

# **Bill Summary** Food Hygiene Rating (Wales) Bill

June 2012

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**Enquiry no:** 12/1563

# **Bill Summary**

## **Food Hygiene Rating (Wales) Bill**

June 2012

Philippa Watkins, Jonathan Baxter,  
Hannah Johnson and Alys Thomas

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# Food Hygiene Rating (Wales) Bill

## 1. Introduction

**Introduction date:** 28 May 2012.

**Member in charge:** Lesley Griffiths AM, Minister for Health and Social Services.

**Assembly Committee undertaking Stage 1 scrutiny of the Bill:** Health and Social Care Committee which has launched a consultation on the Bill. This closes on 29 June 2012.<sup>1</sup>

**Stage 1 reporting deadline:** 16 October 2012

The *Food Hygiene Rating (Wales) Bill* will make it compulsory for food businesses in Wales to display information on their hygiene standards (their food hygiene rating) in a position where it can easily be seen by customers.

A voluntary scheme was introduced in October 2010. It provides food businesses with a rating from between 0 (urgent improvement necessary) to 5 (very good) based on their compliance with food law requirements. The Bill will require food businesses to display their food hygiene rating and local authorities to enforce the mandatory scheme in their area and ensure ratings are correctly displayed.<sup>3</sup>

## 2. Current Legislation

The *Food Hygiene Rating (Wales) Bill* falls within Schedule 7, Part 1, paragraph 8 to the *Government of Wales Act 2006*. Paragraph 8 ('Food') provides legislative competence in respect of food and food products, food safety and the protection of interests of consumers in relation to Food.

Current legislation in Wales relating to food hygiene is:

*The Food Hygiene (Wales) Regulations 2006*<sup>4</sup> ('the Regulations') as amended is the key piece of legislation which governs food hygiene in Wales, and gave effect to the provisions of the EU food hygiene regulations, the most relevant ones being:

- Regulation (EC) 852/2004 on the hygiene of foodstuffs;

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<sup>1</sup> National Assembly for Wales, *National Assembly Committee for Wales opens consultation of Food Hygiene Rating (Wales) Bill*, Press Release, 29 May 2012 [accessed 30 May 2012]

<sup>2</sup> Business Committee, *Report on the timetable for the consideration of the Food Hygiene Ratings (Wales) Bill*, May 2012 [accessed 30 May 2012]

<sup>3</sup> Welsh Government, *Legislation pages, Food Hygiene Rating (Wales) Bill* [accessed 30 May 2012]

<sup>4</sup> *The Food Hygiene (Wales) Regulations 2006*, SI 2006/31 (W.5) [accessed 16 May 2012]

- Regulation (EC) 853/2004 on the specific hygiene rules for food of animal origin;
- Regulation (EC) 854/2004 on the specific rules for the organisation of official controls on products of animal origin intended for human consumption.

### 3. Background

#### 3.1. Policy Context

September 2005 saw the largest ever outbreak of *E. coli* O157 in Wales and the second largest in the UK. There were more than 150 cases, most of whom were children. Thirty one people were admitted to hospital and a five year old child, Mason Jones, died.

Following the outbreak, the First Minister for Wales commissioned a public inquiry headed by Professor Pennington which reported on 19 March 2009 and made 24 recommendations.<sup>5</sup>

In June 2010 Professor Pennington addressed the National Assembly for Wales' Health, Wellbeing and Local Government Committee who were reviewing the implementation of his report. He suggested that a food hygiene rating scheme would be an inexpensive way of driving improvements in food safety:

**Lorraine Barrett:** Could any actions be taken to improve food hygiene services and to make them more effective that do not require any additional funding? Is it more or less a case of more funding being needed or are there basic things—or anything—that could be done without extra funding?

