

**Health and Social Care Committee  
Food Hygiene Rating (Wales) Bill  
FHR 13 – British Beer and Pub Association (BBPA)**

**Health and Social Care Committee of the National Assembly for  
Wales**

**Consultation on the Food Hygiene Rating (Wales) Bill**

**Introduction**

The British Beer and Pub Association (BBPA), is the leading trade association representing the interests of over half of the 52,000 pubs in the UK. There are 52,000 public houses in the UK, of which 3,200 are in Wales. Nationally, the pub sector contributes over £19bn to the economy, representing 2% of GDP and employing almost 600,000 people in full and part-time jobs. Pubs are vital to our economy, at the heart of our communities, and are central to society. We are an industry with the potential to create many more much-needed jobs and investment throughout the country. However, in order to do this we need a tax and regulatory regime that supports our sector.

Only 10% or so of the 3,200 pubs in Wales are branded or chain outlets operated by a parent company. The pub sector provides 32,000 direct jobs in Wales, with 46,000 direct and indirect jobs being supported overall by the beer and pub sector. Since the vast majority of catering businesses, including pubs, are small, independent businesses, we believe the costs of introducing a mandatory food hygiene rating scheme will fall disproportionately on SMEs, inhibiting their ability to create new employment opportunities and much needed economic growth.

The Association has devoted significant resources and expertise to assist in the development of a voluntary national scheme that has been agreed and successfully implemented across England and Wales. Additional regulatory burdens will have a debilitating effect on Welsh food businesses which will place them at an economic disadvantage to their counterparts in other regions of the UK.

We welcome this opportunity to respond to the questions raised by the Health and Social Care Committee of the National Assembly for Wales below and hope that our views will be taken into account.

## Consultation Questions

### BBPA Response

#### General

#### **1. Is there a need for a Bill to introduce a statutory food hygiene rating scheme in Wales? Please explain your answer.**

The BBPA is a member of the FSA Food Hygiene Rating Scheme Steering Group, which has overseen the development of the national scheme over the last three years, and has been instrumental in ensuring local authority and business acceptance of the voluntary national scheme. We are very disappointed, therefore, that the Welsh Government is proposing to introduce the Food Hygiene Rating (Wales) Bill which will inevitably place additional bureaucracy and cost on small pub businesses in Wales, at a time when the scheme is just beginning to gain national recognition and credibility. We do not, therefore, believe that there is any need for a successful voluntary initiative such as the national voluntary Food Hygiene Rating Scheme to be made compulsory in Wales or any other part of the UK. The voluntary national scheme was only launched on 30<sup>th</sup> November 2010, and we would much prefer that it is given sufficient time to become established, and that some form of national evaluation of its impact is carried out before any consideration is given to introducing the scheme on a statutory basis in any part of the UK.

The proposals will also place a significant cost burden on pubs and other catering businesses, the vast majority of which are SMEs, which we believe is out of step with the UK Government's overall commitment to reducing burdens on business. The BBPA and the BHA were recently successful in opposing proposals for the compulsory display of ratings from the London (Local Authorities) Bill. Parliament, by rejecting the provisions of this Bill, signified its firm support for the voluntary display of hygiene ratings.

The Welsh Government consultation earlier this year suggested that a mandatory Food Hygiene Rating Scheme would help to avoid serious food poisoning incidents in the future. While we recognise the devastating impact of the outbreaks of E.coli O157 in Wales in 2005 and E.coli O104 in Germany last year, it is clear, contrary to the suggestion in the consultation, that the display of food hygiene ratings in catering businesses would not have prevented either of these. The source in the case of the Welsh outbreak was identified as a butcher (already operating under a licensing scheme) who was ultimately responsible for supplying contaminated meat, and in Germany, an organic vegetable farm was pinpointed as the origin of the problem. The food hygiene rating in a restaurant relates purely to compliance with food hygiene legislation and represents a "snapshot" based on an inspection at a given moment in time, and in neither case would hygiene ratings of restaurants have prevented the outbreaks and their consequences.

