

# **FOOD HYGIENE RATING BILL**

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## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of Health, Social Services and Public Safety (the Department) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Food Hygiene Rating Scheme (FHRS) is designed to provide consumers with information about food hygiene standards (found at the time of inspection by district council food safety officers) in the places where they eat out or shop for food.
4. The objective is to enable consumers to make informed choices which in turn will provide a strong incentive for businesses to achieve and maintain compliance with existing food hygiene law. The overarching aim is to reduce the incidence of foodborne illness.
5. The information is provided to consumers through a simple numerical scale operating from 0 to 5 – where 0 means that ‘urgent improvement is necessary’ and 5 means a food business fully complies with legal requirements and has ‘very good’ standards. The rating is made available on the Food Standards Agency website but businesses are also provided with a food hygiene rating sticker to place in the window or door at their premises so the information is available to consumers before they enter the establishment.
6. The scheme currently operates on a voluntary basis. This means that display of food hygiene ratings at food businesses is voluntary. Ongoing research shows that voluntary display remains low, with only 56% of establishments choosing to display their rating. Display is much lower among establishments with a rating of 0-2.
7. The Bill’s main objective is to make it mandatory for food businesses to display their food hygiene rating sticker, thus ensuring consumers have access to the information at the point of choice. It will also require food businesses that supply consumers with food through an online facility, to provide their rating online in the manner to be specified
8. A number of safeguards are built into the scheme for businesses. These include a right for food business operators to appeal against their rating; to request to have their rating

re-assessed where they have made necessary improvements and a right to reply to explain to consumers any mitigating circumstances.

## **CONSULTATION**

9. A 12-week formal consultation exercise was carried out between February and April 2013. The consultation paper was widely circulated to interested parties including food industry trade associations and representatives; district councils; government departments; community and voluntary groups and consumer organisations. A series of stakeholder events and one to one meetings were organised to address and discuss the proposals in the consultation paper.
10. Twenty-nine responses were received to the consultation from a range of stakeholders including individual food businesses and food industry trade associations; enforcement representatives from district councils and their representative bodies; the voluntary sector and the general public. In addition views were sought from small/micro food businesses and consumers through the Food Standards Agency's independently conducted Citizens Forum research programme.
11. Responses to the consultation were wide ranging from strong support for various proposals to opposition to others. In general responses showed strong support for mandatory display of food hygiene ratings at food premises in order to inform consumer choice, although views from industry were mixed. A full consideration of all the responses resulted in a review and modification of aspects of the proposals put forward in the consultation paper. The analysis of and response to the consultation can be viewed on the Food Standards Agency's website at <http://multimedia.food.gov.uk/multimedia/pdfs/consultationresponse/impactfhrr-report.pdf>

## **OPTIONS CONSIDERED**

12. The FHRS currently operates on a voluntary basis and is implemented by district councils in partnership with the Food Standards Agency.
13. The options considered were:
  - **Option 1** - 'Do nothing', and continue with the current voluntary scheme.
  - **Option 2** - Greater promotion of the current voluntary scheme to increase consumer awareness and use.
  - **Option 3** - Introduce a statutory scheme with mandatory display of ratings at food business premises.
  - **Option 4** - Introduce a statutory scheme with mandatory display of ratings at food business premises, plus cost recovery from businesses where they choose to request a re-rating.
14. Option 4 was the preferred option. Moving to a statutory scheme best met the policy objective as it would increase accessibility of ratings to consumers and the incentive to businesses to improve and maintain standards over time. It also provided the most economically viable solution for achieving the policy objective as it would ensure that district council resources for inspecting high risk businesses would not be diverted to carrying out re-rating assessments at lower risk operations.

## **OVERVIEW**

15. The Bill consists of 20 clauses and one Schedule.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Food hygiene rating**

This clause requires district councils to rate the food hygiene standards of food business establishments supplying food direct to consumers, following inspections carried out as part of official controls. It allows the Department to make regulations to specify categories of establishment that would not be rated and to amend the definition of ‘food business establishment’, to enable other categories of establishment to be rated, for example, food establishments supply food other than direct to consumers, such as trade to trade supply.

### **Clause 2: Notification and publication**

This clause requires district councils to notify a rating to the operator of the establishment within 14 days of carrying out an inspection. Additional information must be provided including a sticker showing the rating. District councils must inform the Food Standards Agency of ratings within 34 days of carrying out the inspection who in turn must publish them on its website within 7 days of the end of the appeal period. The Department will prescribe the forms of the rating sticker in regulations and specify whether the cost will be borne by the Food Standards Agency and/or the district councils.

