and a robust legal framework within this area and adding to it will only increase costs and manpower requirements.

4. The vast array of premises involved and the nature of their business make the siting of and design of an appropriate label/sticker an impossible task. The current plastic sticker is not something that is in keeping with the standards of hotels trading at the higher grading levels. The nature of a hotel premises means that food is served in a range of locations within the hotel environs. A system of multiple stickering of hotels with the grading may not be possible and there would be concerns on how this would be interpreted in legal terms.

5. If displaying of your rating becomes mandatory, it would be the belief of the NIHF that considerable funds would have to be allocated to raise awareness about its role and meaning. This should include a full digital presence that would have to be continually

updated. The NIHF would have concerns that introducing such promotion would incur great cost and that this would have to be borne by the food service industry in the long run.

6. The costs and legal intricacies of a scheme that is subject to interpretative judgement would be of grave concern to our members.

7. The increase in costs for appeal and a fine system are not appropriate nor in the interests of the consumer. The fact that some 50% of businesses do not display the current rating is testament to the value attributed to the scheme at present.

8. Government has advised that they are seeking to reduce the legislative burden on business and the introduction of further mandatory schemes is contrary to this goal. The NIHF has recently worked with others in the sector to seek out reducing red tape and the federation disappointed that a mandatory display route has been advocated by the FSA.

The Northern Ireland Hotels Federation advocates that displaying of the food Hygiene rating remains voluntary at this time.

Northern Ireland Local Government Association

Marie and Martina

I am just emailing to let you both know that the Executive Committee of the Northern Ireland Local Government Association* considered the Chief Environmental Health Officers' Group Written Submission to the Health Committee on the Food Hygiene Rating Bill at their meeting this morning. They would like to endorse the content of the submission.

Regards

Karen

Karen Smyth

Head of Policy

NILGA

> **For information, the Northern Ireland Local Government Association is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties.*

Pubs of Ulster

Kathryn

If possible can we please submit the following views of our members?

Implementation and Enforcement – Food Hygiene Rating System

a. Lack of distinction between different types of business, for example a restaurant and a shop selling pre-packed, is an issue for the industry who would like to see some sort of distinction added, such as colour-coding – for example a 5 rating can be afforded to a fine dining restaurant, a convenience store or a public sector school canteen – all stickers look the same and therefore don't help to differentiate between the various business types

b. Some businesses have been advised they can never achieve the top rating due to limitations of the building they occupy, despite caring about this issue and wanting to be seen as a top business in this area. FSA stated that achievement of a 5 should be possible for all businesses as it simply requires compliance with legal requirement and involves no gold-plating. Concerns therefore with the implementation and advice being carried out through the Environmental Health Service isn't consistent.

c. The industry would like pilot schemes for any future initiatives to be set up in order to assess the full cost to business involved

d. A 'grace' period after assessment rather than an appeal system would allow businesses to rectify any issues identified during inspection would be helpful to business and deliver the same result

e. Self-assessment and online recording of some information in advance would be useful and allow for more effective use of inspection time, business time and wider regulator time.

f. Businesses have experienced a lack of consistency between council boundaries and individual officers from the same council area.

g. Businesses are reluctant to use the appeals process for fear of being penalised at a later date and are generally unaware that regulators are supposed to take a graduated approach to enforcement in order to work with and advise businesses to help them become compliant – Businesses need to be assured that an appeals system is there to support them and not to go against them, when they have a legitimate complaint or issue.

h. Inspection of premises should avoid service times unless it is actually to inspect the actual operation and not paperwork.

i. The establishment of a primary authority scheme in NI where trade bodies could select a primary authority for its members who be a significant move in standardising requirements and enforcement.

Regards

Colin

Colin Neill
Chief Executive
Nobody Works Harder For Licensees!
Effective Representation, Valuable Services & Savings

Dr Richard Hyde

Comments on the Food Hygiene Rating Bill as introduced

1. I am Dr Richard Hyde and I am an Assistant Professor of Law at the University of Nottingham. My research focuses on food and consumer protection, and I have written a number of pieces regarding this. I am currently completing a book on the regulatory response to food-borne illness, and I believe that a hygiene rating scheme can make a positive contribution to such efforts.

2. I make the following comments on the detailed provisions of the bill to assist the committee in their scrutiny of the provisions.

3. Clause 2(3)(g) – it may be worth considering whether the information accompanying the notification should also set out the penalties for failure to comply with the obligations in clauses 7 and 8. The sub-clause would therefore read "an explanation of the effect of section 6 and of the duties under sections 7 and 8 and of the penalties for failure to comply with such duties, and."

4. Clause 5(2) – a decision to edit replies or refuse to send a reply to the Food Standards Agency will be amenable to judicial review on normal grounds. However, it may be appropriate to include wording to make clear that the requirement that the decision be reasonable be placed within the statute to make clear to those making the decision that their power to edit or refuse is limited.

5. Clause 6(2)(a) – 'change of ownership of the establishment' might be a little unclear; it is not clear whether the approval would be terminated if the corporate owner of the premises remained the same but the ownership of the shares of the corporate owner changed hands. The approval would clearly be terminated if the business was sold by way of asset sale. The definition of establishment in Regulation 853/2004 has been considered by the High Court of England and Wales in *Allan Rich Seafoods v Lincoln Magistrates' Court* [2009] EWHC 3391 (Admin). A firm conclusion was not expressed about whether a share sale rendered premises a different 'establishment' for the purposes of the approval provisions in Regulation 853/2004 (see paragraph [46]). Might it be better to include "(d) there is a change of ownership of the food business operator" as a further circumstance where the hygiene rating becomes invalid, particularly if a change in ownership and/or control can have the effect of altering the score allocated on account of the management of food hygiene issues.

6. Clause 7(2) – As a corollary to the choice given to a food business regarding the display of ratings should there be an offence of displaying multiple valid hygiene ratings, because the clause provides that they "may choose which of the two stickers to display" but there is seemingly no sanction if they choose to display both.

7. Clause 8(2)(b) – It may be better to make the second limb of the test of 'relevant employee' an objective test rather than being wholly subjective. Redrafting Clause 8(2)(b) as "in the reasonable opinion of a person in the position of the operator of the establishment…" would ensure that an operator could not argue that whilst a reasonable person would foresee that the employee would be subject to the request for oral information he or she had not, and therefore not be guilty of the offence under clause 10(3) because the employee who failed to provide information was not a relevant employee. A food business would remain protected by the due diligence defence in clause 10.

8. Clause 10 – it may be worth considering whether an employee who intentionally provides false information in response to a request should be guilty of an offence, even if the food business can take advantage of the due diligence offence provided for by clause 10(4).

9. Clause 10(6) – In the Food Hygiene Rating Wales Act it is made explicit that it is not an offence to 'alter, deface or otherwise tamper with' a rating sticker in the process of removing it. Consideration should be given to the introduction of similar wording into the draft bill.

10. Clause 14(3) – the review should specifically include a review of enforcement, and particularly the operation of clauses 10 and 11, and particularly whether the fixed penalty provisions are working (and whether the offences to which they apply should be expanded to include, inter alia, those set out in section 10(3)).

11. Clause 16 – in the definition of 'food hygiene rating' replace 'that section' with 'section 1.' This would aid clarity particularly for businesses unfamiliar with the reading of statutes.