**Professor Pennington:** That is a difficult question to give a simple answer to. There has been a lot of discussion about scores on the doors, for example, as a public manifestation to the consumer that someone is running a safe business. There must be a funding implication in rolling that out, but not a large one, because it is based on what is already happening. It is basically a question of bringing together information that is already gathered and then putting it out into the public domain. That sort of initiative has the power behind it to significantly improve food safety in terms of businesses such as restaurants and so on and shops selling food, because the public can see what it is getting. That is still in development, but the sooner we get on with it the better. We need a really good, solid system that the public understands and that does not just depend on someone going on the web. That information would be visible when you went into a shop, and that would not be an expensive way of driving quite significant improvements in food safety.<sup>6</sup>

In his legislative statement in July 2011 the First Minister stated that he would be introducing legislation that would:

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<sup>5</sup> [Welsh Government, E.Coli Inquiry webpage \[accessed 30 May 2012\]](#)

<sup>6</sup> [HWLG Committee, RoP, 10 June 2010 \[accessed 30 May 2012\]](#)

Will allow the Welsh Government to make mandatory arrangements for a simple public health measure to give consumers easily understood at-a-glance information on the hygiene standards of a food business so they can make better informed choices about where they eat or shop.<sup>7</sup>

A ***Draft Food Hygiene Ratings (Wales) Bill*** was launched on 14 September and put out to consultation. The consultation closed on 7 March 2012.<sup>8</sup>

### *3.2. Food Standards Agency*

The **Food Standards Agency (FSA)** was established in 2000, and is an independent UK non-Ministerial Government Department whose functions include advising Ministers and other public bodies in each of the UK administrations on food matters.

There are differences in the remit of the Food Standards Agency in the various countries of the UK. In Wales responsibility for all nutrition and healthy eating issues has transferred to the Health Department but responsibility for general food labelling and composition issues remains with the Food Standards Agency.<sup>9</sup>

The specific work of the FSA in Wales is funded by the Welsh Government. The FSA in Wales's annual budget for 2011-2012 was set at £3.242m.

### *3.3. Food Hygiene Rating Scheme*

In 2008, the FSA undertook a consultation on proposals to establish a **UK-wide 'Scores on the Doors'** scheme on hygiene standards in food businesses. The aim of the consultation was to seek comments on the proposals for establishing a UK-wide scheme to provide consumers with information. Following the consultation, the scheme was renamed the '**Food Hygiene Rating Scheme**'.

The Food Hygiene Rating Scheme ('the FSA scheme') helps consumers choose where to eat out or shop for food by giving them information about the hygiene standards in restaurants, cafés, takeaways, hotels, pubs and food shops. Ratings are also given to schools, hospitals and residential care homes. The FSA scheme was launched in **Wales** in **October 2010**.

Each business is given a 'hygiene rating' when it is inspected by a food safety officer from the relevant local authority. The hygiene rating shows how closely the business is meeting the requirements of food hygiene law.

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<sup>7</sup> [RoP, 12 July 2011 \[Accessed 30 May 2012\]](#)

<sup>8</sup> [Welsh Government, \*Draft Food Hygiene Ratings \(Wales\) Bill, Consultation\* \[accessed 30 May 2012\]](#)

<sup>9</sup> Food Standards Agency, [Director Wales Report to Board](#), September 2011 [accessed 16 May 2012]

The rating for each premise is published on a national website<sup>10</sup>, and a sticker and certificate is provided for display in the premises. The display by food business owners of their food hygiene rating in their premises is currently **voluntary**.

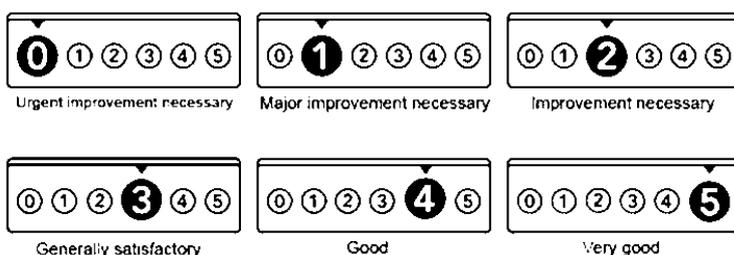
The *Food Hygiene Rating (Wales) Bill* will make the display of these ratings **mandatory**.

The food safety officer inspecting a business checks how well the business is meeting the law by looking at:

- how hygienically the food is handled – how it is prepared, cooked, re-heated, cooled and stored;
- the condition of the structure of the buildings – the cleanliness, layout, lighting, ventilation and other facilities; and
- how the business manages and records what it does to make sure food is safe.<sup>11</sup>

At the end of the inspection, the business is given one of the six ratings. The top rating of '5' means that the business was found to have 'very good' hygiene standards. Any business should be able to reach this top rating.