### **Clause 3: Appeal**

This clause provides operators of food business establishments with a right of appeal against the rating. The appeal must be made to the council that produced the rating within 21 days. An officer of the council who was involved in the production of the rating cannot be involved in determining the appeal. The district council must determine the appeal within a further 21 days and notify the outcome to the food business operator in writing along with additional information, including a new food hygiene rating sticker where the rating has changed. Within the same timescale the district council must notify the Food Standards Agency of the outcome of the appeal and where the rating has changed, the Food Standards Agency must publish the new rating online within 7 days. The Department can make an order to provide for an appeal to be determined by another person other than the district council that produced the rating.

### **Clause 4: Request for re-rating**

This clause provides operators of food business establishments with a right to request a re-rating. The request, which can be made after the appeal period, must be made in writing to the council that produced the rating; must include an explanation of the steps taken to improve compliance and must be accompanied by a fee (to be specified by the Department). Within three months of receiving a request, the district council must inspect and review the rating (unless it does not propose to do so, in which case it must inform the operator along with an explanation). The outcome of the re-rating must be notified to the operator within 14 days of the inspection and be accompanied with additional information, including a new food hygiene rating sticker where the rating has changed. District councils must inform the Food Standards Agency of ratings within 34 days of carrying out the inspection who in turn must

publish them on its website within 7 days of the end of the appeal period. The Department can make an order to limit the number of occasions on which the right to request a review of a rating may be exercised.

### **Clause 5: Right of reply**

This clause allows operators of food business establishments to make a written reply to the establishment's rating to the district council, for publication alongside the rating on the Food Standards Agency's website. The purpose is to provide operators with an opportunity to explain to potential customers any actions that have been taken to improve hygiene standards or any particular circumstances at the time of inspection that might have affected the rating. The text may be edited by the council (for example, to remove any inaccurate or defamatory remarks) before sending to the Food Standards Agency for publication on its website. The Food Standards Agency must publish the right of reply within 7 days of receipt or within 7 days of publishing the rating.

### **Clause 6 & 7: Validity of rating and duty to display the rating**

These clauses set out when a food hygiene rating is valid and places a duty on food business operators to display their valid rating sticker at their establishment and allows the Department by regulation to require them to provide their rating online where they supply consumers with food through an online facility. A food hygiene rating becomes valid when a food business operator is notified of their rating following an inspection, appeal or re-rating request. During and until the end of an appeal period, food business operators can choose either to display their newly notified rating or previous rating sticker. A rating ceases to be valid 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.

### **Clause 8: Duty to provide information about rating**

This clause requires the operator of a food business to orally inform a person of the food hygiene rating when requested. The purpose is to provide the information to persons who would not see the rating sticker displayed at the establishment – for example, blind or partially sighted people or people making a telephone order. This duty also extends 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.

### **Clause 9: Enforcement and powers of entry**

This clause requires district councils to enforce the provisions of the Bill within their districts and provides authorised officers with a power of entry to ascertain if the duty to display the rating and provide information orally where requested, is being complied with.

### **Clause 10 & 11: Offences and Fixed Penalty**

This clause creates a number of offences. An operator of a food business establishment commits an offence if they fail to display a valid rating sticker, display a non-valid rating sticker, or fail to provide their rating online where they supply consumers with food through an online facility. It would also include failure to orally inform a person of the rating when requested; however, where this 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.

A person commits an offence where they intentionally alter, deface or tamper with an establishment's valid rating sticker or if they obstruct an authorised officer in exercising their functions.

A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; however, for offences of failing to display a valid rating sticker or displaying a non-valid rating sticker, the operator can be given a fixed penalty notice. This clause also introduces Schedule 1 which makes further provision about fixed penalties.

This clause also provides for corporate liability.

### **Clause 12: Provision of information for a new business**

This clause requires district councils to provide new food business establishments with information on the Bill (to be specified by the Department).

### **Clause 13: Mobile establishments**

This clause relates to mobile establishments. It provides a regulation making power for the Department to enable transfer of the inspection and rating functions of a district council to another district council in relation to mobile establishments. The reason is that a mobile establishment may be registered with a council but not trade in its district; instead, for example, it may trade exclusively in another district council area. For this reason and where the district councils agree, the inspection and rating functions could transfer to the council in whose area the mobile establishment is trading.

