

Explanatory Memorandum to The Food Hygiene Rating (Promotion of Rating) (Wales) Regulations 2016

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food Hygiene Rating (Promotion of Rating) (Wales) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Vaughan Gething AM
Deputy Minister for Health

22 February 2016

1. Description

The Food Hygiene Rating (Promotion of Rating)(Wales) Regulations 2016 (“the Regulations”) require takeaway food businesses to display a bilingual statement on defined hard copy materials (e.g. menus and leaflets), directing the consumer to the food hygiene ratings website and encouraging the consumer to ask the food business for their rating. The Regulations also make provision for the voluntary use of food hygiene rating images and prescribing their format including the creation of offences and enforcement powers

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

It is intended that the Regulations will come into force on 28 November 2016, allowing an appropriate lead-in time for food businesses and local authorities.

3. Legislative background

The Welsh Ministers have power to make the Regulations under sections 10(1)(a), (2)(b), (3)(a) and (b) and (c), and 15(1) of the Food Hygiene Rating (Wales) Act 2013.

4. Purpose & intended effect of the legislation

The Regulations build on the requirements for the statutory food hygiene rating scheme established by the Food Hygiene Rating (Wales) Act 2013 and the Food Hygiene Rating (Wales) Regulations 2013, which set out the legal framework for the scheme, and the details of how it operates.

The Regulations fulfil a Ministerial obligation made as a result of discussions at the Health and Social Care Committee during the passage of the Food Hygiene Rating (Wales) Act 2013. Committee members wanted consumers who utilise menus and leaflets to order takeaway food to be able to ascertain the food hygiene rating of the food business before they order. It was considered that food businesses who use such materials should be required to print a statement directing the consumer to the rating via the food hygiene rating website, or to ask the food business for their rating.

The Regulations:

- define the types of food business to which the Regulations apply as takeaways.
- confirm that takeaways who produce hard copy publicity material as defined in the Regulations must display the following bilingual statement on their materials. The Regulations also prescribe the minimum font size:

“Ewch i food.gov.uk/ratings i ganfod sgôr hylendid bwyd ein busnes neu gofynnwch inni beth yw ein sgôr hylendid bwyd wrth archebu. / Go to food.gov.uk/ratings to find out the food hygiene rating of our business or ask us for our food hygiene rating when you order”.

- allow food businesses to voluntarily display their valid food hygiene rating on their hard copy publicity material in addition to the statement, prescribing the minimum size and graphic to be used.

The Regulations also create the following offences:

- Failure to display the statement in its prescribed form;
- If used, displaying an invalid (incorrect or fabricated) food hygiene rating or failure to display the rating graphic in its prescribed form.

The Regulations also create a power for food enforcement officers to issue fixed penalty notices, undertake prosecutions and remove materials for the purposes of investigation.

5. Consultation

A Consultation on the draft Regulations took place between 24 August and 13 November 2015 including local authorities, food businesses, and representative trade organisations. 22 consultation responses were received.

The responses were largely supportive of the proposals and contained a number of key themes:

- The principle of takeaway businesses including a reference to the food hygiene rating scheme on their hard copy publicity materials was agreed. Opinion on whether compliance should be based on a choice between an image or statement varied;
- The definition of takeaway food was generally agreed, though whether some variants of takeaway provision would be fully covered was queried;
- There was general agreement that the size of font for the statement, and the size and format of the image should be prescribed;
- The proposed offences and penalties were generally agreed, and some additional offences were suggested for consideration.

The main issue to be raised was whether the use of the image should be voluntary only, and whether voluntary use could be regulated as prescribed in the draft regulations. A number of other technical issues were raised by both food businesses and local authorities as to the practical application of the Regulations. These technical issues will be addressed in statutory guidance and did not require amendments to the Regulations themselves.