A business can be given one of the following hygiene ratings:<sup>12</sup>



The food safety officer will explain to the person who owns or manages the business what improvements are needed and how they can achieve the top rating of '5'. The local authority will check that these improvements are made.

### 3.4. Mandatory display of scores

Calls for the display of **hygiene ratings to be mandatory in Wales** have been made by Consumer Focus Wales in their second annual report on *Protecting Consumers from E-coli 0157*, published in March 2011. The report states that:

**Wales is well placed to be the first country in the UK to make display of hygiene ratings mandatory.** All 22 Welsh local authorities have committed to take part in the scheme, while many in England and Scotland have not yet signed up.

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<sup>10</sup> <http://ratings.food.gov.uk/>

<sup>11</sup> Food Standards Agency website: [Find out more about food hygiene ratings](#) [accessed 8 November 2011]

<sup>12</sup> Image source: [Food Standards Agency website](#)

We have taken legal advice which states that, as a result of the referendum on 3 March, the National Assembly for Wales now has the power to change the law to make display mandatory.

The Welsh [...] Government should introduce an Act of the Assembly to require food businesses to display hygiene ratings **on business premises**.<sup>13</sup>

The FSA discussed their response<sup>14</sup> to Consumer Focus Wales's report and its 18 recommendations at a board meeting in September 2011.

### 3.5. *Participation in the FSA Scheme*

**All 22 local authorities in Wales are participating voluntarily in the FSA Scheme** and of the approximately 30,000 food businesses in Wales, over 13,500 have been rated so far.

However, not all food businesses that are given a food hygiene rating currently display them at their premises. An evaluation undertaken on behalf of the FSA has showed that **low scoring businesses are reluctant to display their score**.<sup>15</sup> This means that the only way to find out the score of a business is to visit the FSA's national website where all local authority business scores are displayed. The Welsh Government sees two problems with this:

(a) We know that just over 30 percent of people in Wales do not use the internet; for those aged 65 and over, this figure is 73 percent. Therefore for people who do not use the internet, finding out a food hygiene rating via the FSA website is not an option.

(b) Many people do not plan where they will eat but decide spontaneously. In these cases, access to the internet may not be either possible or practical and therefore if a food hygiene rating is not displayed at the premises, consumers may have no way of accessing this information before they choose where to eat or buy food.<sup>16</sup>

## 4. The Bill

The *Food Hygiene Rating (Wales) Bill* will create a compulsory food hygiene rating scheme for food businesses in Wales. This will be broadly based on the Food Standards Agency's current food hygiene rating scheme ('the FSA scheme'), which has been widely adopted but is, at present, voluntary.

The Welsh Government considers that requiring food hygiene ratings to be displayed at food business establishments where they can be seen easily by consumers is the most effective and straightforward way of ensuring that

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<sup>13</sup> Consumer Focus Wales, *Protecting consumers from E-coli O157*, March 2011 [accessed 8 November 2011]

<sup>14</sup> Food Standards Agency, *Responding To The Second Annual Report Of Consumer Focus Wales: Protecting Consumers From E. Coli O157*, September 2011 [accessed 8 November 2011]

<sup>15</sup> Evaluation of Scores on the Doors: Final Main Report for the FSA (March 2008) Greenstreet Berman.

<sup>16</sup> Welsh Government, *Consultation document - Proposals for a Food Hygiene Rating (Wales) Bill*, December 2011 [accessed 15 May 2012]

consumers have equal access to information about the food hygiene standards of food businesses in Wales.

#### 4.1. *Clauses*

##### **Clause 1 – Overview**

This clause provides introduces of the key provisions in the Bill. The Bill has **26 clauses** and **1 Schedule**.

##### **Abbreviations**

FSA – the Food Standards Agency

FPN – fixed penalty notice

“rating” – the food hygiene rating

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

This clause requires food authorities in Wales (local authorities and port authorities) to prepare programmes of inspections of food business establishments in their areas in order to assess the hygiene standards of those establishments. In preparing a programme of inspections the food authority must have regard to the matters specified by the FSA and approved by the Welsh Ministers.