12. If the committee requires anything they should not hesitate to ask.

Richard Hyde, 10/12/2014

Which

Which? works for you

Which?, 2 Marylebone Road, London, NW1 4DF
Date: 12th December 2014
Response by: Sue Davies, Chief Policy Adviser, Sue.Davies@which.co.uk

Consultation Response

Which? comments on the Food Hygiene Rating Bill (Committee Stage)

About Which?

Which? exists to make individuals as powerful as the organisations they deal with in their daily lives. We are now the largest consumer body in the UK with almost 800,000 members: we understand consumers and what makes them tick. We operate as an independent, a-political, group social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. We plough the money from our commercial ventures back into our campaigns and free advice for all.

Summary of our response

Which? strongly supports the Bill and the introduction of a mandatory requirement to display hygiene ratings as part of the Food Hygiene Rating Scheme. A Which? survey in March 2013 found that 95% of people thought that hygiene ratings should be clearly displayed on food businesses' windows or doors[i]. While display remains voluntary for food businesses, it will be largely the better performers that display this information, rather than those that present the greatest risk to consumers. The scheme therefore has the potential to raise levels of compliance across businesses within Northern Ireland and therefore to reduce the significant health and economic burden of foodborne disease.

We support most of the specific provisions within the Bill, including the requirement to provide the information verbally when requested and the opportunity for businesses to request to be re-rated. We do however think that the scheme should be applied to a wider range of businesses so that there is transparency across the whole supply chain, not only those businesses that supply food directly to the consumers. It is also essential that there are tough penalties and meaningful enforcement action to ensure that all businesses display their ratings as intended.

General comments

Which? welcomes the opportunity to submit comments on the draft Bill to introduce mandatory display of hygiene ratings in Northern Ireland.

Which? is a consumer champion
We work to make things better for consumers. Our advice helps them make informed decisions. **Our campaigns make people's lives fairer,simpler and safer.**
Our services and products put consumers' needs first to bring them better value.

www.which.co.uk
Which?
2 Marylebone Road, London, NW1 4DF
t 020 7770 7000 f 0207 7770 7600
www.which.co.uk

Which

Which? works for you

We have long supported such an approach as a way of enabling more informed consumer decisions about where to eat and buy food and as a way of raising hygiene standards. Evidence from other countries where such schemes have been in place, such as Denmark, Canada and the United States, shows that displaying the ratings helps to improve hygiene standards and ultimately helps reduce rates of food poisoning. Similar evidence is emerging from Wales where a requirement to display hygiene ratings on the actual food premises has been in place since November 2013.

This Bill will therefore introduce an important measure to help reduce the 48,300 cases of foodborne illness and 24 deaths that result from it in Northern Ireland every year. It will also have a clear economic benefit given that the estimated cost to the Northern Ireland economy from foodborne disease is £83 million each year.

Although consumers can access hygiene ratings through the Food Standards Agency (FSA) web-site, we consider it important that the rating is displayed on the premises to have most impact. While some people may look at the rating in advance of booking a restaurant, many will make a decision based on the appearance of the premises or may be unaware of the existence of the scheme. It is therefore important that the information is clearly displayed at the point of choice.

Encouraging businesses to voluntarily display their ratings has only had a limited impact with around 40% doing this. Inevitably this is more likely to be businesses that are better performers so consumers will not necessarily see who are the worst businesses for hygiene compliance. Leaving provision of this information to a voluntary scheme would not therefore achieve the objective of enabling informed choices or incentivising businesses to improve as effectively as requiring mandatory display.

Consumer support

Our consumer research also shows strong public support for such a scheme. A Which? survey in March 2013 found that 95% of people thought that hygiene ratings should be clearly displayed on food businesses' windows or doors[ii]. This research also indicated that people would avoid poorer performing premises, helping to incentivise them to improve and rewarding those with a higher level of compliance with hygiene requirements. Three quarters of people surveyed said that a rating of 0,1 or 2 would stop them eating or buying food and around a third said that this would be the case for a score of 3.

Specific comments

We would like to emphasise the following aspects of the Bill which we consider to be particularly important:

- **Clause 1- Businesses included within the scheme**: It is essential that the scheme includes businesses that supply food directly to the public. We also think that it is important that it covers business to business information in order to drive improvements across the food supply chain. These businesses are now included within the Welsh scheme.

- **Clauses 3 and 4 - Appeal and right to reply**: We agree that there should be a clear and transparent appeal process and that businesses should be allowed a right to reply.

Which

Which? works for you

- **Clause 4 - Requests for re-ratings:** We think that it is fair to allow businesses to request a re-rating and that this is an important measure to help improve standards. It should, however, be ensured that local authorities have sufficient resources to be able to do this.

- **Clauses 7 and 8- Means of display and provision of information**: It is essential that the rating sticker provided by the District Council is displayed prominently on the premises at the point where consumers are likely to make a choice, for example, close to the door, or the menu where one is displayed. We also agree that there should be a requirement to provide the information verbally in order to ensure that people who are blind or partially sighted can access this information and to make sure people can find out this information when making telephone orders for example.

- **Clause 9, 10 and 11 - Penalties for failing to display:** As the Committee has already highlighted, we consider it essential that there are strict enough penalties within the Bill where a business operator does not display the rating to act as a deterrent. District Councils must also take enforcement action where a rating is not displayed.

  It is important that the FHRS continues to operate in line with a risk-based approach and that it does not detract District Councils from putting most resource into businesses that are the poorest performers and present the greatest risk. Our analysis of the data submitted to the FSA by local authorities shows that there is currently a lot of inconsistency between District Councils' ability to ensure compliance by medium and high risk businesses. Analysis of the data for 2012/13 for example (http://www.which.co.uk/about-which/who-we-are/which-policy/food/food-safety/food-hygiene/) found that while Ballymena was ensuring 95.3% compliance for these businesses, Moyle was only managing compliance for 75%. The FSA therefore has an important role supporting local authorities to ensure that they are all achieving a high level of compliance. Mandatory display of the Food Hygiene Rating Scheme should also help ensure this as the number of non-compliant premises will become more visible to the public. We are currently analysing the most recent data for 2013/14.

Conclusion

We strongly support the Bill and the introduction of a mandatory requirement to display hygiene ratings as part of the Food Hygiene Rating Scheme. The scheme has the potential to raise levels of compliance across businesses within Northern Ireland and therefore to reduce the health and economic burden of foodborne disease.

Which?
December 2014

---

[i] The State of our Plates, Which?, June 2013, p30-32.
[ii] The State of our Plates, Which?, June 2013, p30-32.

3

Appendix 4

Correspondence from the Department and Other Papers

Correspondence from the Department and Other Papers

Table of Contents

RaISe Briefing Paper - NIAR 636-14	12 November 2014
Food Standards Agency	5 February 2015
Food Standards Agency	19 February 2015
Food Standards Agency	26 February 2015
Food Standards Agency	12 March 2015
Food Standards Agency	16 March 2015
Food Standards Agency	1 April 2015
Minister for Health, Social Services & Public Safety	20 April 2015

Research and Information Service
Bill Paper

Paper 117/14 12th November 2014 NIAR 636-14

Dr Janice Thompson

Food Hygiene Rating (Northern Ireland) Bill

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.

