
Food Hygiene Rating (Wales) Bill

Submission to
the Health and
Social Care
Committee

29th June 2012





Food Hygiene Rating (Wales) Bill

The Federation of Small Businesses in Wales

The Federation of Small Businesses Wales welcomes the opportunity to present its views to the National Assembly's Health and Social Care Committee on the Welsh Government's Food Hygiene Rating (Wales) Bill. FSB Wales is the authoritative voice of small businesses in Wales. With 10,000 members, a Welsh Policy Unit, two regional committees and twelve branch committees; FSB Wales is in constant contact with small businesses at a grassroots level. It undertakes a monthly online survey of its members as well as an annual membership survey on a wide range of issues and concerns facing small business.

Executive Summary

- FSB Wales' submission to the Welsh Government's consultation on the draft Food Hygiene Rating (Wales) Bill was informed by a focus group of FSB Wales members. The members welcome moves towards greater food safety and have largely positive experiences of the voluntary scheme.
- The Welsh Government should carefully examine whether there is a need to create additional legislation to place a statutory obligation on local authorities to participate in the scheme in light of the fact that all local authorities in Wales at present operate the voluntary scheme.
- FSB Wales questions the Welsh Government's Regulatory Impact Assessment (RIA) with regards to the Bill as introduced, particularly around the decision to extend the scheme to business to business trade. FSB Wales does not dispute the Welsh Government's ability to introduce regulatory legislation where necessary. Neither does it have no regard for the intention to safeguard public health through the imposition of statutory requirements upon its members and other businesses. However, as a matter of best practice FSB Wales is of the considered opinion that regulatory impact assessments must be robust and provide an evidence base that proves the need to legislate and that in this case the public health will safeguarded and advanced. It is not clear that such an evidence base exists or that an appropriately robust regulatory impact assessment has taken place with regards to the Food Hygiene Rating (Wales) Bill.
- FSB Wales welcomes the amendments to the Draft Food Hygiene Rating (Wales) Bill around the right of reply, the right of appeal and the ability of food establishments to apply for a re-rating. However, certain issues around the timescales and costs involved should be reconsidered to ensure that the legislation is not overly onerous to small businesses.
- FSB Wales calls on the Welsh Government to issue strong guidance to Food Authorities and businesses to ensure that there is adequate awareness of the impact of the legislation. The FSA should be encouraged to promote the scheme to businesses in a way that enables them to reproduce best practice and achieve satisfactory ratings. Should the money raised from Fixed Penalty Notices be hypothecated for food safety issues as the Bill suggests then FSB Wales believes that the priority should be on raising awareness of good practice amongst food establishments.



Introduction

The Health and Social Care Committee will be aware that FSB Wales submitted evidence to the Welsh Government's consultation in advance of the current bill being introduced to the National Assembly. Please see the enclosed copy for ease of reference.

In this submission, FSB Wales will develop on some of the observations made to the Welsh Government previously in light of the amendments already made to the bill and highlight areas of concern that remain for FSB Wales members.

Regulatory Impact Assessment

FSB Wales is concerned that the Welsh Government has not appropriately applied a Regulatory Impact Assessment to the Food Hygiene Rating (Wales) Bill as introduced. The Welsh Government's stated objectives in the Regulatory Impact Assessment are as follows¹:

1. *creating a compulsory FHRS for food businesses in Wales;*
2. *placing a duty on local authorities to operate the scheme (broadly speaking, this means to carry out all of the activities which they currently undertake voluntarily in relation to the FSA scheme);*
3. *placing a duty on food business operators to display their food hygiene ratings in a designated position at their establishment while giving them rights of appeal and a right of reply similar to those in relation to the FSA voluntary scheme; and*
4. *making it an offence for food business operators to fail to display their food hygiene ratings in the manner prescribed under the scheme or to tamper with or falsify those ratings.*

Clearly, the Bill as introduced will satisfy the objectives outlined above; however it is questionable whether legislation is the best means of achieving this. For example, all local authorities at present take part in the voluntary scheme and are committed to do so for the foreseeable future highlighting the need for further examination as to the need to legislate to oblige them to do so².

Furthermore, much of the evidence base relied upon in the regulatory impact assessment rests on analysis undertaken by the FSA between September and October 2011³. FSB Wales is mindful that the current scheme in Wales has only been in operation since October 2010 and believes it would be beneficial for the evidence base to be further debated in the public domain in order to ascertain

¹ Welsh Government. 2012. *Draft Regulatory Impact Assessment: Food Hygiene Rating (Wales) Bill* [Online]. Available at: <http://wales.gov.uk/docs/phhs/consultation/111214impacten.pdf> (accessed 28th June 2012).

