



Llywodraeth Cymru
Welsh Government

FOOD HYGIENE RATING (WALES) BILL

**Explanatory Memorandum
incorporating the Regulatory Impact
Assessment and Explanatory Notes**

May 2012

FOOD HYGIENE RATING (WALES) BILL

Explanatory Memorandum to Food Hygiene Rating (Wales) Bill

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Food Hygiene Rating (Wales) Bill, introduced by me on the 28 May 2012 would be within the legislative competence of the National Assembly for Wales.

Lesley Griffiths AM

Minister for Health and Social Services
Assembly Member in charge of the Bill

28 May 2012

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ANNEX 1 – EXPLANATORY NOTES TO THE FOOD HYGIENE RATING (WALES) BILL

1. Description

1. The Food Hygiene Rating (Wales) Bill gives effect to the Welsh Government's proposals to introduce a statutory food hygiene rating scheme in Wales. The Bill establishes a statutory requirement for food authorities to operate a food hygiene rating scheme (which includes rating food businesses and enforcing the scheme) and places a duty on food businesses to display their food hygiene rating at their establishment. The intention of the Bill is to ensure that consumers are provided with information about the food hygiene standards of food businesses in Wales. This will enable consumers to make better informed choices about where to eat or shop for food.

2. Legislative background

2. The National Assembly for Wales has the legislative competence to make the provisions in the Food Hygiene Rating (Wales) Bill under Part 4 of the Government of Wales Act 2006 (GOWA 2006).
3. The relevant provisions of GOWA 2006 are set out section 108 and Schedule 7.
4. Paragraph 8 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate - under the heading of “*Food*”:

“Food and food products. Food safety (including packaging and other materials which come into contact with food). Protection of interests of consumers in relation to food.”

This gives the Assembly legislative competence to make the provisions of the Food Hygiene Rating (Wales) Bill.

5. None of the provisions of the Food Hygiene Rating (Wales) Bill falls within any of the exceptions specified in Part 1 of Schedule 7 to GOWA 2006 or applies otherwise in relation to Wales or confers, imposes, modifies, or removes (or gives power to confer, impose, modify or remove) functions exercisable other than in relation to Wales; or breaches any of the restrictions in Part 2 of Schedule 7 - having regard to any exception in Part 3 of that Schedule from those restrictions.

3. Purpose and intended effect of the legislation

Problem/issue that the Bill is seeking to address

6. Food hygiene is vital for the protection of human health. In 2005, the largest outbreak of *E. coli* O157 in Wales resulted in the death of one five year old child and long term health consequences for several other children. Following the outbreak, the First Minister for Wales commissioned a public inquiry and Professor Pennington delivered his report on 19 March 2009. When Professor Pennington addressed the National Assembly for Wales' Health, Wellbeing and Local Government Committee in June 2010, he suggested that a food hygiene rating scheme would not be an expensive way of driving quite significant improvements in food safety.
7. The Welsh Government's Programme for Government (September 2011) includes a number of actions to prevent poor health and reduce health inequalities, including to: *introduce the Food Rating Scheme Bill to ensure that the public have better access to information about the hygiene standards of food establishments*. This Explanatory Memorandum provides details of the proposal for a new law relating to the introduction of a statutory food hygiene rating scheme in Wales.
8. The Food Standards Agency (FSA) was set up in 2000 to protect the public's health and consumer interests in relation to food. Food poisoning is caused by the consumption of contaminated food or water. Poor hygiene, cross contamination, improper handling and inadequate heat treatment are the most common causes of food borne disease. The FSA's Chief Scientist's Report for 2010-11¹ states that each year there are about a million people who suffer a food borne illness, of which 20,000 receive hospital treatment and there are 500 deaths in the UK.
9. In October 2010, the FSA's Food Hygiene Rating Scheme (the 'FSA Scheme') was launched in Wales, England and Northern Ireland on a voluntary basis. The FSA Scheme was developed in collaboration with consumers, industry and enforcement stakeholders. All 22 local authorities in Wales are participating voluntarily in the FSA Scheme and of approximately 30,000 food business establishments in Wales, over 17,500 have so far been rated².
10. The FSA Scheme helps consumers choose where to eat out or shop for food by giving them information about the hygiene standards in food business establishments. It applies to places where people eat out including restaurants, takeaways, mobile caterers, cafes, hotels, and pubs. It also applies to schools, hospitals, residential care homes and work place canteens as well as places where consumers shop for food such as supermarkets, bakeries and delicatessens. Local authorities are responsible for enforcing