Research and Information Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

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) 852/2004[1] 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

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

- 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 orders[2] 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.

2 Including the commencement order

Contents

Executive Summary

Contents

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

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

1.3 Examples of Food Hygiene Rating Schemes Operating in Other Countries

2 Policy Options Considered for Northern Ireland

3 Food Hygiene Rating (Northern Ireland) Bill

4 Summary of Subordinate Legislation in the Bill

5. Consultation Views from Northern Ireland

5.1 Key Issues From Public Consultation Process

5.2 Views of Consumers and Small/Micro Food Businesses

Appendix 1 – Food Hygiene Ratings Schemes in Other Countries

Appendix 2 – Financial Implications, Costs and Benefits

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

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

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]

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]:

- ‘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.

[12]

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.

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

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

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.

[13]

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]

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

In January 2013, GfK NOP[15] 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 FHRS stickers/ certificates and via a phone survey investigated the rationale and impact of display and non-display of FHRS ratings by businesses[16]. The key findings are summarised below from the Executive Summary of the Report[17].

In 2013, the proportion of FHRS 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 FHRS 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

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

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

(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 FHRS. 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-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 said[20],

> *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)

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

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

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]

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 follows[26]:

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:

- 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]

---

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

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.

The Regulatory Impact Assessment by the FSA indicates that the following groups will be affected by the Bill[28]:

- *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.

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.

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
- 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 process[29]:

- 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) 852/2004[33] or to be approved by a DC under Article 4 of Regulation (EC) 853/2004, and which supplies food direct to consumers.[i]

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)).

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/mgIssueHistoryHome.aspx?IId=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

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);
  - 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).

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

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);
- 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]

---

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/mgIssueHistoryHome.aspx?IId=3812&Opt=0&AIID=8966

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

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/mgIssueHistoryHome.aspx?IId=3812&Opt=0&AIID=8966

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 compliance[42] 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;
  - 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;

---

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

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

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

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 comments[45] (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)).

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 notices[46].

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 hour[48], 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.

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

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.

3.10 Clause 10: Offences

Clause 10 creates a number of offences[49] 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));
- 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 notice[51], 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 council[52] but may, for example, trade exclusively in another DC area.

---

49 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.

50 Food Hygiene Rating (Wales) Bill Stage 1 Committee Report, October 2012, paragraphs 142-153, http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=3812&Opt=0&AIID=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 area[53]:

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) must[54]:

(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;

(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.

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

54 As above

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.

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.

---

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

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 expand or reduce the categories of food establishments that must 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 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	Power Conferred on	Form	Proposed Procedure	Reason for Power
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 commence-ment 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 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]

---

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

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

61 As above, page 19

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]

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 concerned 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.

---

62 Mandatory Display of Food Hygiene Ratings in Northern Ireland, Consultation Report 2013, FSA, page 21

63 As above, page 23

64 As above, page 26

65 As above, page 29

66 As above, page 31

67 As above, page 34

5.2 Views of consumers and small/micro food businesses[68]

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 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.

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

Appendix 1 – Food Hygiene Ratings Schemes in Other Countries[69]

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 costs[76]

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).

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.

---

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/mgIssueHistoryHome.aspx?IId=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

2. Local authority costs[77]

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 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 costs[78]

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.

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

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

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 businesses[79]

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 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 authorities[80]

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:

79 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, page 26

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

- 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.

(Endnotes)

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

Food Standards Agency – Food Hygiene Rating Bill proposed amendments

10 A-C Clarendon Road
Belfast, BT1 3BG
T 028 9041 7709
E michael.jackson@foodstandards.gsi.gov.uk

Dr Kathryn Aiken
Clerk
Committee for Health, Social Services and Public Safety
414
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

5 February 2015

Dear Kathryn

Food Hygiene Rating Bill – Proposed Amendments

I am writing to you further to your letter dated 20 January concerning the Examiner of Statutory Rules' Report.

Amendments have been drafted in response to the concerns raised by the Examiner of Statutory Rules' and have also been shared with him. He confirmed in his report to the Committee that these amendments would address his concerns.

It is, therefore, proposed that amendments are tabled as follows:

- Clause 14(8) to be omitted along with clause 18(4)(c) and 18(6).
- In place of clause 14(8) more limited powers will be inserted:

  (a) Clause 4(10) - to provide a power to limit the number of occasions on which a right to request a review of a rating may be made.

  (b) A new clause allowing the Department to amend a time period specified by substituting a different time period by order.

- These additional order-making powers would be subject to draft affirmative procedure (by an amendment in clause 18).
- An amendment that will link the review (in clause 14) to the question of exercising order-making powers in clause 1(7) and 3(10) and the proposed clause 4(10).

In advance of the Committee meeting on the 11 February I enclose proposed amendments which can be found in Appendix 1.

Should you wish to discuss further please do not hesitate to contact me.

Yours Sincerely

Michael Jackson

Heal of Local Authority Policy and Delivery
Food Standards Agency in NI

Appendix 1

Food Hygiene Rating Bill – Proposed Amendments

1 Clause **4**, page **4**, line **28**, at end insert—

"(10) The Department may by order amend this section so as to limit, in the case of each food hygiene rating for an establishment, the number of occasions on which the right to request a review of the rating may be exercised."

2 After Clause **13** insert the following New Clause—

"Adjustment of time periods

The Department may by order amend a provision of this Act which specifies a period within which something may or must be done by substituting a different period for the period for the time being specified."

3 Clause **14**, page **9**, line **6**, at end insert—

"(7A) The Department must publish its response to the report; and its response must indicate—

(a) whether it proposes to exercise one or more of the powers under sections 1(7), 3(10), 4(10) and [*Adjustment of time periods*],

(b) in so far as it does so propose, the amendments it proposes to make and its reasons for doing so, and

(c) in so far as it does not so propose, its reasons for not doing so."

4 Clause **14**, page **9**, line **7**, leave out subsection (8).

5 Clause **18**, page **10**, line **27**, at end insert—

"( ) section 4(10) (power to limit number of requests for review of rating);

( ) section [*Adjustment of time periods*] (power to amend time periods);"

6 Clause **18**, page **10**, line **28**, leave out paragraph (c).

7 Clause **18**, page **10**, line **32**, leave out subsection (6).

Food Standards Agency – Food Hygiene Rating Bill proposed amendments

10 A-C Clarendon Road
Belfast, BT1 3BG
T 028 9041 7709
E michael.jackson@foodstandards.gsi.gov.uk

Dr Kathryn Aiken
Clerk
Committee for Health, Social Services and Public Safety
414 Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

19 February 2015

Dear Kathryn

Food Hygiene Rating Bill – Proposed Amendments

I am writing to you further to the FSA's attendance at the Committee on 11 February at which the oral and written evidence to the Committee on the Food Hygiene Rating Bill was discussed.

Having considered the issues raised at the meeting by the Committee I would advise that we intend to propose amendments to the following clauses of the bill:

Clause 2

a. clause 2(1) - to provide flexibility on the requirement to notify the operator of an establishment of ratings within 14 days in exceptional circumstances (further details provided in **New Clauses** below),

b. clause 2(3) - to provide flexibility on when information is to be provided by district councils to operators of establishments recognising that a council may provide certain information at the time of inspection and the remaining information at a later date but within the 14 day notification period,

c. clause 2(4) - to include a time period for district councils to notify a rating to the Food Standards Agency,

d. clause 2(5) - to include a time period for the Food Standards Agency to publish ratings on line.