² Members' Research Service. 2012. *Bill Summary: Food Hygiene Rating (Wales) Bill* [Online]. Available at: <http://www.assemblywales.org/bus-home/research/bus-assembly-research-publications/research-constitution/12-029.pdf?langoption=3&ttl=Food%20Hygiene%20Rating%20%28Wales%29%20Bill%20-%20Bill%20Summary%20paper> (accessed 28th June 2012).

³ FSA. 2011. *The Display of Food Hygiene Rating Wales* [Online]. Available at: http://www.foodbase.org.uk/admintools/reportdocuments/732-1-1244_FHRS_Report-13_December_2011_-_FINAL.pdf (accessed 28th June 2012).



whether legislation is needed to further develop food hygiene measures⁴. Increasing the regulatory burden on small businesses should be considered only if there is no other means by which to increase the potency of the current voluntary scheme.

Inclusion of business to business trade

The stated objectives of the Welsh Government during the consultation on the draft Food Hygiene Rating (Wales) Bill were to move the voluntary scheme to a mandatory basis, whilst compelling food operators to display their ratings. FSB Wales notes paragraphs 39 and 40 of the Explanatory Memorandum that state;

“The Welsh Government proposes that the mandatory scheme should be modelled on the voluntary scheme...Because the existing scheme is operating well, and because of the high level of costs for developing and implementing a new scheme, the Welsh Government decided very early on that the main components of the voluntary scheme would – wherever possible - be replicated in the mandatory scheme.”⁵

At present, business to business trade does not come under the remit of the voluntary scheme. FSB Wales notes the Welsh Government’s decision to include this in the scope of the Bill as introduced and the Minister for Health stated during plenary⁶;

“The Bill also requires those establishments involved in food business-to-business trade to be included in the scope of the scheme. These are businesses that produce, process or prepare food and include food manufacturers, wholesalers and transporters. Establishments involved in food business-to-business trade are currently not rated under the voluntary FSA scheme. However, I want to ensure that this Bill covers as wide a range of food businesses as possible, including those supplying food to our schools and hospitals.”

Clearly, the inclusion of business to business trade within the scope of the Bill constitutes a significant departure from the original objectives of the Food Hygiene Rating (Wales) Bill which sought to place the existing scheme onto a mandatory basis. As such, FSB Wales believes that the inclusion of business to business trade has not properly been considered as part of the Regulatory Impact Assessment.

⁴ Members’ Research Service. 2012. *Bill Summary: Food Hygiene Rating (Wales) Bill* [Online]. Available at: <http://www.assemblywales.org/bus-home/research/bus-assembly-research-publications/researchconstitution/12-029.pdf?langoption=3&ttl=Food%20Hygiene%20Rating%20%28Wales%29%20Bill%20-%20Bill%20Summary%20paper> (accessed 28th June 2012).

⁵ Welsh Government. 2012. *Food Hygiene Rating (Wales) Bill: Explanatory Memorandum* [Online]. Available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld8916-em-e.pdf?langoption=3&ttl=PRI-LD8916-EM%20-%20Food%20Hygiene%20Rating%20%28Wales%29%20Bill%20-%20Explanatory%20Memorandum> (accessed 28th June 2012).

⁶ Record of Proceedings 29 May 2012. *Introduction of the Food Hygiene Rating (Wales) Bill* [Online]. Available at: <http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=234781&ds=5%2F2012#dat4> (accessed 29th June 2012).



During our consultation exercise, many of our members highlighted concerns around the costs of implementing such a scheme on business to business trade, stating that costs would likely be transferred to the retailer and ultimately the customer⁷. FSB Wales members believe that the focus of the food rating exercise should be on the point of sale to the customer. Should the Bill proceed in its current format, there may be unintended consequences that have not been properly considered as a result of the inclusion of business to business trade. FSB Wales believes the Welsh Government has a duty to ensure such matters are considered when taking the decision to increase the regulatory burden on small businesses. As a result, the FSB Cannot give unequivocal support to the proposed Bill.

The Regulatory Impact Assessment should also consider the implications of including business to business trade on wholesalers and related businesses. It is important to recognise that many businesses in Wales will be supplied from companies operating across the UK and the EU that will not fall under the remit of the legislation. This could impede the Welsh Government's stated objectives with regards to food hygiene whilst placing Wales based wholesalers at a competitive disadvantage.