¹ Available at <http://www.food.gov.uk/science/researchpolicy/chiefsci/csreps/>

² Food Standards Agency

food safety legislation at food business establishments in their area which includes carrying out programmed inspections of food business establishments. These inspections are carried out in a risk-based manner with establishments that pose a higher risk to the consumer being inspected more frequently than those with a lower risk. On the date of inspection, the food safety officer checks how well the establishment is meeting the requirements of the relevant food hygiene legislation and calculates the 'food hygiene rating' in accordance with the FSA scheme criteria. The establishment is given one of six food hygiene ratings: the top rating of '5' means that the establishment was found to have 'very good' hygiene standards; any food business should be able to achieve this top rating. At the bottom of the scale is '0' – this means urgent improvement is necessary. The rating given shows how well the business does overall. The local authority notifies the food business of their rating and provides a certificate and sticker. The food business operator is encouraged to display the sticker in a place where it can be easily seen by consumers.

11. The Welsh Government recognises the important benefits created by the FSA Scheme, but also acknowledges that it has some shortcomings. The main limitations with the FSA Scheme are that:
 - the display of food hygiene ratings at food business establishments is voluntary; and
 - participation by local authorities, whose officers produce the food hygiene ratings, is also voluntary.

12. Although all 22 local authorities in Wales currently participate in the FSA Scheme, not all food businesses that are given a food hygiene rating currently display them at their premises. An evaluation undertaken in 2011 on behalf of the FSA found that only 31 percent of food businesses were voluntarily displaying their food hygiene rating³. This research has also shown that low scoring food businesses rarely display their score, with just 6 percent of those with 0, 1 or 2 ratings included in the research choosing to do so. The percentages of businesses voluntarily displaying their food hygiene rating when broken down by band was as follows:

³ The display of food hygiene ratings in Wales (December 2011) GfK NOP:
http://www.food.gov.uk/wales/aboutus_wales/pressreleases/2011/dec/limiteddisplayfhrs_wales

Table 1: Percentage of outlets displaying food hygiene rating

Food Hygiene Rating	Percentage of outlets displaying certificate or sticker
5	66%
4	40%
3	21%
0, 1 and 2	6%

13. As some food businesses do not display their food hygiene rating at their establishment, the only reliable way for consumers to find out about the food hygiene standards within food businesses is to visit the FSA's national (UK) website where all food hygiene ratings given by local authorities are displayed. The Welsh Government considers that there are two problems with this:
- 31 percent of people in Wales do not use the internet; for those aged 65 and over, this figure is 73 percent⁴. Therefore for those people finding out a food hygiene rating via the FSA website is not an option.
 - 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.
14. 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 consumers have equal access to this information.
15. The mandatory display of ratings is strongly supported by Consumer Focus Wales which recognises the ability of consumer power to drive up food hygiene standards by making information publicly available on the hygiene performance of individual businesses. The display of food hygiene ratings is also popular with the public. In response to a 2008 survey carried out for the FSA⁵, 95 percent of the public wanted to see mandatory display of food hygiene ratings. A Consumer Focus Wales telephone survey undertaken in October 2011 found that 94 percent of people in Wales think that it should be

⁴ Richard, S (2009) Logged in or locked out? Consumer Focus Wales

⁵ Food Standards Agency (2008) Evaluation of Scores On The Doors Final Main report for the Food Standards Agency. www.food.gov.uk/multimedia/pdfs/sotdmainreport.pdf

compulsory for food businesses in Wales to display their food hygiene rating score⁶.

16. The Bill seeks to make it compulsory for those food businesses in Wales that are within the scope of the new statutory food hygiene rating scheme to display food hygiene rating information at their establishment. If requested, the operator must also verbally inform customers of the food hygiene rating. Not only will this help consumers to make informed choices about where to eat out or shop for food, it is expected that the requirement for the display of food hygiene ratings will drive up standards and act as an incentive to food businesses to improve their food hygiene standards as consumer demand for good hygiene ratings increases.

Who is affected by the Bill?