Clause 5

a. clause 5(2) - to include a time period within which a district council must deal with a "right of reply" to ensure this safeguard works effectively,

b. clause 5(3) – to include a time period for the Food Standards Agency to publish a "right of reply" on line. That period would link to the obligation to publish the rating under clause 2(5) so the published "right of reply" always relates to the relevant published rating.

c. clause 5(5) - to require a district council to inform the Food Standards Agency as well as the operator of an establishment where a district council had edited a "right of reply" or refused to send one to the Food Standards Agency for publication.

Clause 12

It is proposed to provide an amendment to clause 12(2) to allow flexibility on when information would be provided by district councils to new businesses recognising that they may do so in advance of registration of an establishment.

New Clauses

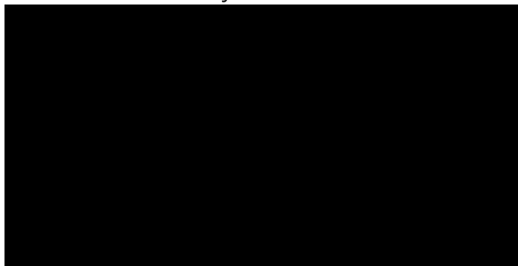
We also intend to provide amendments by way of new clauses as follows:

- a new clause to allow flexibility for district councils and the Food Standards Agency around certain timescales set out in the bill, where compliance would not be reasonably possible due to “exceptional circumstances” such as, for example, a major food incident or IT failure and also during times when district council offices would be closed for extended holiday periods. This would apply to time periods in a number of clauses (clause 2(1) and 4(3) and amended clauses 2(4), 2(5), 5(2) and 5(3) as detailed above).
- a new clause to require the Food Standards Agency to promote the scheme. This is to address the Committee’s recognition that in order for the policy objective to be fully achieved it will be necessary to promote the scheme to food business operators and consumers

The drafting of these amendments is being progressed and we anticipate that we will be in a position to provide the proposed amendments to the Committee in advance of the next evidence session with the FSA that is scheduled for 4 March.

I hope that the above information will be of assistance to the Committee members when they consider representations regarding the bill in closed session next week and please do not hesitate to contact me should you wish to discuss further.

Yours Sincerely



Michael Jackson
Heal of Local Authority Policy and Delivery
Food Standards Agency in NI

Food Standards Agency – Food Hygiene Rating Bill proposed amendments

10 A-C Clarendon Road
Belfast, BT1 3BG
T 028 9041 7709
E michael.jackson@foodstandards.gsi.gov.uk

Dr Kathryn Aiken
Clerk
Committee for Health, Social Services and Public Safety
414 Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

26 February 2015

Dear Kathryn

Food Hygiene Rating Bill – Proposed Amendments

I last wrote to you on the 19 February confirming that the Food Standards Agency intends to propose a number of additional amendments to the Food Hygiene Rating bill. This is in response to issues raised at the Committee on 11 February.

Please find in the appendix the list of proposed amendments. This includes amendments sent to you on 5 February 2015 to address issues raised by the Examiner of Statutory Rules.

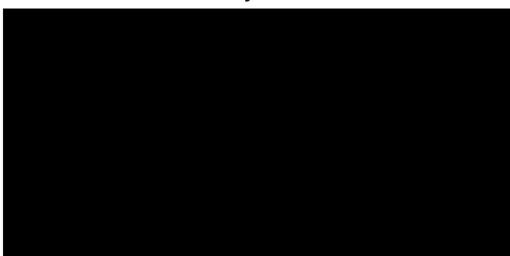
The FSA believes these amendments will address many of the issues raised by the Committee but we would wish to specifically draw to your attention amendment 13 in the appendix.

At the Committee meeting on the 11 February we agreed to consider an amendment to clause 5(5) - to require a district council to inform the Food Standards Agency as well as the operator of an establishment where a district council had edited a "right of reply" or refused to send one to the Food Standards Agency for publication. This was to address Committee concerns that the Food Standards Agency should be made aware where councils exercise this right. Please refer to amendment 13 in the appendix, in particular 2(B)(c) and 2(C)(c) (and associated consequential amendments 15 and 20).

Having considered this further we are of the view that the amendments detailed in amendment 13 at clauses 2(B)(c) and 2(C)(c) are not necessary and would hope to discuss this further with the Committee on the 4 March.

I hope that the above information will be of assistance to the Committee members when they further consider the bill on 4 March. Please do not hesitate to contact me should you wish to discuss further.

Yours Sincerely



Michael Jackson
Heal of Local Authority Policy and Delivery
Food Standards Agency in NI

Appendix

Food Hygiene Rating Bill – Amendments

1 Clause **2**, page **2**, line **8**, after second "must" insert "(in so far as the district council has not already provided the operator with the following)".

2 Clause **2**, page **2**, line **19**, leave out "Having given a notification under this section" insert "Within 34 days of carrying out an inspection of a food business establishment on the basis of which it prepares a food hygiene rating".

3 Clause **2**, page **2**, line **24**, leave out "on its website" and insert "online".

4 Clause **2**, page **2**, line **25**, after "appropriate" insert "; and, if it is required to publish the rating, it must do so no later than 7 days after the end of the appeal period in relation to the rating".

5 Clause **2**, page **2**, line **25**, at end insert—

"(5A) The "end of the appeal period", in relation to a food hygiene rating, means—

(a) the end of the period within which an appeal against the rating may be made under section 3, or

(b) where an appeal against the rating is made under that section, the end of the day on which the operator of the establishment is notified of the determination of the appeal (or, if the appeal is abandoned, the end of the day on which it is abandoned)."

6 Clause **2**, page **2**, line **26**, leave out "of sticker to be provided under subsection (3)(a)" and insert "or forms of stickers to be provided under subsection (3)(a); and, in the case of each form so prescribed, the regulations must specify whether the cost of producing stickers in that form is to be borne—

(a) by the Food Standards Agency,

(b) by the district council which provides the stickers, or

(c) by the Food Standards Agency and the district council jointly in the manner prescribed."

7 Clause **3**, page **3**, line **11**, at end insert—

"(6A) The district council to which the appeal is made must also, before the end of the period under subsection (5)—

(a) inform the Food Standards Agency of its determination on the appeal (or, if the appeal is abandoned, that it has been abandoned), and

(b) if the district council has changed the establishment's food hygiene rating on the appeal but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(6B) The Food Standards Agency, having been informed under subsection (6A)(a) of the determination on the appeal, must, if the rating has been changed on the appeal, publish the new rating online, unless it has been informed under subsection (6A)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so within 7 days of having been informed of the determination on the appeal."

8 Clause **3**, page **3**, line **19**, leave out "the" and insert "a".

9 Clause 4, page 4, line 6, at end insert—

"(4A) Within 34 days of carrying out an inspection under subsection (2), a district council—

(a) must inform the Food Standards Agency of its determination on the review, and

(b) if the district council has changed the establishment's food hygiene rating on the review but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(4B) The Food Standards Agency, having been informed under subsection (4A)(a) of the determination on the review, must, if the rating has been changed on the review, publish the new rating online, unless it has been informed under subsection (4A)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so no later than 7 days after the end of the appeal period in relation to the new rating."