### **Clause 14: Review of operation of Act**

This clause requires the Food Standards Agency to carry out a review of the operation of the Bill within three years of its commencement. The review in particular must consider whether the appeal process is operating satisfactorily; whether there should be a limit on the number of re-ratings that can be requested; whether time periods specified in the Bill are adequate and whether the fixed penalty procedure is operating satisfactorily. The Food Standards Agency can carry out subsequent reviews as and when it considers appropriate.

On conclusion of the review the Food Standards Agency must prepare and send a report, containing any recommendations for improvements to the operation of the Bill, to the Department. The Department must publish the report and a response to it indicating whether or not, along with reasons, it intends to exercise certain order making powers.

District councils must also keep the operation of the Bill in its area under review and provide the Food Standards Agency with information as requested to inform the review.

It also requires the Food Standards Agency to promote the scheme provided for by the Bill.

### **Clause 15: Guidance**

This clause requires district councils to have regard to guidance issued by the Department and the Food Standards Agency, in exercising functions under the Bill.

### **Clause 16: Adjustment of time periods**

This clause allows the Department to amend, by order, time periods in the bill within which something may or must be done. It provides flexibility for district councils and the Food Standards Agency to comply with certain time bound requirements as soon as is reasonably practicable, where due to exceptional circumstances, they have been unable to do so within the required period. It also extends certain time bound requirements by 7 days over the Christmas period, to take account of office closures.

### **Clause 17: Interpretation**

This clause contains definitions of terms used in the Bill and ensures that definitions of EU Regulations will be ambulatory.

It also provides for District councils to notify the rating to operators of establishments by ordinary post and for notification of the rating to be treated as being received on the day on which it would have been delivered in the course of ordinary post.

### **Clause 18: Transitional provision**

This clause allows the Department to make, by order, transitional provisions. The purpose is to provide establishments with a food hygiene rating within a transitional period. 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.

### **Clause 19: Regulations and orders**

This clause contains general provisions for making regulations and orders under the Bill.

### **Clause 20: Crown application**

This clause states that the Crown is bound by the provisions of the Bill.

### **Clause 21: Short title and commencement**

This clause contains provisions for the commencement of the legislation. The Bill will, for the most part, come into operation by commencement order.

### **Schedule**

The schedule sets down provisions for a fixed penalty notice scheme. In particular, the Department will by order specify the level of the fixed penalty; however, there will be a 25% discount for early repayment. Any sums received by district councils will have to be applied for the purposes of the legislation; however, the purposes can be amended by the Department.

## **FINANCIALEFFECTS OF THE BILL**

16. The Bill will not have significant financial implications.

## **HUMAN RIGHTS ISSUES**

17. The provisions of the Bill are, in the Department's view, compatible with the provisions of the Human Rights Act 1998.

## **EQUALITY IMPACT ASSESSMENT**

18. 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.

## **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

19. A Regulatory Impact Assessment (RIA) was completed covering the various options for increasing accessibility of food hygiene ratings for consumers. The RIA also examined the potential impacts on business and district councils and sought to quantify the possible health impact of the options.
20. The main impact on businesses in moving to a statutory scheme is that they would have to pay for re-rating inspections they requested. Importantly, food businesses already have a legal responsibility to comply with food law. There will therefore be no impact on businesses that are fully compliant and receive the highest rating. Furthermore, the option for businesses to choose to request and pay for a re-rating is voluntary and does not constitute a cost that is imposed by the policy.
21. The main impact on district councils is that they would be required to participate in the scheme; review the scheme to ensure it was operating as intended and monitor the operation of the scheme, where necessary taking enforcement action. District councils would also have to provide the safeguards for businesses, i.e. appeals, 'right to replies' and re-rating inspections when requested, however, these safeguards already exist and are already delivered within the current voluntary scheme. A move to a statutory scheme would enable the district councils to recover the costs for carrying out re-rating assessments.
22. The RIA was subject to public consultation along with proposals for a statutory scheme and is available by contacting the Food Standards Agency, 10A-C Clarendon Road, Belfast, BT1 3BG.

## **LEGISLATIVE COMPETENCE**

23. The Minister for the Department of Health, Social Services and Public Safety had 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."*

**SECRETARY OF STATE CONSENT**

The Secretary of State had consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering the Bill.