##### **Clause 3 – Food hygiene ratings**

On the basis of the assessment made on an inspection, the food authority is required to produce a rating, scored against the rating criteria published by the FSA.

The food authority must send to the operator of the establishment :

- (a) written notification of the rating;
- (b) a written statement of the reasons for the rating;
- (c) a food hygiene rating sticker (the form of the sticker is to be prescribed in regulations); and
- (d) any other information which may be set out in regulations.

The notification, statement, sticker and information must be sent within 14 days of the inspection by the food authority.

The rating ceases to be valid if the food business establishment receives notification of a new food hygiene rating, or when there has been a transfer of ownership or closure of the food business establishment.

#### **Clause 4 – Rating criteria**

This clause requires the rating criteria (published by the FSA under clause 13(b)) to include a system to score a food business establishment's hygiene standards.

#### **Clause 5 – Right of appeal**

This clause provides the procedure for an operator of a food business establishment to appeal against a rating given to the establishment, and the grounds upon which such an appeal may be made.

The operator has 21 days to appeal, from the date the rating notification is received. A food authority must decide the appeal (and a further inspection can be carried out in order to consider the appeal), and send the operator notification of its decision.

- 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.
- Appeals must be decided within 21 days of being received by the food authority.

#### **Clause 6 – Notification and publication of food hygiene ratings**

This clause requires a food authority to inform the FSA of the ratings that it has awarded to food business establishments in its area, and sets out timescales within which this must be done. The FSA must then publish those ratings on its website.

#### **Clause 7 – Requirement to display food hygiene rating stickers**

This clause provides that when the operator of a food business establishment has received notification of its rating from the food authority, the operator has 21 days until they must display the sticker at the food establishment.

#### **Clause 10 – Right to reply**

During the period that the rating is valid, the operator of a food business establishment is given the opportunity to comment (in writing) to the food authority on the establishment's rating. Any comments received by the food authority under this clause must be forwarded to the FSA, who may publish the comments on their website with the food business establishment's rating.

### **Clause 11 – Food hygiene re-ratings**

The operator of a food business establishment may request the food authority to carry out a re-rating assessment for the purpose of considering whether to change a rating. If the conditions set out in this clause are met, (including the requirement that the operator has paid the reasonable costs of the re-rating) the food authority must carry out an inspection no later than three months after the food authority received the request.

If the re-rating results in a change to the rating, the food authority must issue the revised rating to the operator within 14 days. Alternatively where no revised rating is to be issued, the operator must be notified of that within 14 days of the completion of the inspection.

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

This clause sets out the general duties of the FSA in relation to the food hygiene rating scheme.

### **Clause 14 – Other powers and responsibilities of food authorities**

This clause provides that when a food authority registers, or receives an application for approval from a new food business establishment, it must send information (to be prescribed by the Welsh Ministers in regulations) to the operator within 14 days.

### **Clause 15 – Other responsibilities of operators of food business establishments**

This clause requires an operator of a food business establishment to provide information and all reasonable assistance to the food authority to enable it to produce a food hygiene rating for the establishment and to exercise its other functions under the legislation.

### **Clause 16 – Power of entry**

This clause provides an authorised officer of a food authority, on production of written authority, with power of entry to a food business establishment for specified purposes to do with the Bill.

### **Clause 17 - Obstruction of authorised officers**

### **Clause 18 - Offences by bodies corporate**

This clause provides that where a body corporate (such as a company, or any other body incorporated by statute) commits an offence under this Bill a director, manager or secretary of that body (or anyone purporting to act in any such capacity) will also be guilty of an offence in circumstances where they are found to be personally culpable.

### **Clause 19 – Penalties**

This clause provides that offences under this Bill are triable in the Magistrates Court and punishable by a fine not exceeding level 3 on the standard scale (currently £1,000).

### **Clause 20 – Fixed penalties**

This clause enables an authorised officer of a food authority to issue a fixed penalty notice (FPN) to a person they have reason to believe has committed an offence under the Bill. An authorised officer may offer that person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty. If the fixed penalty is not paid, the food authority retains the power to prosecute.