10 Clause **4**, page **4**, line **25**, after "applies" insert ", with such modifications as are necessary,".

11 Clause **4**, page **4**, line **27**, leave out "the" and insert "a".

12 Clause **4**, page **4**, line **28**, at end insert—

"(10) The Department may by order amend this section so as to limit, in the case of each food hygiene rating for an establishment, the number of occasions on which the right to request a review of the rating may be exercised."

13 Clause **5**, page **4**, line **35**, leave out subsection (2) and insert—

"(2) Where the district council receives representations under subsection (1), it must, within 21 days of receiving them, take action under subsection (2A), (2B) or (2C).

(2A) The action for the district council under this subsection is to send the representations to the Food Standards Agency in the form in which the council received them.

(2B) The action for the district council under this subsection is—

(a) to edit the representations,

(b) to send them to the Food Standards Agency in that edited form, and

(c) to provide the operator and the Food Standards Agency with a written explanation of the council's reasons for editing the representations.

(2C) The action for the district council under this subsection is—

(a) to decide not to send the representations to the Food Standards Agency in any form, and

(b) to provide the operator and the Food Standards Agency with a written explanation of the district council's reasons for deciding not to send the representations to the Food Standards Agency."

14 Clause **5**, page **5**, line **1**, leave out "having received" and insert "within 7 days of receiving".

15 Clause **5**, page **5**, line **2**, leave out "(2)(a) or (b)" and insert "(2A) or (2B)".

16 Clause **5**, page **5**, line **2**, leave out "on its website" and insert "online".

17 Clause **5**, page **5**, line **3**, at end insert—

"(3A) But where, at the time when the Food Standards Agency receives the representations, it has yet to publish under section 2(5) the rating to which the representations relate, the

duty under subsection (3) instead applies as a duty to publish the representations within 7 days of publishing the rating under section 2(5)."

18 Clause **5**, page **5**, line **4**, leave out "(2)" and insert "(3)".

19 Clause **5**, page **5**, line **5**, after "2(4)(b)" insert ", 3(6A)(b) or 4(4A)(b)".

20 Clause **5**, page **5**, line **7**, leave out subsection (5).

21 Clause **6**, page **5**, line **29**, leave out subsection (4).

22 Clause **12**, page **8**, line **8**, after "regulations" insert "(in so far as the district council has not already done so)".

23 Clause **14**, page **9**, line **6**, at end insert—

"(7A) The Department must publish its response to the report; and its response must indicate—

(a) whether it proposes to exercise one or more of the powers under sections 1(7), 3(10), 4(10) and [Adjustment of time periods](1),

(b) in so far as it does so propose, the amendments it proposes to make and its reasons for doing so, and

(c) in so far as it does not so propose, its reasons for not doing so."

24 Clause **14**, page **9**, line **7**, leave out subsection (8).

25 Clause **14**, page **9**, line **8**, at end insert—

"( ) The Food Standards Agency must promote the scheme provided for by this Act."

26 After Clause **15** insert the following New Clause—

"**Adjustment of time periods**

(1) The Department may by order amend a provision of this Act which specifies a period within which something may or must be done by substituting a different period for the period for the time being specified.

(2) Where the period under section 2(1), (4) or (5), 3(6B), 4(3), (4A) or (4B) or 5(2) or (3) includes the last working day before Christmas Day, the period is to be extended by 7 days; and for this purpose, "working day" means a day which is not a Saturday or Sunday.

(3) Where, because of exceptional circumstances, it is not reasonably practicable for a district council to comply with section 2(1) or (4), 4(3) or (4A) or 5(2), or for the Food Standards Agency to comply with section 2(5), 3(6B), 4(4A) or (4B) or 5(3), within the period for the time being specified (including any extension of that period under subsection (2) above), it must comply as soon as it is reasonably practicable for it to do so."

27 Clause **16**, page **9**, line **19**, at end insert—

""end of the appeal period", in relation to a food hygiene rating, has the meaning given in section 2(5A);".

28 Clause **18**, page **10**, line **27**, at end insert—

"( ) section 4(10) (power to limit number of requests for review of rating);"

29 Clause **18**, page **10**, line **28**, leave out paragraph (c).

30 Clause **18**, page **10**, line **29**, at end insert—

( ) section [Adjustment of time periods](1) (power to amend time periods);”

31 Clause **18**, page **10**, line **32**, leave out subsection (6).

FSA Proposed Amendments

Dr Kathryn Aiken
Clerk
Committee for Health, Social Services and Public Safety
Room 414, Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

12 March 2015

Dear Kathryn

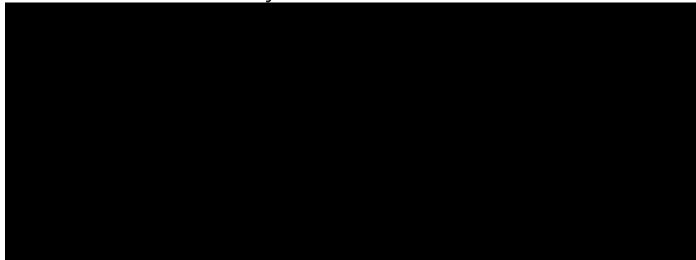
Food Hygiene Rating Bill – Proposed Amendments

I refer to our discussions with the Committee on 4 March regarding the amendments to the Food Hygiene Rating Bill that we have brought forward to date and our conversation today regarding amendment 13.

To facilitate the Committee's next considerations I have attached in the Appendix to this letter a consolidated set of amendments that omit what were amendments numbers 13, 15 and 20 and omit from the new clause in what is now amendment 23 of the references to clause 5(2).

I hope that this set of amendments will be of assistance to the Committee and please do not hesitate to contact me should you wish to discuss further.

Yours sincerely



Michael Jackson
Heal of Local Authority Policy and Delivery
Food Standards Agency in NI

Appendix

Food Hygiene Rating Bill – amendments – 10 March 2015

1 Clause 2, page 2, line 8, after second "must" insert "(in so far as the district council has not already provided the operator with the following)".

2 Clause 2, page 2, line 19, leave out "Having given a notification under this section" insert "Within 34 days of carrying out an inspection of a food business establishment on the basis of which it prepares a food hygiene rating".

3 Clause 2, page 2, line 24, leave out "on its website" and insert "online".

4 Clause 2, page 2, line 25, after "appropriate" insert "; and, if it is required to publish the rating, it must do so no later than 7 days after the end of the appeal period in relation to the rating".

5 Clause 2, page 2, line 25, at end insert—

"(5A) The "end of the appeal period", in relation to a food hygiene rating, means—

(a) the end of the period within which an appeal against the rating may be made under section 3, or

(b) where an appeal against the rating is made under that section, the end of the day on which the operator of the establishment is notified of the determination of the appeal (or, if the appeal is abandoned, the end of the day on which it is abandoned)."

6 Clause 2, page 2, line 26, leave out "of sticker to be provided under subsection (3)(a)" and insert "or forms of stickers to be provided under subsection (3)(a); and, in the case of each form so prescribed, the regulations must specify whether the cost of producing stickers in that form is to be borne—

(a) by the Food Standards Agency,

(b) by the district council which provides the stickers, or

(c) by the Food Standards Agency and the district council jointly in the manner prescribed."

