

Draft Regulations laid before the National Assembly for Wales under section 26(4) of the Food Hygiene Rating (Wales) Act 2013 for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2016 No. (W.)

FOOD, WALES

**The Food Hygiene Rating
(Promotion of Food Hygiene
Rating) (Wales) Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the promotion of food hygiene ratings under the Food Hygiene Rating (Wales) Act 2013 (“the Act”).

Regulation 2 provides that these Regulations apply to establishments which supply takeaway food.

Regulation 3 sets out what food operators must do to promote their food hygiene rating and provides what must be displayed on their printed publicity materials.

Regulation 4 provides that where food operators choose to display a food hygiene rating on their printed publicity materials in addition to the statement it is required to display, that rating must comply with the requirements of regulation 4(2) and Schedule 1.

Regulation 5 makes it an offence for a food business establishment operator to fail to comply with the requirements of regulations 3 and 4(2).

Regulation 6 provides that where a body corporate (such as a company, or any other body incorporated by statute) commits an offence under the Regulations, 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.

Regulation 7 provides that food authorities may enforce these Regulations and regulation 8 provides a power of entry and seizure of documents to authorised officers of food authorities to enforce the Regulations.

Regulation 9 provides that an offence under the Regulations is triable in the Magistrates Court and punishable by a fine not exceeding level 3 on the standard scale.

Regulation 10 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 Regulations. 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. This regulation also introduces Schedule 2.

Part 1 of Schedule 2 sets out the procedure for fixed penalty notices and the level of fixed penalties payable in respect of an offence under these Regulations.

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

Regulation 11 provides that food authorities must use the receipts it receives from fixed penalties for enforcing food hygiene in Wales.

Regulation 12 prescribes information that a food authority must send to the operator of a food business establishment.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained at the Health and Social Services Group, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

A draft of the Regulations was notified to the European Commission in accordance with Article 8 of Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations (OJ No L204, 21.7.1998, p. 37) last amended by Directive 98/48/EC (OJ No L217, 05.08.1998, p. 18).

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**The Food Hygiene Rating
(Promotion of Food Hygiene
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Made []

Coming into force 28 November 2016

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 10(1)(a), (2)(b), (3)(a) and (b) and (c), and 15(1) of the Food Hygiene Rating (Wales) Act 2013⁽¹⁾.

In accordance with section 26(4) of that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016 and they come into force on 28 November 2016.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Hygiene Rating (Wales) Act 2013;

“establishment” (“*sefydliad*”) means food business establishment;

“publicity materials” (“*deunyddiau cyhoeddusrwydd*”) means any printed material

(1) 2013 anaw 2.

which promotes the takeaway food provided by the operator's establishment and which includes the prices of the food provided together with a description of how a consumer, being an individual to whom food is supplied otherwise than in the course of a business carried on by him or her, may place an order otherwise than in person:

“rating” (“*sgôr*”) means a food hygiene rating given under the Act; and

“takeaway food” (“*cludfwyd*”) means food that has been prepared to the specific order of consumers for delivery or collection to be consumed off the premises.

Establishments to which these Regulations apply

2. These Regulations apply to establishments that supply takeaway food direct to consumers.

Requirement to promote food hygiene rating

3.—(1) An operator of an establishment must ensure that its publicity materials display the statement—

“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”.

(2) The statement must be positioned in a conspicuous place on the publicity materials so it can be easily seen by consumers.

(3) The statement must conform to the following specifications—

- (a) type size of at least 9 points as measured in font ‘Times New Roman’ not narrowed; and
- (b) space between text lines of least 3mm.

Display of food hygiene rating

4.—(1) Where publicity materials comply with regulation 3, an operator may also choose to display the establishment's rating on its publicity materials.

(2) Publicity materials which display the rating must—

- (a) display a valid rating;
- (b) position the rating in a conspicuous place on the publicity materials so it can be easily seen by consumers;
- (c) display the rating in such a way that makes it clear to which establishment it relates to if publicity materials promote the takeaway food of more than one establishment; and

- (d) comply with Schedule 1.

Offences

5. An operator of an establishment commits an offence if, without reasonable excuse, the operator—

- (a) fails to comply with the requirements of regulation 3; and
- (b) fails to comply with the requirement of regulation 4(2).

Offences by bodies corporate

6.—(1) This regulation applies where an offence under regulation 5 is committed by a body corporate.