#### **2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.**

While we accept that it is not the Welsh Government's intention to depart significantly from the FSA Scheme in establishing a statutory food hygiene rating scheme for Wales, unfortunately the Bill will introduce additional requirements and mechanisms which do not form part of the voluntary national scheme.

Once legislation is introduced, then it will also be possible in the future to adapt the scheme further, which would cause further issues for businesses, particularly those operating across borders, and could also give rise to confusion amongst consumers. In our response to the Welsh Government's consultation earlier this year, we requested that should a statutory food hygiene rating scheme be introduced in Wales, that it should be in accordance with the requirements of the voluntary national scheme, to avoid imposing additional burdens on businesses and local authorities.

### **3. Are the sections of the Bill appropriate in terms of introducing a statutory food hygiene rating scheme in Wales? If not, how does the Bill need to change?**

We welcome a number of the amendments which have been made to the Bill following the public consultation, particularly with regard to the timescales for appeals and the clarification of the provisions relating to the right to reply. However, overall, the proposals will still create additional bureaucracy, penalties and costs for businesses.

We remain concerned about the following sections of the Bill in particular, which we also highlighted in our response to the Welsh Government:

#### **1 - Overview**

We do not support Clause 1(6) and Clause 1(7) in particular since these requirements depart from the national scheme and will create burdens on businesses, which we simply do not believe are necessary. We would prefer that the national voluntary scheme is given sufficient time to become established, and that some form of national evaluation of its impact is carried out before any consideration is given to introducing the scheme on a statutory basis. While we support the scheme itself, and in the interests of consistency, would accept that it could be made compulsory across local authorities in Wales, we believe that it would be better to retain the flexibility for businesses with regard to display of the signage and avoid imposing unnecessary burdens.

Technology is also constantly moving on, and the assumption in the Explanatory Memorandum is short sighted, as it does not appear to recognise that the situation with regard to internet usage and access to smart phones will be very different in just a few years time, even among those aged over 65, and that the web-based ratings will be even more widely available. This is not, in our view, sound evidence upon which to introduce a statutory requirement affecting over 3,000 pub businesses in Wales, which will have a lasting effect.

#### **4 – Rating Criteria**

We believe that the rating criteria and the scoring system should be a matter for guidance rather than primary or secondary legislation. A consistent approach to rating, as detailed in the FSA brand standard for the national scheme, is crucial to ensuring fair treatment for businesses and securing the credibility of the scheme. Prior to the development of the national brand standard, businesses were subject to inconsistent inspection criteria, which were not based on legal compliance with food hygiene law, but went beyond this to include a level of good practice which many smaller businesses were simply unable to achieve and which precluded them from achieving the top rating, even though they were legally compliant. The Food Hygiene Rating Scheme must remain a legal compliance scheme, and the Bill should reflect this and not introduce any scope to depart from this approach and gold-plate existing legislation.

## 7 – Requirement to display food hygiene rating stickers

As stated above, we do not support any mandatory requirement for the display of the FHRS sticker. We believe that it would be better to retain the flexibility for businesses with regard to display of the signage and avoid imposing unnecessary burdens. In our view, the level of display of the FHRS stickers nationally has made good progress considering the relatively short time that the scheme has been running (since November 2010), and especially as a significant number of local authorities (including London Boroughs) have only agreed to come on board with the national scheme in recent months, following an arrangement between the FSA and Transparency Data on the website platform for ratings. We were confident that the overall percentages for signage display would have increased over the coming months due to this important development.

As with any voluntary system, it is inevitably that not everyone will join in; in this case not all businesses will choose to display their rating, especially if it is below three stars. Feedback from our membership suggests that even companies achieving the top rating choose not to display the score for various reasons, not least because there are a number of other signs and stickers that are also jostling for priority space in pubs, such as National Pubwatch stickers, Unit Awareness Information, Best Bar None, local or national food awards, Good Beer Guide, BII etc). Sometimes, there are also aesthetic reasons for not displaying the stickers, as the design of the stickers does not always sit well with corporate branding.

However, the fact that the food hygiene ratings now reflect legal compliance rather than gold plating food hygiene law has meant that businesses have been increasingly happy to display their scores, and this will continue to grow over time.