7 Clause 3, page 3, line 11, at end insert—

"(6A) The district council to which the appeal is made must also, before the end of the period under subsection (5)—

(a) inform the Food Standards Agency of its determination on the appeal (or, if the appeal is abandoned, that it has been abandoned), and

(b) if the district council has changed the establishment's food hygiene rating on the appeal but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(6B) The Food Standards Agency, having been informed under subsection (6A)(a) of the determination on the appeal, must, if the rating has been changed on the appeal, publish the new rating online, unless it has been informed under subsection (6A)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so within 7 days of having been informed of the determination on the appeal."

8 Clause 3, page 3, line 19, leave out "the" and insert "a".

9 Clause 4, page 4, line 6, at end insert—

"(4A) Within 34 days of carrying out an inspection under subsection (2), a district council—

(a) must inform the Food Standards Agency of its determination on the review, and

(b) if the district council has changed the establishment's food hygiene rating on the review but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(4B) The Food Standards Agency, having been informed under subsection (4A)(a) of the determination on the review, must, if the rating has been changed on the review, publish the new rating online, unless it has been informed under subsection (4A)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so no later than 7 days after the end of the appeal period in relation to the new rating."

10 Clause 4, page 4, line 25, after "applies" insert ", with such modifications as are necessary,".

11 Clause 4, page 4, line 27, leave out "the" and insert "a".

12 Clause 4, page 4, line 28, at end insert—

"(10) The Department may by order amend this section so as to limit, in the case of each food hygiene rating for an establishment, the number of occasions on which the right to request a review of the rating may be exercised."

13 Clause 5, page 5, line 1, leave out "having received" and insert "within 7 days of receiving".

14 Clause 5, page 5, line 2, leave out "on its website" and insert "online".

15 Clause 5, page 5, line 3, at end insert—

"(3A) But where, at the time when the Food Standards Agency receives the representations, it has yet to publish under section 2(5) the rating to which the representations relate, the duty under subsection (3) instead applies as a duty to publish the representations within 7 days of publishing the rating under section 2(5)."

16 Clause 5, page 5, line 4, leave out "(2)" and insert "(3)".

17 Clause 5, page 5, line 5, after "2(4)(b)" insert ", 3(6A)(b) or 4(4A)(b)".

18 Clause 6, page 5, line 29, leave out subsection (4).

19 Clause 12, page 8, line 8, after "regulations" insert "(in so far as the district council has not already done so)".

20 Clause 14, page 9, line 6, at end insert—

"(7A) The Department must publish its response to the report; and its response must indicate—

(a) whether it proposes to exercise one or more of the powers under sections 1(7), 3(10), 4(10) and [Adjustment of time periods](1),

(b) in so far as it does so propose, the amendments it proposes to make and its reasons for doing so, and

(c) in so far as it does not so propose, its reasons for not doing so."

21 Clause 14, page 9, line 7, leave out subsection (8).

22 Clause 14, page 9, line 8, at end insert—

"( ) The Food Standards Agency must promote the scheme provided for by this Act."

23 After Clause 15 insert the following New Clause—

“Adjustment of time periods

(1) The Department may by order amend a provision of this Act which specifies a period within which something may or must be done by substituting a different period for the period for the time being specified.

(2) Where the period under section 2(1), (4) or (5), 3(6B), 4(3), (4A) or (4B) or 5(3) includes the last working day before Christmas Day, the period is to be extended by 7 days; and for this purpose, “working day” means a day which is not a Saturday or Sunday.

(3) Where, because of exceptional circumstances, it is not reasonably practicable for a district council to comply with section 2(1) or (4) or 4(3) or (4A), or for the Food Standards Agency to comply with section 2(5), 3(6B), 4(4A) or (4B) or 5(3), within the period for the time being specified (including any extension of that period under subsection (2) above), it must comply as soon as it is reasonably practicable for it to do so.”

24 Clause 16, page 9, line 19, at end insert—

““end of the appeal period”, in relation to a food hygiene rating, has the meaning given in section 2(5A);”.

25 Clause 18, page 10, line 27, at end insert—

“( ) section 4(10) (power to limit number of requests for review of rating);”

26 Clause 18, page 10, line 28, leave out paragraph (c).

27 Clause 18, page 10, line 29, at end insert—

( ) section [Adjustment of time periods](1) (power to amend time periods);”

28 Clause 18, page 10, line 32, leave out subsection (6).

Food Standards Agency – Food Hygiene Rating Bill proposed amendments

10 A-C Clarendon Road
Belfast, BT1 3BG
T 028 9041 7709
E michael.jackson@foodstandards.gsi.gov.uk

Dr Kathryn Aiken
Clerk
Committee for Health, Social Services and Public Safety
414 Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

16 March 2015

Dear Kathryn

Food Hygiene Rating Bill – Online Publication of Ratings by Food Business Opeartors – Possible Amendment

I refer to our discussions last week regarding the Committee's ongoing concern regarding the Food Hygiene Rating Bill not containing a requirement for Food Business Operators to publish their ratings online.

In our representations to the Committee on this matter we raised concerns regarding the feasibility of including such a requirement on several grounds, most notably the issue of the Assembly's legislative competence to introduce a requirement on food businesses that operate in Northern Ireland and also in other parts of the United Kingdom. At the meeting of the Committee on 4 March we indicated that we did not propose to bring forward an amendment to introduce such a requirement, however, we have reflected on this further and identified possible amendments that we would be prepared to bring forward.

I have attached in the Appendix to this letter amendments for the Committee's consideration. These amendments would;

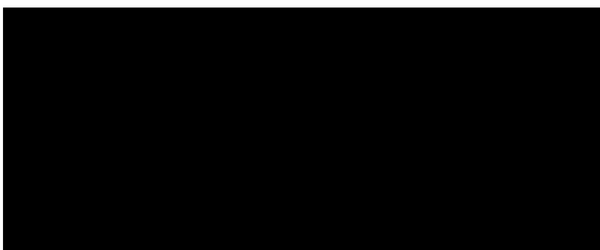
- introduce a requirement within clause 14 for the Food Standards Agency to consider, within its obligation to review the operation of the Act within three years, whether it would be feasible to impose on the food business operator of an establishment requirements to publish online ratings relating to the establishment
- provide regulation making powers to require such publication, subject to the findings of the review, and to enforce such a requirement.

The new regulation making powers within these amendments would, as with other such powers in the bill, be subject to affirmative resolution by the Assembly.

Please note that we have not had the opportunity to obtain approval from the Minister to introduce these amendments, however, we thought that that it would be helpful for members of the Committee to be in a position to consider this approach when they meet on Wednesday to conduct the informal clause by clause scrutiny of the bill. Kathryn Baker and myself will be available on Wednesday should the Committee wish to discuss these amendments with us.

Please do not hesitate to contact me should you wish to discuss further.

Yours sincerely



Michael Jackson
Heal of Local Authority Policy and Delivery
Food Standards Agency in NI

Appendix

Food Hygiene Rating Bill – amendments – 16 March 2015

1 Clause **14**, page **8**, line **37**, at end insert—

"(d) whether it would be feasible to impose on the operator of a food business establishment requirements relating to the publication online of the food hygiene rating for the establishment."