17. Food businesses that supply food direct to consumers will be included in the food hygiene rating scheme. This includes, for example, restaurants, takeaways, mobile caterers, cafes, hotels, pubs, schools, hospitals, residential care homes, supermarkets, bakeries and delicatessens. The Bill enables the Welsh Ministers to prescribe (by way of regulations) that certain categories of establishment are exempt from rating; any such regulations would be consulted upon subject to the Bill completing Stage 1 of the Assembly's consideration.
18. The Bill also includes provision for those establishments that are involved in food business-to-business trade to be included in the scope of the new scheme. These businesses may produce, process or prepare food but do not sell food directly to consumers. Examples of these establishments are manufacturers, wholesalers and transporters. Establishments involved in food business-to-business trade are currently not rated under the FSA Scheme.
19. The Bill requires "food authorities" in Wales to inspect and produce food hygiene ratings of food establishments in their areas. A "food authority" is a county council or county borough council with functions under the Food Safety Act 1990. In Wales, local authorities and port health authorities are food authorities so they will be affected by the requirements in the Bill. The Bill also provides the Welsh Ministers with powers to amend the definition of a food authority (for example to include other bodies).
20. Consumers will benefit from the Bill because they will be provided with easily understandable, accessible information on the hygiene standards of a food business so that they can make better informed choices about where to eat or shop for food.

⁶ Consumer Focus (November 2011) <http://www.consumerfocus.org.uk/wales/news/welsh-consumers-want-easy-access-to-food-hygiene-reports>

Objectives

21. The Welsh Government's primary policy objective in relation to this Bill is to establish a statutory food hygiene rating scheme in Wales. The Welsh Government intends to ensure that the new compulsory scheme is workable. For this reason, the new scheme will be broadly based on the FSA Scheme which has been adopted throughout Wales. The Bill requires that food authorities inspect and produce food hygiene ratings for food business establishments in their areas, using criteria published by the FSA. Food business establishments that have been rated will be required to display their food hygiene rating in a designated position at their establishment and the FSA will be required to publish the rating on their website. Food authorities will be required to enforce the new law which will make failure to display a food hygiene rating in the location and manner prescribed an offence. The Bill will also make it an offence for a food business not to verbally divulge their hygiene rating when asked to do so. This would provide some reassurance to blind and partially sighted people who would be unable to view the rating displayed. Food authorities in Wales will be provided with the means to enforce the new compulsory scheme through the use of fixed penalty notices and (where appropriate) prosecution.
22. The Welsh Government also intends that the new scheme is fair to food businesses. Although the Bill will require food businesses to display their food hygiene rating at their establishment for the benefit of consumers, when the food authority informs the food business of their rating, the Bill requires the food authority to provide an explanation of why the establishment received the rating.
23. The food hygiene rating scheme will also provide food businesses with:
 - The right to appeal against their food hygiene rating. This will provide food businesses with 21 days to dispute the food hygiene rating given to them if they consider it does not properly reflect the hygiene standards that were found at the time of the inspection and/or that the rating criteria were not applied correctly by the food authority when producing the food hygiene rating. The Bill requires the food authority to consider the appeal. As part of that process, the food authority may conduct a further inspection.
 - The ability to comment on their food hygiene rating. This "right to reply" provides operators with an opportunity to explain to potential customers any actions that have been taken to improve hygiene standards since the food hygiene inspection. They could also provide details of any unusual circumstances at the time of the food hygiene inspection that might have affected the food hygiene rating awarded. The food authority must forward any comments to the FSA who may publish the comments on their website alongside the food business establishment's food hygiene rating.

- The ability to request that the food authority undertakes a re-rating assessment of the establishment. The operator may request a re-rating if, for example, they have undertaken work which they think may affect their food hygiene rating. This will give the food business operator an incentive to improve the hygiene at their establishment and if appropriate, to be given a new rating, without having to wait until the next planned food hygiene inspection. The Bill requires that the food authority complies with the operator's request and undertakes the re-rating inspection within three months of the request being made - provided that the food authority is satisfied that certain conditions are met. The Bill requires food authorities to charge food business operators reasonable costs for any re-rating inspections carried out at the request of the operator. As these inspections will be solely for the purpose of re-evaluating the current food hygiene rating, the Welsh Government considers that food authorities should be required to charge the operator so that they can recover the cost of the inspection. Food authorities will be required to publish in advance the charge to be levied so that the food business is reasonably informed of the likely charge and how it was derived.

Detailed implementation and delivery plan

24. The main elements of the legislation are on the face of the Bill however the Bill does enable the Welsh Ministers to make a number of regulations. These regulation-making powers are summarised in section 5 of this Explanatory Memorandum. It is the Government's intention to consult on the detail of the proposed regulations, subject to the Bill completing Stage 1 of the Assembly's consideration.
25. The Bill includes provision for the Welsh Ministers to issue guidance to support the implementation of the Bill and for the FSA to make recommendations to food authorities to assist them to comply with their responsibilities under the new compulsory scheme. The Bill requires food authorities to have regard to the recommendations made by the FSA and guidance given by the Welsh Ministers. The Welsh Government intends to work with the FSA and food authorities to develop guidance which will support them in successfully implementing the food hygiene rating scheme and in exercising their functions under the Bill and any regulations made under it. Training, funded by the Welsh Government will also be provided for local authority officers. The recommendations made by the FSA will include advice on adopting a consistent approach to the scheme across Wales. The timescales for implementation of this Bill, and the subsequent regulations, guidance and training are set out below (paragraph 29).