The following changes were agreed as part of the consultation exercise:

- **S1(3) definition of “takeaway food”:** Some of the consultation responses queried whether this definition would cover various order/delivery business models in the takeaway trade. The definition as it stood covered these scenarios but to ensure clarity, the definition was amended to specifically include the scenario of collection of food from a takeaway premises after it has been ordered remotely.
- **S.4(2)(a) specified font size** – wording was added to specify that the prescribed 9pt type size for the statement is the minimum font size to be used.
- **Regulations 3-5 the statement/image choice** - A number of the responders considered that compliance should be based on the use of the statement only and that FBOs should be able to use the image voluntarily. Regulations 3-5 have been amended so FBOs **must** display the statement as prescribed and **may** show the rating image in addition. If they do this, then the image **must** be their valid rating in the prescribed format. The offences have been amended accordingly to address failure to display the prescribed statement, and (if used), displaying an invalid rating or non-prescribed image.
- **Coming into force date** – the coming into force date for the Regulations was set at 28 November 2016 to allow an appropriate lead-in time for local authorities and food businesses.
- **Schedule 1** - the size of the image given in this schedule was found to be incorrect as the dimensions were missing the decimal points. The dimensions have been rounded.

An analysis of the consultation responses will be available shortly at

<http://gov.wales/consultations/healthsocialcare/food-hygiene-rating/?status=closed&lang=en>

THE FOOD HYGIENE RATING (PROMOTION OF FOOD HYGIENE RATING) (WALES) REGULATIONS 2016 REGULATORY IMPACT ASSESSMENT

1. Introduction

1. This Regulatory Impact Assessment aims to assess the impact of the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016 (“the Regulations”). The Food Hygiene Rating (Wales) Act 2013 (“the Act”) imposes a requirement for food businesses to display food hygiene ratings based on their compliance with food hygiene standards. This helps consumers to make informed choices about where to eat or shop for food. Food businesses are required to display their food hygiene rating and food authorities enforce this requirement.
2. Section 10 of the Act (promoting food hygiene ratings) enables Welsh Ministers, by regulations, to make provision about the promotion of a food business establishment’s food hygiene rating by an operator of the establishment or a person acting on the operator’s behalf. The regulations may impose duties upon an operator in relation to publicising the rating in material promoting the food provided by the establishment.
3. The Welsh Government previously consulted on a similar proposal in 2014 to include a statement on certain food businesses’ publicity material that made reference to where a consumer can view the food hygiene rating of that food business i.e. the food hygiene rating website and also encouraged the consumer to verbally request the rating from the food business operator. The consultation responses identified the following key points:
 - The statement as drafted was considered to be too formal, and could be better framed as a statement from the food business;
 - The scope of the regulations was considered to be too wide, with the potential to unintentionally cover food businesses who issued generic publicity materials, such as supermarkets.
4. The statement amended in light of the consultation responses is now less formal and worded as coming from the food business:

“Go to food.gov.uk/ratings to find out the food hygiene rating of our business, or ask us for our food hygiene rating when you order.”
5. We have further restricted the scope of the regulations for food businesses who prepare takeaway food to the specific order of the consumer for delivery or collection to be consumed off the premises. This definition is aimed to capture food businesses providing takeaway food for consumers that can be remotely ordered. A key reason for identifying this type of food business is the potential for consumers to order and obtain food without having the benefit of viewing a food hygiene rating e.g. home delivery of pizzas and other food or

to order food before collecting it at the premises.

6. More and more businesses are choosing to display their food hygiene ratings voluntarily on their publicity material. However, officials have been made aware of the actions of a small number of food businesses misrepresenting their food hygiene rating on their publicity material. It was originally considered that Trading Standards legislation could be used to address this kind of misrepresentation, but local authority officers are of the opinion that it would be difficult to prove the criteria required under that legislation to take legal action.
7. The revised regulations now require food business operators to publish a revised bilingual statement and allow the option of voluntary use of an image of their valid food hygiene rating on their hard copy publicity materials such as takeaway menus and leaflets. The statement amended in light of last year's consultation will refer consumers to the FSA website where the food hygiene rating for that food business can be viewed and encourage consumers to ask the business for its rating. This will ensure potential customers have the opportunity to view the food hygiene rating before deciding whether to purchase food from the establishment and placing an order remotely. The regulations create offences for the non display of the statement and where the food business chooses to display an image of the hygiene rating, failure to display a valid rating or prescribed rating image. Enforcement powers similar to those in the Act and a new regulatory power to seize a food business' non compliant material as evidence of a failure to comply with the requirements are included in the regulations.