2 Clause **14**, page **9**, line **6**, at end insert—

"(7B) The Department's response must also indicate—

(a) whether it proposes to make regulations under subsection (7C), and

(b) its reasons for proposing, or for not proposing, to do so.

(7C) Where the Department is satisfied in light of the conclusions in the report on the matter referred to in subsection (3)(d) that it would be feasible to impose requirements of the kind referred to there, it may by regulations make provision imposing such requirements.

(7D) Regulations under subsection (7C) must include provision for the enforcement of the requirements imposed by the regulations; and for that purpose the regulations may in particular—

(a) provide for the creation of an offence;

(b) provide for the imposition of a fixed penalty;

(c) apply a provision of this Act (with or without modifications)."

3 Clause **18**, page **10**, line **20**, at beginning insert "Except as provided by subsection (2A),".

4 Clause **18**, page **10**, line **20**, at end insert—

"(2A) No regulations shall be made under section 14(7C) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly."

Food Standards Agency – Food Hygiene Rating Bill proposed amendments

10 A-C Clarendon Road
Belfast, BT1 3BG
T 028 9041 7709
E michael.jackson@foodstandards.gsi.gov.uk

Dr Kathryn Aiken
Clerk
Committee for Health, Social Services and Public Safety
414 Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

1 April 2015

Dear Kathryn

Food Hygiene Rating Bill – Online Publication of Ratings by Food Business Opeartors – Possible Amendment

Further to your email on Monday, I am writing to you regarding the Committee's ongoing concern relating to the Food Hygiene Rating Bill not containing a requirement for Food Business Operators to publish their ratings online.

We provided a suggested amendment on the 16 March for the Committee's consideration, however we are aware that this amendment did not address the members concern.

Please find attached in **appendix 1** a set of alternative amendments for consideration by the Committee at their meeting on the 15 April. In drafting these amendments we have sought advice and agreement from the Attorney General that these amendments remain within the legislative competence of the NI Assembly.

The amendments provide regulation making powers for the Department to set out detail within subordinate legislation. Operators of food business establishments supplying food by means of an online facility would be required to ensure that the establishments' food hygiene rating was provided online. The manner of display would be specified in the regulations and could include providing a link to the Food Standards Agency's website. The amendments also set out that failure to comply with the duty would be an offence under clause 10 with the possibility of a fixed penalty notice being served under clause 11.

Regulations to bring about these effects would be made using the draft affirmative procedure. It is intended that this power will be exercised in the first set of regulations drafted and will enable stakeholders to be consulted on the proposals.

On the 12 March we provided a complete list of amendments that have already been agreed with the Committee. Our drafter in the Office of the Legislative Counsel has made some final drafting revisions to this list to ensure consistency of terminology throughout and has added three new amendments to recast the order of clause 18. These revised amendments are technical in nature only and do not alter the original intention.

The changes to the list of agreed amendments are included and highlighted in **appendix 2** and are:

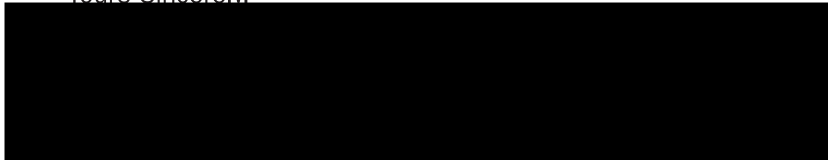
- On amendment 5, on the new subsection (5A)(b), the "of" between "determination" and "the appeal" has been changed to "on" (for consistency with similar provisions elsewhere in the Bill).
- On amendment 6, in the new paragraph (c), "the manner prescribed" has been changed to "the specified manner" (again, for consistency).
- On amendment 23, in the new subsection (3), "4(4A) or (4B)" has been changed to "4(4B)".
- Amendments 25, 29 and 30 are new amendments to recast the order of clause 18 (Regulations and orders) and put them in a form which our drafter advised was more natural and would be easier to interpret for the reader of the Bill.

Please note that we have not had the opportunity to obtain approval from the Minister to introduce these amendments, however, we thought that that it would be helpful for members of the Committee to be in a position to consider this approach when they meet on Wednesday 15 April. As soon as we receive a response from the Minister we will contact you.

Finally I attach separately to this letter two 'red and black' versions of the bill. One version is a clean copy with the amendments shown in red text. The second version numbers the amendments (in accordance with the revised list in appendix 2) through the use of comment boxes. I trust this will be helpful to you and the Committee.

Please do not hesitate to contact either myself or Michael Jackson should you wish to discuss further.

Yours Sincerely,



Kathryn Baker
Head of Consumer Protection

Food Standards Agency in NI

Appendix 1

1 Clause **7**, page **6**, line **2**, at end insert—

"(3) The Department may by regulations provide that, in the case of a food business establishment which supplies consumers with food which they order by means of an online facility of a specified kind, the operator must ensure that the establishment's food hygiene rating is provided online in the specified manner.

(4) The regulations may, for example, require a food hygiene rating to be provided online by means of a link to the rating in the form in which it is published by the Food Standards Agency under section 2(5)."

2 Clause **10**, page **6**, line **32**, leave out "7" and insert "7(1) or a duty in regulations under section 7(3)".

3 Clause **18**, page **10**, line **19**, at end insert—

"(1A) No regulations shall be made under section 7(3) (online provision of ratings) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly."

4 Clause **18**, page **10**, line **20**, after "under" insert "any other provision of".

5 Clause **18**, page **10**, line **33**, at end insert—

"( ) An order under section 1(7) may, in reliance on subsection (1) of this section, amend sections 7, 10 and 11 (online provision of ratings, offences and civil penalties)."

Appendix 2

1 Clause **2**, page **2**, line **8**, after second “must” insert “(in so far as the district council has not already provided the operator with the following)”.

2 Clause **2**, page **2**, line **19**, leave out “Having given a notification under this section” insert “Within 34 days of carrying out an inspection of a food business establishment on the basis of which it prepares a food hygiene rating”.

3 Clause **2**, page **2**, line **24**, leave out “on its website” and insert “online”.

4 Clause **2**, page **2**, line **25**, after “appropriate” insert “; and, if it is required to publish the rating, it must do so no later than 7 days after the end of the appeal period in relation to the rating”.

5 Clause **2**, page **2**, line **25**, at end insert—

“(5A) The “end of the appeal period”, in relation to a food hygiene rating, means—

(a) the end of the period within which an appeal against the rating may be made under section 3, or

(b) where an appeal against the rating is made under that section, the end of the day on which the operator of the establishment is notified of the determination on the appeal (or, if the appeal is abandoned, the end of the day on which it is abandoned).”

6 Clause **2**, page **2**, line **26**, leave out “of sticker to be provided under subsection (3)(a)” and insert “or forms of stickers to be provided under subsection (3)(a); and, in the case of each form so prescribed, the regulations must specify whether the cost of producing stickers in that form is to be borne—

(a) by the Food Standards Agency,

(b) by the district council which provides the stickers, or

(c) by the Food Standards Agency and the district council jointly in the specified manner.”