(2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager or secretary of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that director, manager, secretary or person purporting to act as such (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) The reference to the director, manager or secretary of the body corporate includes a reference—

- (a) to any similar officer of the body; or
- (b) where the body is a body corporate whose affairs are managed by its members, to any officer or member of the body.

Enforcement

7. A food authority may enforce the obligations imposed by regulations 3 and 4(2) on establishments in its area.

Power of entry

8.—(1) An authorised officer of a food authority may on production of the officer's written authority if demanded, enter at all reasonable hours an establishment for the purposes of enforcing the requirements in regulations 3 and 4(2).

(2) But in the case of entry into any part of an establishment used only as a private dwelling 24 hours' notice of the intended entry must be given to the operator.

(3) An authorised officer may seize and remove any document which they have reasonable grounds to believe may be evidence of a failure to comply with regulations 3 and 4(2).

Penalties

9. A person guilty of an offence under regulation 5 is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Fixed penalties

10.—(1) Where an authorised officer of a food authority has reason to believe that a person has committed an offence under regulation 5, the officer may give a notice to the person offering them the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty.

(2) Where a person is given a notice under this regulation in respect of an offence—

- (a) no proceedings may be instituted for the offence before the end of a period specified in the notice, and
- (b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(3) Schedule 2 (fixed penalty notices) has effect.

Fixed penalty receipts

11. A food authority must use amounts paid to it under fixed penalty notices issued under regulation 10 for the purpose of its functions relating to enforcement of food hygiene in Wales.

Responsibility of food authorities to send information to operators

12. A food authority must send a statement drawing attention to the requirements of these Regulations to operators of establishments in its area in accordance with section 15(1) of the Act (other powers and responsibilities of food authorities).

Vaughan Gething

The Deputy Minister for Health under the authority of the Minister for Health and Social Services, one of the Welsh Ministers

Date

SCHEDULE 1 Regulation 4

FOOD HYGIENE RATING

1. A valid rating must be displayed in one of the forms shown below.



2. The appropriate form for an establishment is whichever form shown in paragraph 1 displays the current rating for that establishment.

3. The rating must conform to the following specifications—

- colour references: Green: c43 m0 y100 k0 & Black;
- the dimensions for the ratings must be at least 39mm (wide) x 27mm (tall).

SCHEDULE 2 Regulation 10

FIXED PENALTY NOTICES

PART 1

PROCEDURE FOR FIXED PENALTY NOTICES

1. A fixed penalty notice may offer the opportunity for a person to pay a penalty of £200 (“the penalty”) within a period of 28 days beginning with the day in which the penalty notice is given.

2. A fixed penalty notice may also offer the opportunity for a person to pay a reduced penalty of £150 (“the discounted penalty”) if payment is made within a period of 14 days beginning with the day in which the penalty notice is given.

3. Payment of the penalty or the discounted penalty may be made by posting a letter containing the amount of the penalty to the person described on the notice at the address so described. Payment is to be regarded as having been made at the time at which the letter would be delivered in the ordinary course of post.

4. Paragraph 3 does not prevent payment of the penalty being made by any other method.

5. If a food authority considers that a fixed penalty notice given to a person by an authorised officer acting on its behalf ought not to have been given, the food authority must give notice to that person withdrawing the fixed penalty notice.

6. If a fixed penalty notice is withdrawn—

- (a) a food authority must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and
- (b) no proceedings may be brought or continued against the person who received the notice for the offence in question.

7. In any proceedings, a certificate which—

- (a) purports to be signed by or on behalf of the chief finance officer of a food authority, and
- (b) states that payment of a penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

PART 2

FORM AND CONTENT OF FIXED PENALTY NOTICES

8. A fixed penalty notice must give particulars of the circumstance alleged to constitute the offence as are necessary to explain why an offence has occurred.

9. A fixed penalty notice must also state—

- (a) the name and address of the authority on whose behalf the authorised officer was acting when the officer gave the notice;
- (b) the amount of the penalty and the period for paying the penalty;
- (c) the amount of the discounted penalty and the period for which the discount applies;
- (d) the consequences of not paying the penalty before the end of the penalty payment period;

- (e) the person to whom and the address at which the penalty or discounted penalty may be paid;
- (f) by what method payment may be made;
- (g) the person to whom and the address at which any representations relating to the notice may be made.

10. A fixed penalty notice must also—

- (a) inform the person to whom it is given of his or her right to be tried for the alleged offence,
and
- (b) explain how that right may be exercised.