2. The Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016

Background

8. The regulations:
 - Provide for hard copy publicity materials that promote takeaway food items, for delivery or collection to be consumed off the food business' premises, advertised for sale to the consumer which include a purchase price for the food items; and, a method for remote ordering, to carry a bilingual statement. The statement will refer consumers to the FSA website where the food hygiene rating for that food business can be viewed and will also encourage consumers to ask the business for their rating. They also prescribe the format for displaying an image of the valid food hygiene rating for the food business, should this be used.
 - Create offences for the non display of the statement and (if used) the display of an invalid image of their hygiene rating. Enforcement powers include the use of fixed penalty notices (FPNs) and the power to seize non compliant material if an authorised officer has grounds to believe the material may be evidence of a failure to comply with the regulations.

Reason for Intervention

9. The Regulations introduce powers that will ensure that consumers can see a statement or (if used) an image of a valid food hygiene on hard copy publicity material they might use to order food remotely. The statement will advise the consumer where they can find the food hygiene rating for that food business and encourage them to ask the business for the rating before placing an order for the food. This will provide the consumer with an opportunity to consider the hygiene rating and inform their decision about whether to place an order.

Policy Objectives

10. The objectives are to ensure:
 - A consumer ordering food remotely has an opportunity to obtain the hygiene rating for the food business and make an informed decision before placing an order;
 - Where a food business is not displaying the statement on specified hard copy material an offence takes place and the food authority has enforcement powers it may use to address such incidents;
 - If a food business chooses to display an image of a food hygiene rating, an offence is committed if it is not their valid food hygiene rating or in the specified format, and

- The implementation of the statutory scheme is as effective as possible.

Options

11. Option 1 - do nothing.
12. Option 2 - regulate for a bilingual statement to be displayed on all food businesses' hard copy publicity material and websites.
13. Option 3 - regulate for a statement and the voluntary use of an image of the valid food hygiene rating to be displayed on certain food businesses' hard copy publicity material. This option includes the creation of offences and enforcement action a food authority may take.

Option 1 - do nothing

14. There is a possibility consumers will order food remotely for home delivery (e.g. using a takeaway menu) without being aware of the food hygiene rating for that food business. Section 8 of the Food Hygiene Rating (Wales) Act 2013 provides for a relevant employee to comply with a request made by a person to be informed verbally of the establishment's food hygiene rating. However, consumers may not be aware of this requirement on a food business. There is currently a situation where a consumer can order food remotely without knowing the food business' food hygiene rating. The Welsh Government wishes to address this to strengthen and future-proof the statutory scheme. Therefore, the option to do nothing is not considered sufficient.

Option 2 - regulate for a bilingual statement to be displayed on all food businesses' hard copy publicity material and websites.

15. We consulted on the wider option of including a bilingual statement on websites and publicity materials directing customers to the FSA ratings website in 2013. Concerns were raised by food businesses about the extent to which a general requirement to display would impact on food businesses. There is no intention to introduce regulations to cover all websites but it is acknowledged that there would be some benefit in having a requirement on takeaway food business websites where you can remotely order food to include aggregate sites. The consultation document included a question to seek views on introducing similar requirements on the display of food hygiene ratings on certain food business websites in future. The option of having a wider requirement to display on all publicity materials goes beyond that required to meet our policy objectives and is therefore not appropriate.

Option 3 - regulate for a bilingual statement to be displayed on certain food businesses' hard copy publicity material and make provision for the voluntary use of an image of the valid food hygiene rating together with the creation of offences and enforcement powers. The preferred option as identified through the consultation process.

16. We wish to pursue regulations that would require food businesses who prepare takeaway food to the specific order of the consumer for delivery or collection for consumption off the premises to display a bilingual statement on hard copy publicity material that contain all of the following information:-

- takeaway food items advertised for sale to the consumer;
- a purchase price for the food items; and,
- a method of remote ordering.