7 Clause **3**, page **3**, line **11**, at end insert—

“(6A) The district council to which the appeal is made must also, before the end of the period under subsection (5)—

(a) inform the Food Standards Agency of its determination on the appeal (or, if the appeal is abandoned, that it has been abandoned), and

(b) if the district council has changed the establishment’s food hygiene rating on the appeal but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(6B) The Food Standards Agency, having been informed under subsection (6A)(a) of the determination on the appeal, must, if the rating has been changed on the appeal, publish the new rating online, unless it has been informed under subsection (6A)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so within 7 days of having been informed of the determination on the appeal.”

8 Clause **3**, page **3**, line **19**, leave out “the” and insert “a”.

9 Clause **4**, page **4**, line **6**, at end insert—

“(4A) Within 34 days of carrying out an inspection under subsection (2), a district council—

(a) must inform the Food Standards Agency of its determination on the review, and

(b) if the district council has changed the establishment's food hygiene rating on the review but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(4B) The Food Standards Agency, having been informed under subsection (4A)(a) of the determination on the review, must, if the rating has been changed on the review, publish the new rating online, unless it has been informed under subsection (4A)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so no later than 7 days after the end of the appeal period in relation to the new rating."

10 Clause **4**, page **4**, line **25**, after "applies" insert ", with such modifications as are necessary,".

11 Clause **4**, page **4**, line **27**, leave out "the" and insert "a".

12 Clause **4**, page **4**, line **28**, at end insert—

"(10) The Department may by order amend this section so as to limit, in the case of each food hygiene rating for an establishment, the number of occasions on which the right to request a review of the rating may be exercised."

13 Clause **5**, page **5**, line **1**, leave out "having received" and insert "within 7 days of receiving".

14 Clause **5**, page **5**, line **2**, leave out "on its website" and insert "online".

15 Clause **5**, page **5**, line **3**, at end insert—

"(3A) But where, at the time when the Food Standards Agency receives the representations, it has yet to publish under section 2(5) the rating to which the representations relate, the duty under subsection (3) instead applies as a duty to publish the representations within 7 days of publishing the rating under section 2(5)."

16 Clause **5**, page **5**, line **4**, leave out "(2)" and insert "(3)".

17 Clause **5**, page **5**, line **5**, after "2(4)(b)" insert ", 3(6A)(b) or 4(4A)(b)".

18 Clause **6**, page **5**, line **29**, leave out subsection (4).

19 Clause **12**, page **8**, line **8**, after "regulations" insert "(in so far as the district council has not already done so)".

20 Clause **14**, page **9**, line **6**, at end insert—

"(7A) The Department must publish its response to the report; and its response must indicate—

(a) whether it proposes to exercise one or more of the powers under sections 1(7), 3(10), 4(10) and [Adjustment of time periods](1),

(b) in so far as it does so propose, the amendments it proposes to make and its reasons for doing so, and

(c) in so far as it does not so propose, its reasons for not doing so."

21 Clause **14**, page **9**, line **7**, leave out subsection (8).

22 Clause **14**, page **9**, line **8**, at end insert—

"( ) The Food Standards Agency must promote the scheme provided for by this Act."

23 After Clause **15** insert the following New Clause—

"**Adjustment of time periods**

(1) The Department may by order amend a provision of this Act which specifies a period within which something may or must be done by substituting a different period for the period for the time being specified.

(2) Where the period under section 2(1), (4) or (5), 3(6B), 4(3), (4A) or (4B) or 5(3) includes the last working day before Christmas Day, the period is to be extended by 7 days; and for this purpose, "working day" means a day which is not a Saturday or Sunday.

(3) Where, because of exceptional circumstances, it is not reasonably practicable for a district council to comply with section 2(1) or (4) or 4(3) or (4A), or for the Food Standards Agency to comply with section 2(5), 3(6B), 4(4B) or 5(3), within the period for the time being specified (including any extension of that period under subsection (2) above), it must comply as soon as it is reasonably practicable for it to do so."

24 Clause **16**, page **9**, line **19**, at end insert—

""end of the appeal period", in relation to a food hygiene rating, has the meaning given in section 2(5A);".

25 Clause **18**, page **10**, line **21**, leave out subsection (3).

26 Clause **18**, page **10**, line **27**, at end insert—

"( ) section 4(10) (power to limit number of requests for review of rating);"

27 Clause **18**, page **10**, line **28**, leave out paragraph (c).

28 Clause 18, page 10, line **29**, at end insert—

( ) section [Adjustment of time periods](1) (power to amend time periods);"

29 Clause **18**, page **10**, line **30**, at end insert—

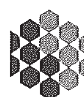
"(4A) An order under any other provision of this Act, other than section 20 (commencement), is subject to negative resolution."

30 Clause **18**, page **10**, line **31**, leave out subsection (5).

31 Clause **18**, page **10**, line **32**, leave out subsection (6).

Ministerial Correspondence 20 April 2015

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY
Jim Wells MLA



Department of
Health, Social Services and Public Safety
www.dhsspsni.gov.uk

Castle Buildings
Stormont Estate
BELFAST BT4 3SQ
Tel: 028 90 520642
Fax: 028 90 520557
Email: private.office@dhsspsni.gov.uk

Ms Maeve McLaughlin MLA
Chair, Committee for Health, Social Services
and Public Safety
Room 414
Parliament Buildings
Stormont
BELFAST
BT4 3XX

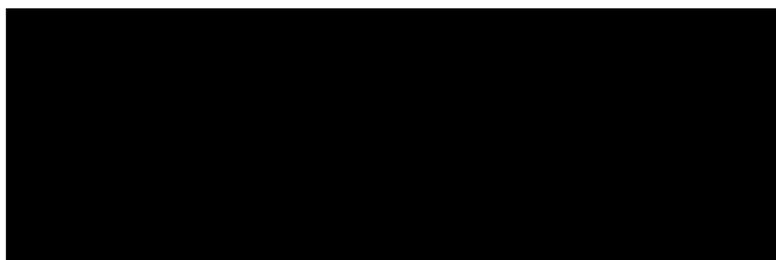
Our Ref: SUB/297/2015

Date: 20 April 2015

Dear Ms McLaughlin

FOOD HYGIENE RATING BILL

Further to the Committee meeting on the 15 April I am writing to the Committee to provide assurance that the powers under the amendment to clause 7 of the Food Hygiene Rating Bill (provided to the Committee on the 1 April) in relation to online display of ratings will be exercised in the first set of regulations drafted after the Act comes into operation.



Jim Wells MLA
Minister for Health, Social Services and Public Safety

Working for a Healthier People

INVESTORS IN PEOPLE

Appendix 5

List of Witnesses

List of Witnesses who gave evidence to the Committee

Mr Michael Jackson	Food Standards Agency
Ms Kathryn Baker	Food Standards Agency
Mr Damian Connolly	Chief Environmental Health Officers Group
Mr Larry Dargan	Chief Environmental Health Officers Group
Ms Fiona McClements	Chief Environmental Health Officers Group
Mr Colin Neill	Pubs of Ulster

Published by Authority of the Northern Ireland Assembly,
Belfast: The Stationery Office

and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone 0870 240 3701

TSO@Blackwell and other Accredited Agents

£21.00

Printed in Northern Ireland by The Stationery Office Limited
© Copyright Northern Ireland Assembly Commission 2015