Another relevant factor is that the voluntary FHRS in England and Wales is more complex in structure due to the six rating tiers compared to Scotland where there is a simpler approach which means businesses either pass their inspection or are rated as “improvement required”. While a requirement to display the stickers would not have a detrimental effect on those venues achieving a three, four or five star rating, previous consumer research by the Food Standards Agency has indicated that those venues with ratings of less than three stars could see a dramatic fall in custom, despite the fact that they are still compliant with food hygiene law, but could improve overall practice. The mandatory requirement will force such businesses to display their rating and as a result they could potentially lose trade, even though they are still legally compliant. Where a food business is not compliant with food hygiene law and poses a danger to public health, enforcement officers should, of course, close that outlet down.

In our view, in the event of a statutory scheme being introduced in Wales or in any of the UK regions, serious consideration should be given to legislating along the lines of the Scottish model which is simpler and fairer for both businesses and consumers.

The Association successfully petitioned against the proposals contained in the recent 10<sup>th</sup> London Local Authorities Bill which proposed the compulsory display of food hygiene ratings, on the grounds that this would create further legislative burdens on businesses which would undermine the efforts of the Food Standards Agency to reduce such burdens as part of its Simplification Plan,

and pre-empt the development of the voluntary national scheme. The House of Commons Committee supported our position, removing the requirement from the Bill.

We firmly believe that it is unacceptable to seek to codify something in law which is in need of further refinement and has not, as yet, been subject to proper evaluation. We remain concerned that the Welsh Government's proposals will result in enforcement efforts being diverted away from promoting good standards of compliance with food hygiene law, with enforcement officers focusing instead on the minutiae of valid stickers being properly displayed.

## **9 – Offences**

We remain concerned about the creation of unnecessary bureaucracy and burdens on catering businesses such as the introduction of the proposed offences under law for failing to display valid food hygiene rating stickers, in the right place etc. These are minor failings, best dealt with by a good enforcement regime and dialogue with businesses. We are also disappointed that an additional offence has been introduced for failing to comply with a request by a person to be informed verbally of the food hygiene rating.

It is not clear how this would be enforced, and it also has the potential to be anecdotal and therefore difficult to prove. It could put operators at risk of vexatious or fictitious claims against them which they would equally find difficult to defend.

The removal of the requirement for businesses to display the stickers would negate the need to create a range of offences and fines, which ultimately will place unnecessary administrative and financial burdens on businesses.

## **12 – Payment of the costs of re-rating**

This was not proposed by the Food Standards Agency (FSA) in its original consultation on “Scores on the Doors” in 2008 and the issue is still under discussion with the FSA in respect of the national voluntary scheme. The FSA has developed a robust national framework in the interests of consistency and transparency of operation and we do not think that the Bill should be going beyond the parameters set by the national scheme in this respect.

We have previously suggested to the FSA that it should provide guidance to local authorities setting out the circumstances in which re-inspections, re-visits, and documentary evidence would generally be acceptable.

In the absence of any legal framework, local authorities are able to retain an element of discretion to extend this to circumstances not specified in any guidance from the Agency. A mandatory food hygiene rating scheme in Wales will undermine the voluntary national scheme and leave no room for local discretion on the part of local authorities.

## **19 – Penalties**

We remain very much opposed to the introduction of fines for what are essentially minor misdemeanors involving the display of food hygiene rating stickers.

A Level 3 fine (£1,000) is excessive in view of the type of offences outlined in Clause 9, and we suggest that a maximum fine at Level 1 (£200) would be a sufficient deterrent for catering businesses, the vast majority of which are SMEs. It appears that the proposals have taken the current position in relation to the display of smoking signage as its benchmark. The BBPA has always maintained that the penalties in respect to failing to display the correct “No Smoking” signage are too high, and indeed questioned the need to require this signage once the legislation was firmly established. Following the Government’s “Red Tape Challenge” last year, we are delighted that the Government is now reviewing the need for “No Smoking” signage, and we are hopeful that this particular burden, and the related penalties, will be repealed. It follows, therefore, that the existing rules around “No Smoking” signage are not a suitable template for these penalties.