Given the National Assembly's new powers to legislate for Wales, FSB Wales hopes that the Welsh Government and the National Assembly will ensure all proposed legislation is carefully considered before its introduction. The appropriate use of Regulatory Impact Assessments is fundamental in this respect.

Right of appeal

FSB Wales welcomes the changes made by the Welsh Government around the right of food operators to appeal rating decisions. Many FSB Wales members highlighted the need for the time period to be reflective of the limited time available to small businesses to deal with administrative issues. FSB Wales also welcomes subsection 5(7) of the Bill as introduced that states; *"The appeal must be determined by an authorised officer who was not involved in the assessment of the food hygiene rating that is being appealed"*⁸. This is largely reflective of comments received from FSB Wales members on this issue around the inconsistency of food authority officers in providing a rating.

Whilst welcoming the extension of time allotted to the appeals process, FSB Wales believes that food authorities should be responsive in dealing with appeals in order to resolve operator appeals in good time. Of particular importance is the increase from 7 days to 21 days of the time in which a food authority must determine the appeal and notify the operator of a food establishment. For example, 21 days for both the appellant and the food authority to examine an appeal effectively

⁷ FSB Wales. 2012. Food Hygiene Rating (Wales) Bill: written submission to the Welsh Government [Online]. Available at: [http://www.fsb.org.uk/policy/rpu/wales/assets/policy%20documents/food%20hygiene%20rating%20\(wales\)%20bill%20-%207th%20march%202012.pdf](http://www.fsb.org.uk/policy/rpu/wales/assets/policy%20documents/food%20hygiene%20rating%20(wales)%20bill%20-%207th%20march%202012.pdf) (accessed 26th June 2012)

⁸ Food Hygiene Rating (Wales) Bill. As introduced. (2011-12) [Online]. Available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld8916-e.pdf?langoption=3&ttl=PRI-LD8916%20-%20Food%20Hygiene%20Rating%20%28Wales%29%20Bill> (accessed 26th June 2012)



creates a 42 day process. This could be significant for small businesses, particularly those in seasonal sectors, and FSB Wales calls for the appeals process to be as efficient as possible.

Right of Reply

The draft Food Hygiene Rating (Wales) Bill included in subsection 9(2)⁹ a time limit for the right to reply by food operators:

Any comment must be made to a food authority –

- (a) Within 28 days of receipt of notification of the food hygiene rating if no appeal is made,*
or
- (b) Within 14 days of notification of the determination of the appeal.*

FSB Wales welcomes the changes to the Bill as introduced around the right to reply with the reduced section 10¹⁰ enabling operators to comment on their rating while it is valid. While the right to reply is to be welcomed, it should be noted that subsequent improvements made by the food operator will not be visually obvious to the consumer without the establishment carrying out a re-rating process.

Re-rating of establishments

The ability to apply for a re-rating is an important one for small businesses and provides an opportunity for improvements to the establishment to be recognised. FSB Wales welcomes the additional clarification provided by the Bill as introduced. However, FSB Wales feels that the obligation for a food authority to re-rate an establishment within three months under subsection 11(7) should be considered in greater detail¹¹. Three months is a significant period of time for a food operator and would put significant pressure on the food operator's reputation and competitiveness and could have unintended consequences for the viability of the business.

Furthermore, FSB Wales welcomes the addition of subsection 12(2) in the Bill as introduced which states; *"Before carrying out the re-rating, the food authority must inform the operator of the costs of the re-rating and the way the costs have been calculated"*¹². FSB Wales agrees that it is important for food operators to be fully aware of the cost implications of the re-rating process. FSB Wales believes that the calculation of costs relating to the re-rating process should be the result of strong Welsh Government guidelines in order to avoid the situation whereby a local authority is incentivised to use re-rating inspections as a means to go beyond simple cost recovery.

⁹ Draft Food Hygiene Rating (Wales) Bill. (2011-12). [Online]. Available at: <http://wales.gov.uk/docs/phhs/consultation/111214billen.pdf> (accessed 26th June 2012)

¹⁰ Food Hygiene Rating (Wales) Bill. As introduced. (2011-12) [Online]. Available at: <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld8916-e.pdf?langoption=3&ttl=PRI-LD8916%20-%20Food%20Hygiene%20Rating%20%28Wales%29%20Bill> (accessed 26th June 2012)

¹¹ *ibid*

¹² *ibid*



Subsection 12(4) of the Bill as introduced states “A food authority may require payment in advance of the re-rating being carried out”¹³. FSB Wales is concerned that payment mechanisms for the re-rating of food establishments as a result of the Bill would not be sufficiently flexible in taking into account the often difficult cash flow needs of small businesses. It is important that food authorities work with local businesses that may have spent significant sums on improving their premises and dealing with the reputational side effects of a poor rating, in order to manage the cost recovery process in a way that doesn’t penalise acquiescence.