### **Clause 22 – Guidance**

This clause enable the Welsh Ministers to issue guidance to food authorities in relation to the exercise of their functions under the Bill. The food authority must have regard to this guidance.

### **Clause 24 – Regulations**

This clause provides general arrangements for making orders and regulations under this Bill.

### **Schedule 1 – Fixed penalty notices**

Part 1 of Schedule 1 sets out the procedure for fixed penalty notices and the level of fixed penalties payable in respect of an offence under the Bill. Paragraphs 1 and 2 provide that the FPN should be £200 to be paid in 28 days, with a discounted penalty of £150 if the FPN is paid within 14 days. The Welsh Ministers may make regulations to prescribe a different amount for the penalty or the discounted penalty.

Part 2 of Schedule 1 makes provision in relation to the form and content of fixed penalty notices.

#### *4.2. Timetable*

There are no specific requirements for the Bill to be passed within a certain timescale. Provided the Bill is passed by the National Assembly for Wales, the proposed timescales for implementation of this new legislation is:

- Royal Assent is anticipated in March 2013.
- The Government anticipates that the new statutory scheme will be in place in November 2013.
- Guidance will be developed and issued to coincide with the coming into force of the scheme.

### 5. Response to the Bill

The Minister for Health and Social Services, Lesley Griffiths AM made a legislative statement to Plenary on 29 May 2012 in which she stated:

While my main objective is to provide information on hygiene standards to consumers, I intend for the Bill to be fair to food businesses. Although they will be required to display their food hygiene rating, the Bill provides a food business operator with a right to appeal their establishment's rating and also the right to comment upon it. These comments will be published on the FSA website for consumers to see.<sup>17</sup>

She concluded:

I believe that the Food Hygiene Rating (Wales) Bill will introduce a simple but effective public health measure that will empower consumers and help to improve food hygiene standards. I look forward to working with Assembly Members and others with an interest in the food hygiene rating scheme in scrutinising the Bill.<sup>18</sup>

While welcoming the Bill, Conservative spokesperson Darren Millar AM flagged up some possible loopholes:

There are a number of issues I want to raise with you, Minister. There is a need to ensure that there is consistency in the way the hygiene rating system works across Wales so that if someone gets a rating of 4 or 5 in Cardiff, it is done in the same way as a 4 or 5 might be applied to a business in Conwy or elsewhere. We need some confidence that the regulatory regime will be applied in a fair and consistent way. I would be grateful if you could tell us, at this reasonably early stage, what work you have done with your officials to ensure that that is the case.

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<sup>17</sup> [RoP, 29 May 2012 \[accessed 31 May 2012\]](#)

<sup>18</sup> [RoP, 29 May 2012 \[accessed 31 May 2012\]](#)

I welcome the fact that you have attempted to catch all food-related businesses, but many businesses from which people purchase their food in Wales may well be based outside of Wales. What action are you able to take to safeguard the people of Wales from poor food hygiene standards elsewhere in the United Kingdom or overseas? Another area that needs to be considered is the takeaway market in Wales. Many takeaways offer food delivery services and access to a food hygiene rating will not be readily available to consumers if they are ordering food over the telephone. I wonder whether there ought to be some form of disclosure to consumers in the case of orders over the telephone to takeaways.<sup>19</sup>

Plaid Cymru spokesperson, Elin Jones AM, also supported the aims of the Bill but like Darren Millar, also identified areas where greater clarity might be needed:

There are three particular fields that I would like to ask questions about. First, the score from zero to six is a sign of hygiene, but this measure is a little crude, and behind every score is a full hygiene report on every establishment that has been prepared by local authority officers, giving context and the reasons for that score. At the moment, in order to see that report, you have to make a freedom of information request to the local authority, and that is inadequate in the medium to long term. Therefore, will the Minister, as this legislation is introduced, also look at means of placing those reports on the internet, in the public domain, so that they are available to the public?