## **20 – Fixed penalties**

We do not support the introduction of Fixed Penalty Notices (FPNs) and comment further on this issue in relation to the Schedule to the Bill (below).

## **21 – Use of fixed penalty receipts**

We do not support the provision that, in the event of FPNs being introduced, the receipts should be paid to the Welsh Ministers to retain for the improvement of food hygiene in Wales. We do not think this would be the most efficient use of funds, and would prefer the Bill to allow receipts to be retained by local authorities in order to focus locally on those premises which would benefit from more intensive support.

## **Schedule (Section 20) – Fixed Penalty Notices**

As stated above, we do not support the introduction of FPNs, but in the event that they are introduced, we do not support the proposed fine of £200, with a discounted penalty of £150 if the FPN is paid within a certain period.

This is far too high, given the nature of the offences it will cover. Current FPNs for traffic offences such as speeding, traffic light contraventions, failing to comply with yellow box junctions and no right/left turns, are £60 plus three points on the driving licence of the individual concerned. These offences are more serious than the failure to display a sticker, and yet the fine is much less. Similarly, FPNs for disorder are currently set at £50 for lower tier offences and £80 for higher tier offences. Again, we would argue that these cover more serious offences, but attract a lower rate. Parents who fail to ensure their child attends school regularly can be issued with FPNs for truancy which range from £50 to £100.

Again, the reference point for the FPN level is probably the offences related to “No Smoking” signage, but as we have pointed out above, this is not appropriate as the Government is currently committed to reviewing this in the light of its drive to reduce burdens on business.

In the event FPNs are introduced, then we suggest that they should be in the region of £50 with a reduction of 25% for early payment. If they are set any higher than this, then early payment should reduce the fine by 50%, as is the case with parking fines for example.

**4. How will the proposed Measure change what organisations do currently and what impact will such changes have, if any?**

As previously stated, businesses which do not currently display the FHRs stickers will need to do so, and, as far as pubs are concerned, may have to do so at the expense of displaying signage for other initiatives. Businesses will have to manage the display of the sticker, ie. ensure that it is displayed and has not fallen down, that it is in date, properly visible and so on. In the event of issues arising with managed venues, companies may also need to provide additional staff training and introduce disciplinary procedures in the event of offences being committed at unit level. Again, as referred to above, those businesses with lower ratings will be forced to display their stickers and may suffer detriment to trade, despite still being compliant with food hygiene legislation.

**5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

The Food Standards Agency considered a report on the “Food Hygiene Rating Scheme and Food Hygiene Information Scheme – increasing provision of information to consumers on the hygiene standards of food premises” at its open meeting on Tuesday 22 May, and agreed that:

- a mandatory approach to display of ratings/inspection results will strengthen the FHRs and FHIS and increase their potential to improve public health protection; and
- the FSA, in consultation with other relevant Government Departments and with stakeholders, should assess the impact of introducing parallel legislation to give a statutory basis to the FHRs/ FHIS in England, Northern Ireland and Scotland once local authority uptake of the schemes is complete.

We believe it would be sensible for the Food Hygiene Rating (Wales) Bill to be part of this overall review, in order to ensure a co-ordinated approach to the introduction of any resulting legislation which will safeguard the consistency of the national scheme.

The Association believes it is essential that the Welsh Assembly consider the potential burdens on the tens of thousands of small catering businesses that the introduction of a statutory FHRs will impose, in the context of the Government’s public commitment to reduce such burdens following the “Red Tape Challenge” last year. In the event that legislation is introduced, then consideration must also be given to removing burdens elsewhere, as part of the “one in, one out” principle.

**Powers to make subordinate legislation**

**6. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?**

Notwithstanding our concerns about the Bill per se, we agree with the powers in the Bill enabling secondary legislation. We remain concerned about any amendment of the definition of “food business establishment” (Clause 2(6)(a)) as explained above.

## **Financial Implications**

### **7. What are your views on the financial implications of the Bill?**

The Association does not agree with the preferred Option 4 as detailed in Regulatory Impact Assessment, contained in Part 2 of the Explanatory Memorandum, and remains opposed to proposals to introduce a mandatory food hygiene rating scheme in Wales. We believe that this will undermine the voluntary national scheme, which has been developed by the Food Standards Agency in collaboration with local authorities and business representatives, including ourselves.