Fixed penalty notices

The use of fixed penalty notices as a means of punishing an offence was widely accepted in our consultation with FSB Wales members on this issue. However, it is important that, where used, fixed penalty notices are proportionate. As such, FSB Wales welcomes the ability to pay a discounted penalty of £150 within a period of 14 days.

Subsection 21(2) of the Bill as introduced highlights the Welsh Ministers’ capacity to retain fixed penalty receipts for the purpose of improving food hygiene in Wales¹⁴. FSB Wales does not object to the use of the fixed penalty notice in this manner, but would suggest that if the money were to be hypothecated, it could be used to raise awareness amongst small businesses of good practice.

Duties of the Food Standards Agency

The inclusion in paragraph 13(e) of the Bill as introduced of the duty of the FSA to; “*promote the scheme to food business establishments and consumers in Wales*” is to be welcomed¹⁵. However, FSB Wales believes there is scope in the Bill to strengthen the duties of the FSA beyond simply promoting the scheme to actively highlighting good practice to businesses in order to better enable them to achieve satisfactory ratings.

Guidance for businesses

Finally, as mentioned above, it is crucial that businesses are aware of the changes that the Bill proposes. FSB Wales calls on the Welsh Government to provide guidance to small businesses affected by this scheme in a timely manner. The overall objective of the scheme should be to ensure that good practice in food hygiene is rewarded. Therefore, guidance from the Welsh Government should encourage small businesses to achieve the best possible rating.

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *ibid*



Conclusion

FSB Wales believes that the Food Hygiene Rating (Wales) Bill as introduced requires greater regulatory impact assessment to ascertain the likely implications for small businesses of the inclusion of business to business trade within the remit of Bill. The inclusion of business to business trade constitutes a divergence in direction from the Welsh Government's original stated aims around the introduction of a Food Hygiene Rating (Wales) Bill that would move the voluntary scheme to a mandatory basis.

FSB Wales welcomes adaptations around the right of reply, right of appeal and re-ratings procedures but believes further examination of their costs to small businesses and the timescales involved is needed.

Finally, FSB Wales would like to see the Welsh Government produce strong guidance in advance of the legislation coming into force to ensure that small businesses are aware and able to achieve the highest rating possible. The Food Standards Agency has a significant role to play in creating adequate guidance and fixed penalty notice receipts should help finance this.

FSB Wales hopes you find these comments of interest and looks forward to discussing them further with the committee.

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The Federation of Small Businesses

The FSB is non-profit making and non-party political. The Federation of Small Businesses is the UK's **largest campaigning pressure group** promoting and protecting the interests of the self-employed and owners of small firms. Formed in 1974, it now has **200,000 members across 33 regions and 194 branches**.

Lobbying

Our lobbying arm - led by the Westminster Press and Parliamentary office - applies pressure on MPs, Government and Whitehall and puts the FSB viewpoint over to the media. The FSB also has Press and Parliamentary Offices in Glasgow, Cardiff and Belfast to lobby the devolved assemblies. Development Managers work alongside members in our regions to further FSB influence at a regional level.

Member Benefits

In addition, Member Services is committed to delivering a wide range of high quality, good value business services to members of the FSB. These services will be subject to continuing review and will represent a positive enhancement to the benefit of membership of the Leading Business Organisation in the UK.

Vision

A community that recognises, values and adequately rewards the endeavours of those who are self employed and small business owners within the UK

The Federation of Small Businesses is the trading name of the National Federation of Self Employed and Small Businesses Limited. Our registered office is Sir Frank Whittle Way, Blackpool Business Park, Blackpool, Lancashire, FY4 2FE. Our company number is 1263540 and our Data Protection Act registration number is Z7356876. We are a non-profit making organisation and we have registered with the Information Commissioner on a voluntary basis.

Associate Companies

We have two associated companies, FSB (Member Services) Limited (company number 02875304 and Data Protection Act registration number Z7356601) and NFSE Sales Limited (company number 01222258 and Data Protection Act registration number Z7315310).