Secondly, the legislation will require that a sticker showing the score is put in a public place within the establishment. In my opinion, we should consider placing a sticker on the outside of the establishment as well as within. I share Darren Millar's concern about takeaway businesses. The Minister has responded to that in part, but the fact is that many people who buy takeaways do not go anywhere near the business itself to see what the score is—they often obtain information about that food from menus that are distributed from door to door. One option would be an obligation for the score to appear on those menus. That is an issue that could be considered as we scrutinise the legislation.<sup>20</sup>

Liberal Democrat, Aled Roberts AM, also voiced his group's support for the Bill and recognised that "quite a few amendments have been introduced as a result of the consultation period. That should be acknowledged as a strength of this Bill." He further stated:

However, there are issues with regard to dual-use facilities, in particular premises such as community centres, where a centre will not be involved in food preparation, but may be used by a number of organisations. There is some concern, from my experience in Wrexham, about the strength of regulations in certain circumstances, for example when a toddler group may use a community centre, followed by a luncheon club. My understanding is that, under the current regulations, both of those providers would need to be registered for those purposes. However, there is a question about how the regulations pan out as far as the

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

display of certificates by a number of voluntary organisations using the same premises is concerned.<sup>21</sup>

**Mick Antoniw AM stated:**

I have concerns around two areas, which will no doubt come up during the scrutiny process. During the very helpful technical briefing to the Health and Social Care Committee on this, the first area of concern that I had was with establishments with 0, 1 and 2 ratings. The answer given at the time was that those were establishments that would have significantly contravened food safety law and that the law does not allow for them to be closed down unless there is imminent risk of injury to health. I feel that there is a contradiction there—that you can significantly contravene food safety law and that there is a questions mark over whether that means that there is an imminent risk to health. So, I am concerned that we might be advertising a system that is saying that you take your life in your hands if you eat something at a particular establishment, but that that is okay with us. We need to be a bit cautious about that.

The bigger concern that I have, however, is about cross-border mobile vans. Mobile vans are covered in the legislation, and Welsh businesses will be required to comply and to register. When I raised the issue of what happens when vans come across the border, the answer was given that, on the mandatory aspect, the law cannot be enforced in Wales on someone who is trading from England and crossing over the border. That must be wrong. If there is a business in England that wants to trade in Wales, it should be covered by food standard regulations that apply equally to Welsh businesses. The alternative is that Welsh businesses that comply and pay the fees are disadvantaged compared with those across the border who do not have to pay the registration and do not have to maintain the standards and so on. I am not suggesting that there are dozens and dozens of mobile vans coming over solely with the intent of food poisoning the Welsh population, but I think that you get the point about the unfairness of the system. I did not accept at the time that it cannot be done and that we should wait until England decides that it is a good idea and does the same thing. This is something that has to be addressed in terms of fairness to those who are trading on the Welsh side. There are many large public events, we know that there are many cross-border exchanges, and, if we are going to say that there are certain standards that we are going to apply to Welsh businesses, someone wishing to come to Wales to trade should equally abide by those standards.<sup>22</sup>

Consumer Focus Wales, has been campaigning for the last three years to improve food hygiene standards, and assisted the Welsh Government in its consultation of the Draft Bill. It is, therefore, very supportive of the Bill. Liz Withers, Head of Policy for Consumer Focus Wales, said:

We warmly welcome the publication of this bill. We have campaigned for mandatory display on food hygiene ratings to provide better information to consumers and to help them make more informed decisions about where they chose to eat. These proposals provide a real opportunity to drive up standards in premises serving food and reduce food-borne illness.

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<sup>21</sup> [RoP, 29 May 2012 \[accessed 31 May 2012\]](#)

<sup>22</sup> [RoP, 29 May 2012 \[accessed 31 May 2012\]](#)

The over-whelming majority of people in Wales have told us they want a simple and transparent food hygiene standards system. For that to be effective there has to be mandatory display of food hygiene ratings. Under the current voluntary scheme, businesses with poor scores are hiding them away – keeping consumers in the dark. Mandatory display will give consumers the information they want, and the power to make safer choices about where they chose to eat.

Similar mandatory schemes that run in New York and Toronto have been successful and helped to drive up standards, whilst in Los Angeles there is evidence that the introduction of a mandatory scheme resulted in a 20 per cent decrease in people being admitted to hospital with food-borne illness.<sup>23</sup>

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<sup>23</sup> [Consumer Focus Wales, \*New food hygiene Bill can show Wales leading the way\*, Press Release, 28 May 2012 \[accessed 31 May 2012\]](#)