This definition would catch specific publicity materials e.g. takeaway menus. This option enables the Welsh Government to target publicity material that are relevant to meeting its policy objectives but in doing so reduce the burden on food businesses.

17. We also wish to prescribe the format of the image of the food hygiene rating to enable food businesses to use it on a voluntary basis. We wish to create offences to cover the alteration or misuse of the image or the publication of an invalid rating by a food business on its publicity materials. This is to ensure that food businesses present only their valid rating in an official and recognisable format and that action can be taken for non-compliance.

3. Costs

18. This chapter contains the costs of the options detailed in Section 2.

Costs

Option 1 - do nothing

19. This option proposes no change and would therefore not incur any additional costs. This option is not considered sufficient as it does not meet Welsh Government's policy objectives.

Option 2 - regulate for a bilingual statement to be displayed on all food businesses' hard copy publicity material and websites.

20. The Welsh Government considers that there would be costs associated with this option that would fall to food businesses. The addition of a short bilingual statement in terms of costs is likely to be small provided that there was a sufficient lead in time for food businesses to plan for the introduction of the addition of a statement.

21. The introduction of such a requirement for all food businesses operating in Wales would raise the possibility of companies developing separate publicity materials for Wales. There would be a choice for food businesses to add the statement voluntarily to publicity material produced for use in England and Northern Ireland. However, the addition of a statement as proposed would not be appropriate for Scottish consumers where a pass or improvement scheme operates. Producing separate publicity literature for Wales could carry disproportionate costs. Food businesses identified this as an issue in the consultation exercise on the Food Hygiene Rating (Wales) Regulations 2013.

22. The benefits of adding a statement to all food businesses' wider hard copy publicity material and websites is questionable. We wish to fill a gap where people use hard copy publicity material to remotely order food without having the benefit of viewing a food hygiene rating for the food business establishment. We do not wish to capture hard copy materials promoting the food business in general terms or brand advertising on balloons; flags; pens; posters; flyers; food containers; radio; television; twitter feeds or cinema adverts. This can be done voluntarily by the food business if it wishes to do so. Given the complexities and limited perceived benefits of requiring such a change on a wide scale the option is not considered to be advantageous.

Option 3 - regulate for a bilingual statement to be displayed on certain hard copy publicity material and make provision for the voluntary use of an image of the valid food hygiene rating, together with the creation of offences and enforcement powers.

23. Section 10 of the Food Hygiene Rating (Wales) Act 2013 allows for regulations to require food businesses to publish a short bilingual statement informing consumers where the businesses' food hygiene rating can be viewed (i.e. food hygiene rating website) and encouraging consumers to ask the business for its rating or an image of their valid food hygiene rating on their hard copy publicity material.
24. This option requires the inclusion of a bilingual statement on food businesses' hard copy publicity material that includes all of the following (i.) takeaway food items advertised for sale to the consumer; (ii.) a purchase price for the food items; and, (iii.) a method for remote ordering. This requirement applies to food businesses who prepare takeaway food to the specific order of the consumer for delivery or collection, for consumption off the premises. The Welsh Government acknowledges there will be an impact associated with this option that would fall to takeaway food businesses. There would also be a cost to food authorities in enforcing this requirement. This option also provides for food businesses to use an image of the food hygiene rating on a voluntary basis, but sets out the format of the rating images to be used and offences for the display of an invalid rating or use of a non-prescribed format.
25. This option ensures that a person ordering food remotely from a takeaway leaflet or menu has an opportunity to read the statement or view the hygiene rating image, for the relevant food business. The regulations will enable local authorities to address the non-display of the statement or, displaying an invalid rating or a non-prescribed format image, and introduce enforcement powers that a food authority may use to deal with offences. This includes fixed penalty notices (FPNs) and the power to seize non compliant material. The FPN would be £200 with an offer for the person to pay £150 if a payment is made within 14 days beginning with the day on which the penalty notice is given. This is the preferred option as it provides a balanced approach targeting publicity material where it is possible to order food for delivery without having seen the food hygiene rating of the food business supplying the order. The overall estimated net costs associated with the implementation of this option is £172,146 for the 3 years 2016/17 to 2018/19.
26. The Welsh Government proposes that the following bilingual statement be added to the prescribed hard copy publicity material:

“Ewch i food.gov.uk/ratings i ganfod sgôr hylendid bwyd ein busnes neu gofynnwch inni beth yw ein sgôr hylendid bwyd wrth archebu./ Go to food.gov.uk/ratings to find out the food hygiene rating of our business, or ask us for our food hygiene rating when you order.”

Costs to Food Businesses

27. It is expected there will be little additional cost associated with requiring food businesses to display prescribed information on their printed publicity materials. There are around 2,500 takeaway food businesses operating in Wales that might be covered by the proposed regulations. The proposed

regulations will require food business to display a statement on certain publicity materials. The inclusion of this statement will not add to the cost of producing or printing the leaflet but may in certain circumstances slightly reduce the advertising space available to the food business. The publication of the statement might increase the number of consumers verbally requesting a food business' food hygiene rating. Officials would like to ensure that the transition to the new requirements will not place any undue pressures or costs on food businesses and have allowed a lead in time of 8 months before any regulations come into force. This will allow these food businesses to include the information as and when they undertake a routine reprint of their materials. Should food businesses decide to use the food hygiene rating image voluntarily, it must be in the specified format, which includes the appropriate colour. It is recognised that there may be additional costs and risk to the food business if their food hygiene rating changed and they were displaying their old rating on prescribed publicity materials.

28. Based on intelligence from local authority environmental health officers, it is estimated that about 125 food businesses (see paragraph 32) each year will end up paying a FPN for not complying with the regulations. We anticipate that 85% of FPNs (106) would be paid within 14 days at a reduced fee of £150 each, totalling £15,900. It is estimated that a further 10% of FPNs (13) would be paid at the full rate of £200, totalling £2,600. A further 5% of food businesses (6) would progress to court action. Food businesses are estimated to pay a total of £18,500 in FPNs each year.

Costs to Food Authorities

29. The introduction of the regulations is expected to generate additional costs to food authorities. The requirement to display a statement or an image of a valid hygiene rating on publicity material as defined in option 3 above would be enforced by the food authority. Section 10(3) of the Act allows for regulations to (a) create an offence, (b) impose a penalty (including a fixed penalty) and (c) make provision about enforcement. The regulations provide that an offence will have been committed if the business fails to promote their food hygiene rating by way of a statement and (if used) to present an image of a valid hygiene rating on their hard copy publicity material. The regulations therefore include similar enforcement powers to those in the Act to respond to such offences including the power to issue FPNs and seize non-compliant material.
30. When undertaking a planned inspection of a food business, the enforcement officer will also check the food business' hard copy publicity material when they are in scope of the regulations. This material is usually made freely available to customers at the food business establishment. We anticipate it will take 15 minutes to check whether the material requires a statement and whether the statement is included. If a rating is shown the inspecting officer can then check that the rating is the valid one for that food business. Based on a 15 minute check and a cost of £30 per hour, the cost to the food authority would be £7.50 per takeaway where a food business was compliant. The

total cost based on a check of 2,500 takeaway food businesses would therefore be £18,750 per annum.

