

Food Hygiene Rating (Wales) Bill: Summary of changes made at Stage 2

Introduction

This document sets out the main changes made to the *Food Hygiene Rating (Wales) Bill* ('the Bill') during Stage 2 proceedings.

Background

The Bill was introduced by the Minister for Health and Social Services, Lesley Griffiths AM, ('the Minister') on **28 May 2012** and subsequently referred by the Business Committee to **the Health and Social Care Committee** ('the Committee') for Stage 1 scrutiny. The Committee published its Stage 1 report on **4 October 2012**.

The Bill was approved unanimously at Stage 1 by the Assembly following a debate on its general principles in plenary on **16 October 2012**. A financial resolution in relation to the Bill was subsequently agreed by Members in plenary on **23 October 2012**.

Stage 2 proceedings commenced on **17 October 2012**. A total of **35** amendments were tabled (**22** of which were tabled by the **Welsh Government**). The Committee considered and disposed of the amendments at its meeting on **7 November 2012**.

Amendments passed at stage 2

A total of 21 amendments were passed by the Committee during Stage 2 proceedings. All the amendments passed were tabled by the Welsh Government. All non-government amendments were rejected. One Welsh Government amendment was not agreed. The main changes made to the Bill are summarised below:

Application of the Bill

- Amendment 2, moved by the Minister, clarifies that the mandatory scheme applies only to food establishments registered or approved in Wales. The amendment also put the position beyond doubt that the food hygiene rating scheme does not apply to food business establishments that are registered or approved outside Wales. Amendments 1 and 3 are technical amendments consequential to amendment 2.

Appeals

- Amendment 4 requires the food authority to notify the Food Standards Agency (FSA) at the same time as notifying the food business operator of its decision on an appeal. Once it has undertaken its review, the FSA will be required to provide a report to Welsh Ministers.
- Amendment 5 draws a distinction between the function of determining an appeal, which belongs to the food authority, and the conduct of the appeal itself, which has to be performed by an authorised officer other than the one who assessed the food hygiene rating that is being appealed.
- Amendment 6 enables the Welsh Ministers by regulations to provide for appeals to be determined by a person other than the food authority that made the assessment.
- Amendment 7 clarifies that, following an appeal, a food authority can revise rather than change the food business's food hygiene rating. Government amendment 8 makes it clear that the food hygiene rating issued after an appeal is a revised rating, not a new one. These amendments also draw a distinction between the two types of situation where a rating could be changed—as a result of an appeal, and as a result of a re-rating inspection.
- Amendment 9 is intended to ensure that the FSA receives a copy of the notification of the revised food hygiene rating and a copy of the written

statement of the reasons for the rating when a food authority decides to revise a food hygiene rating following an appeal.

Notification and Publication of Food Hygiene Ratings

- Amendment 11 reduces from 28 to seven days the time available to the FSA to publish food hygiene ratings, and any other information that might be prescribed by regulations, on its website.
- Amendment 12 widens the original provision by requiring the operator of a food business establishment to make relevant employees aware of the establishment's food hygiene rating and the requirements to confirm the rating on request.

Offences

- Amendment 14 makes it clear that it is an offence to give a false or misleading food hygiene rating.
- Amendment 16 will ensure that the reference to verbally informing a person of a food hygiene rating captures a new rating provided by a re-rating inspection.

Duties of the Food Standards Agency

- Government amendment 17 requires the FSA to:
 - have regard to guidance issued by Welsh Ministers in exercising its functions under the Act;
 - undertake a review of the implementation of the mandatory scheme after the first year of operation and then every three years;
 - undertake an annual review of the operation of the appeals system;
 - and produce a report containing details of these reviews and provide recommendations for change, if any, no later than three months after the end of the period to which the review relates.

Guidance

- Amendment 18 makes an amendment to section 22 to enable Welsh Ministers to issue guidance to the FSA in addition to food authorities.

Power to amend timescales

- The Health and Social Care Committee's Stage 1 report recommended that consideration should be given to bringing forward an amendment that provides Welsh Ministers with powers through regulations to amend the timescales detailed in section 5 of the Bill on the right to appeal. Government amendment 19 gives effect to this recommendation, but goes further to introduce a provision to enable Welsh Ministers to amend any of the timescales specified on the face of the Bill.

Regulations

- Amendments 20 and 21 change the group of regulation-making powers that are subject to the affirmative procedure. These amendments provide that the procedure applied to the regulation-making powers in section 6(2) and paragraph 3 of the Schedule is to be affirmative rather than negative. The procedure to be applied to the new regulation-making powers in sections 5(8) and 23, as introduced by amendments 6 and 19, is also to be affirmative.

Commencement

- Amendment 22 replaces section 25 of the Bill. This new section 25 specifies that the power to make commencement Orders takes effect two months after the Act receives Royal Assent, which, should the Assembly pass the Bill, is anticipated to be February 2013. The amendment also allows flexibility for the phased commencement of different provisions in the Bill, if required.

Commitments made by the Minister During Stage 2 proceedings, the Minister made commitments to address certain issues at Stage 3

In the Plenary debate on 16 October, she indicated her intention to create **an explicit requirement for food authorities to provide full food hygiene inspection reports to consumers on request**. However, subsequently she has received legal advice that this will need further consideration because of potential wider implications *for the Freedom of Information Act 2000*. If those concerns can be overcome, she will seek to amend the Bill at Stage 3 to create such a requirement.¹

The Minister also asked the committee to oppose amendments 23, 24, 26, 30 and 31 on the understanding that the Government will look to introduce **a requirement for food businesses to publish a statement on their websites, and other appropriate publicity material, directing consumers to the FSA website where they can view the food hygiene rating scheme**. She stated that she intends to do this at Stage 3 and added that she will also be able to set out for Members, at Stage 3, the implementation aspects associated with such a change.²

¹ RoP, Health and Social Care Committee, 7 November 2012, para.95

² RoP, Health and Social Care Committee, 7 November 2012, para.148

Further information

For further information on the *Food Hygiene Rating (Wales) Bill*, please contact Fay Buckle, Legislation Clerk (fay.buckle@wales.gov.uk) or Alys Thomas (alys.thomas@wales.gov.uk) Research Service.

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