The voluntary national scheme has been the positive result of a successful partnership, resulting in an initiative which has wide ranging support, even from local authorities who had initially wanted to continue with their own “scores on the doors” schemes. The fact that the food hygiene ratings now reflect legal compliance rather than gold plating food hygiene law has meant that businesses are increasingly happy to display their scores.

Our preference is for Option 2, which we believe would drive up food hygiene standards, as this would become a point on which businesses would have to compete more than they do currently. Much more could be done to raise consumer awareness of the purpose of food hygiene ratings, as we believe that there is still a tendency on the part of some consumers to confuse the ratings with “quality” as opposed to legal compliance with food hygiene law. We would certainly like to see more work done on consumer understanding of the scheme. The aims of Consumer Focus Wales could also be met through greater consumer awareness of the voluntary national scheme, increasing the demand for food hygiene ratings to be displayed at premises.

The original consultation on the RIA stated in paragraph 22 that of the 13,500 food businesses in Wales which have a food hygiene rating, 3,000 have a score of less than “3” and are therefore less likely to be displaying their scores. This is just 22% of the total number of businesses. It should be possible to target this minority and work with them to raise their food hygiene standards to a level where they would be happy to display their score voluntarily. Where businesses have received higher scores but have not displayed them, there is no consumer detriment which would justify the introduction of mandatory display of food hygiene ratings. We are concerned that a Bill of this nature has been introduced to target an increasing minority of premises.

Compared with the current voluntary national scheme which is working well, we are naturally concerned at the imposition of any costs as a result of these proposals. It is difficult to assess whether the projected £690,000 for re-visits (Summary Table of additional costs of Option 4) is an

accurate assessment of the costs on food businesses, the vast majority of which are SMEs, but it is clear that business is shouldering half of the overall costs, the remainder being shared across local authorities, the FSA and the Welsh Government. We would suggest that these are costs that could be avoided in the spirit of the Government's commitment to reducing costs on businesses.

The RIA does not appear to take into account the costs of the associated bureaucracy that will also be introduced as a result of a mandatory food hygiene rating scheme in order to avoid committing an offence and receiving the associated penalty.

This will require businesses to monitor the state of their stickers to ensure their display remains valid, to put measures in place to raise staff awareness and introduce structures for possible disciplinary action. These additional burdens are difficult to quantify, but exist nonetheless.

## **Other comments**

### **8. Are there any other comments you wish to make about specific sections of the Bill?**

We would take this opportunity to make additional comments about the following sections of the Bill:

#### **2 – Programme of food hygiene inspections**

We understand the rationale behind the decision to include businesses that supply food to other businesses within the scope of the scheme, but would take this opportunity to repeat our original observation that in many cases these will already be governed by other legislation requiring high standards of hygiene, such as the licensing regime for butchers for example.

We do not support the proposal in Clause 2(8)(a) which would allow for definitions of "a food business establishment" to be altered, since this has the potential to lead to further divergence between the voluntary national scheme and the statutory Welsh scheme which would not be helpful to either business or consumers.

#### **13 – Duties of the Food Standards Agency**

We note the requirement for a formal evaluation of the FHRs within three years of the commencement of the scheme, and subsequently every three years. We would reiterate our concern that such a formal evaluation of the voluntary national scheme should have been carried out prior to the consideration of any statutory requirement.

#### **16 – Power of entry**

We question the need for this clause. The food hygiene rating is ultimately the outcome of a food hygiene inspection, which is facilitated under existing food hygiene law. There should be no need for any separate power in this Bill to enable enforcement officers to enter food business establishments for the purpose of producing a food hygiene rating or re-rating (the latter being likely to have been requested by the food business in the first

place). We are concerned, therefore, that the inclusion of these requirements risk gold-plating existing requirements.

**17 – Obstruction of authorised officers**

**18 – Offences by bodies corporate**

We reiterate our concerns about potentially gold-plating existing legislation, as per Clause 16 above.

BBPA/RK  
28.06.12