31. There will be an element of food businesses that will not comply with the requirement to include a statement on their hard copy publicity material. We estimate that initially this could be as much as 30% of the food businesses who produce such leaflets and menus. This figure is likely to significantly reduce after the first year as food businesses become more familiar with the new requirements. 30% of the 2,500 food businesses could mean that as many as 750 businesses each year might fail to print a statement or image on their relevant hard copy publicity material. We envisage a proportionate approach to the enforcement of the regulations and would like to see food authorities working closely with food businesses using persuasion before issuing penalties for non-compliance. We would envisage a further investment of time with each food business that does not initially comply of 30 minutes, with a further 30 mins for a follow-up revisit to check compliance. Working on an hourly rate of £30, the cost to the food authority would be £30.00 per food business. The total cost based on providing support to 750 food businesses would therefore be £22,500 per annum.
32. We estimate that 5% of the 2,500 takeaway food businesses in Wales will not comply and fail to take account of the further advice and guidance provided by the food authority. We therefore estimate that food authorities in Wales may issue around 125 FPNs each year under these regulations. Allowing an hour for each food business at a rate of £30 this would total £3,750 for the whole of Wales. We estimate a further 5% of the 125 FPNs issued might progress to court action. This amounts to 6 cases taking an estimated 10 hours at an hourly rate of £30 costing £1,800. In addition, two senior officers are required to assess the court file at an estimated 30 minutes each at an hourly rate of £48 totalling £288. The total cost of enforcement is therefore estimated at £5,838 per annum.
33. The majority of takeaway food businesses having a hygiene rating of 5 (very good) or 4 (good) are likely to include their hygiene rating on their publicity materials. A high proportion of 3s (generally satisfactory) may also publish their ratings on such materials or they may choose to include the statement only. We consider there is a risk that a very small minority of food businesses will deliberately publish an invalid hygiene rating and that food businesses with a lower hygiene rating are more likely to offend. Of the 452 (as at 12 January 2016) food businesses with a less than satisfactory rating of 3, we consider around 1% (5, rounded, for the whole of Wales) might risk publishing an invalid rating. 5 cases taking an estimated 10 hours at an hourly rate of £30 costing £1,500, and a further 30 minutes each for two senior officers to assess the court file at an hourly rate of £48 totalling £240. The total cost of enforcement of invalid hygiene ratings is therefore estimated at £1,740.
34. We have also included miscellaneous costs that local authorities may incur as a result of these regulations. Local authorities have identified that they are likely to receive complaints from the public about publicity materials that will require investigation. In some cases this will be publicity material delivered

through the door rather than picked up at food businesses. We have estimated that in each of the 22 local authorities, there will be 5 complaints a year, which will require 2 hours each to investigate at an hourly rate of £30.00. The total cost for all local authorities is therefore estimated as £6,600. In addition, local authorities consider that they may have to pay for destruction of publicity materials that have been seized, where prosecution was not pursued, and therefore costs not awarded. We have estimated the cost of destruction per local authority as being £88.80 (based on the daily hire cost of an industrial shredder), making an estimated total of £1,954 per year for the whole of Wales.

35. The costs associated with the introduction of these regulations are set out in the table below:-

	2016/17	2017/18	2018/19	Total	Present Value
Food Authorities					
Checks on food businesses hard copy publicity material.	18,750	18,750	18,750	56,250	52,530
Supporting non-compliant food businesses.	22,500	22,500	22,500	67,500	63,037
Taking enforcement action					
FPNs	3,750	3,750	3,750	11,250	10,506
prosecution	2,088	2,088	2,088	6,264	5,850
invalid hygiene ratings	1,740	1,740	1,740	5,220	4,875
Misc costs	8,554	8,554	8,554	25,662	23,965
Total Net Costs	£57,382	£57,382	£57,382	£172,146	£160,764

FPN receipts are excluded from these figures as the regularity and value of receipts by local authorities are unpredictable.

4. Benefits

36. This chapter contains the benefits of the preferred option 3 detailed in Section 2.
37. Concentrating on defining “publicity materials” to limit the regulations to those food businesses where there is some identified benefit to displaying a reference on printed materials, e.g. takeaways, would address a number of concerns raised by food industry representatives during previous consultations on the proposed addition of a statement to be placed on all their publicity material.
38. The main benefit of targeting the use of a statement on publicity material that contains (i.) takeaway food items advertised for sale to the consumer; (ii.) a purchase price for the food items; and, (iii.) a method for remote ordering, is that it makes a consumer aware of how they might access a hygiene rating before purchasing takeaway food from that food business. A food authority enforcement officer can ask to see any materials caught by this requirement when inspecting the food business.
39. It is becoming more common for food businesses to voluntarily include an image of the food hygiene rating on their publicity materials. We are also aware from local authorities that some food businesses have attempted to mislead consumers by publishing invalid ratings or ratings of their own devising. Prescribing the format of the food hygiene rating image and to create offences to deal with invalid rating images or non-prescribed images being used will have the benefit of providing a mechanism for food authorities to take effective action against the minority of food businesses who attempt to mislead consumers in this way.

5. Specific Impact Assessments

Impact on small business

40. The estimated financial costs to the food business operators are detailed above. The regulations will apply to all food businesses that are registered with a food authority by virtue of Article 6 of Regulation (EC) No 852/2004, or approved by a food authority under Article 4 of Regulation (EC) No 853/2004 who provide food to the consumer and produce hard copy publicity material prescribed in the regulations.
41. The impact on small businesses is not considered to be great, beyond a one off cost to include the bilingual statement on existing publicity materials templates. Food businesses are not required to use the food hygiene rating image unless they do so voluntarily. It is therefore considered that food businesses will consider the balance of the costs and benefits of using the image and consider any risk of future cost if their rating changes. Officials would like to ensure that the transition to the new requirements will not place any undue pressures or costs on food businesses. An 8 month lead in time has been agreed following an early consultation to allow food businesses time to adapt and plan for the new requirement. Small businesses with good food hygiene ratings are likely to see a positive impact.

Impact on voluntary sector

42. There will be little or no other impact on the voluntary sector from introducing these regulations.

Impact on Communities First Areas

43. These regulations have a neutral impact on Communities First Areas.

Equality impact assessment

44. The introduction of these regulations seeks to raise awareness of how to access the hygiene ratings for food businesses prior to ordering food remotely from a food business. There is no evidence to indicate a differential impact on race, gender or disability as a result of these regulations.
45. The duties and responsibilities of Welsh Ministers, the FSA, and Food Authorities are contained within the Food Hygiene Rating (Wales) Act 2013. The Welsh Government will encourage the FSA and food authorities to take into account equality impacts as part of their duties and responsibilities.
46. The Human Rights Act 1998 was considered as part of the screening equality assessment for the regulations and is compatible with Convention Rights. The regulations do not propose anything to change this assessment. There is no

evidence to indicate a differential impact for Gender and Gender Reassignment, Religion and Belief and Non-Belief, Sexual Orientation, Pregnancy and Maternity or Civil Partnerships.

Sustainable development impact

47. The policy objectives of the regulations were considered in terms of potential impact against the indicators for a sustainable economy and society. The statutory scheme is expected to increase competitiveness between food businesses as good ratings are likely to attract more business. The desire for higher ratings by food businesses are driving up food law compliance, creating a high and consistent level of food safety across Wales. The scheme is sustainable in that all food businesses in Wales have information on the actions they need to undertake for their food business to achieve the highest food hygiene rating under the scheme. There is also an appeal process against the rating and the flexibility to adapt this process. There is also a 'right of reply' for food businesses that will be published alongside the rating. There is considered to be a low risk to increased unemployment where food business operators (FBOs) do not meet hygiene standards and close their business.
48. Supporting a sustainable society is at the heart of the policy intent for the statutory scheme. It addresses both health inequality and access to information by introducing easily accessible hygiene ratings and allowing consumers to make a more informed choice about where to eat or shop. The introduction of the statutory scheme has resulted in an improvement of food hygiene standards that will help protect the health and the interests of consumers. The regulations fill a current gap where consumers cannot view a food hygiene rating when ordering food remotely and add detail for the effective operation of the scheme.

Rural proofing checklist

49. The statutory scheme will see a small increase in the amount of travel within rural areas where food authority inspectors meet demand for an anticipated increase in food hygiene re-rating inspections. Food authority inspections of food businesses might take longer in rural areas because of increased travelling time, but this is likely to be offset by the officers working from food authority area offices. The Act includes a mandatory cost recovery from food business operators for re-rating inspections. Food authorities are required to inform the food business in advance of the re-rating inspection charge to be levied in such a way that the food business operator is reasonably informed of the amount.
50. Raising food hygiene standards and increased access to information about food hygiene compliance of food business operators is expected to have a positive impact on tourism in Wales including in rural areas. The regulations

do not change this assessment and add detail for the effective operation of the scheme.

Impact on Welsh Language

51. The FSA has a Welsh Language Policy. There is no risk that the statutory scheme will have a negative impact on the Welsh Language. The statutory scheme in Wales complies with the Welsh Government's Welsh Language Scheme. The regulations require the publication of a bilingual statement or image of the valid hygiene rating by food businesses.

Children's Rights Impact Assessment

52. In 2011 Wales became the first country in the UK to incorporate children's rights into domestic law with the introduction of the Rights of Children and Young Persons (Wales) Measure 2011. The Measure embeds consideration of the United Nations Convention on the Rights of the Child (UNCRC) and the optional protocols into Welsh law. The main duty required within the Measure, under section 1, requires the Welsh Ministers to have due regard to the UNCRC.
53. The Measure requires all the Welsh Ministers to consider children's rights when exercising any of their functions. To ensure compliance, the completion of a Children's Rights Impact Assessment (CRIA) must be considered for all new policies, including development of new subordinate regulations.
54. We consider that whilst the positive and negative impacts of this legislation are largely economic and regulatory, there is a tangential positive impact on children and young people in that they will share the same benefits of access to information brought about by the legislation as other members of the public. We consider that Articles 13 and 17 (right to access information) are the most relevant to this legislation, and have completed a CRIA on this basis. We have not identified any conflicts with other articles of the UNCRC.

Justice Impact Assessment

55. The regulations establish relevant offences for not publishing the statement (directing consumers to the Food Hygiene Rating website and encouraging people to ask verbally for the rating) or (if used) the valid image of the food hygiene rating or a misleading or invalid food hygiene rating on certain hard copy publicity material. Similar enforcement powers to those in the Act including FPNs at the same amount are proposed in the regulations. There are also powers included to seize non-compliant material. The Lord Chief Justice has been made aware of this consultation and the proposal to introduce further offences and enforcement powers.

6. Competition assessment

56. The competition filter is required to be completed if the legislation affects business, charities and/or the voluntary sector. The regulations will have an impact on food businesses in Wales in that they will have to display a statement on certain hard copy publicity.
57. The table below summarises the competition filter results:

Question	Response
Q1: In the market(s) affected by the new regulation, does any firm have more than 10 percent market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20 percent market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50 percent market share?	Yes
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	Yes
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Note: One of the markets affected is the pizza market sector. The responses to Questions 1 to 3 relate to that market.

7. Post implementation review

58. Section 14 of the Act requires the FSA, at the end of the first year of the operation of the mandatory scheme and each subsequent period of three years, to conduct a formal review of the scheme and make recommendations to the Welsh Ministers. A similar review is undertaken of the appeals system but this is done annually. These evaluations consider the effectiveness of the mandatory scheme/appeals process and whether the scheme is delivering improvements for the people of Wales, taking account of the delivering results principles.

Annex 1 – Impact Assessment Forms

We are required to publish statutory impact assessment forms as part of our consultation. The forms annexed here are:

- Equality and Human Rights Impact Assessment
- Children and Young People Impact Assessment
- Welsh Language Impact Assessment
- Biodiversity Impact Assessment

Initial screening assessments were also completed in consideration of the draft Food Hygiene Rating (Promotion of Rating)(Wales) Regulations and this related Regulatory Impact Assessment. These are listed as follows:

- Climate change screening assessment
- Environmental Impact screening assessment
- Health Impact screening assessment
- Privacy Impact screening assessment
- Rural Impact screening assessment
- Strategic Environmental Impact screening assessment

The purpose of screening assessment forms is to ascertain whether full impact assessments are necessary for the policy under consideration. All assessments listed above either identified that the draft regulations were not relevant to the particular Impact Assessment, or that the impact identified was neutral.