Risk/hazards if the legislation is not made

26. If the Bill is not approved, the FSA Scheme will continue to be in place in Wales but it will be on a voluntary basis. Local authorities will not be obliged to participate in the FSA Scheme and food businesses will not be obliged to display their food hygiene rating. The current position where some food

businesses display their food hygiene rating whilst others do not will therefore continue. This will have a detrimental effect on consumer access to information on the food hygiene standards of a food business and their ability to make informed choices about where to eat or shop for food. Primary legislation is therefore required to introduce the statutory food hygiene rating scheme so that the participation of local authorities and the display of food hygiene ratings at food businesses can be made compulsory.

How the legislation will enable sectors to operate more efficiently

27. The Bill seeks to require all food businesses registered with or approved by a food authority in Wales to display their food hygiene rating. This will provide consistency for food businesses in Wales. Not only will this assist consumers, but it is likely that consumer power will drive up the food hygiene standards of individual food businesses. As businesses with higher food hygiene ratings are likely to see a corresponding increase in business, this will provide food businesses with an incentive to strive for higher food hygiene ratings. There is also an opportunity both for individual businesses to promote their ratings and for specific Welsh sectors such as the tourism industry to promote the new compulsory scheme.

Territorial extent

28. The Bill applies in relation to Wales.

Timescale

29. 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.

4. Consultation

Consultation on proposals for a Food Hygiene Rating (Wales) Bill

30. The Welsh Government undertook a consultation on the draft Food Hygiene Rating (Wales) Bill from 14 December 2011 to 7 March 2012. The consultation exercise aimed to gain views on the proposed content of the Bill. The consultation document and draft Bill was issued to stakeholders including food business representative organisations, local government organisations and health organisations. The full consultation distribution list is available on page 25 of the consultation document which is available on the Welsh Government website⁷. 63 responses to the consultation were received. Consumer Focus Wales undertook an engagement exercise with consumers regarding the Bill's proposals and encouraged consumers to submit postcards/emails to the Welsh Government regarding the content of the Bill. 176 responses were received by the Welsh Government as a result of that engagement exercise.
31. Prior to the launch of the consultation, Welsh Government officials met with the Wales Tourism Alliance, the Federation of Small Businesses and the Council for Economic Renewal Working Group to provide information on the proposals and to listen to their views. A pre-consultation letter was also issued immediately prior to the launch of the consultation in a bid to raise awareness of the consultation. An article on the proposed introduction of a statutory food hygiene rating scheme in Wales was included in an FSA e-newsletter, issued in December 2011. The launch of the consultation exercise received media coverage in Wales and a *Wales this Week* programme on the proposed compulsory scheme was broadcast on 31 January 2012 with input from the FSA and the Minister for Health and Social Services. The FSA undertook an advertising campaign promoting the existing voluntary FSA Scheme in February 2012 which also provided an opportunity to remind consumers and businesses in Wales to participate and contribute to the consultation. During the consultation, Welsh Government officials engaged food safety officers from local authorities in order to gain their views on the practicality of the Bill's proposals.

Summary of the outcome of the consultation

32. The majority of respondents were very supportive of the proposed requirement for a food business to display its food hygiene rating at their premises. Two themes which emerged from the consultation responses were consistency and transparency:
- consistency in the way that the new food hygiene rating scheme is implemented in Wales and between the new scheme and the current voluntary FSA Scheme; and

⁷ <http://wales.gov.uk/consultations/healthsocialcare/food/?lang=en&status=closed>

- the Bill should help improve transparency of business performance and accountability of local regulatory activity.

A detailed analysis of the responses received during the consultation is available on the Welsh Government website⁸.

Changes made to the Bill post consultation

33. Following the consultation some important amendments to the Bill have been made. These are:

- (a) businesses that supply food to other businesses are now included within the scope of the scheme;
- (b) the Bill will apply only to food businesses that are registered in Wales. Food business establishments registered outside Wales but trading on a transient basis in Wales (i.e. mobile traders) will not be within the scope of the new scheme;
- (c) food authorities are now required to prepare a programme of inspections of food business establishments in their area having regard to matters specified by the FSA - the programme will determine whether an inspection is required and the frequency of those inspections;
- (d) the requirement to retain the food hygiene certificate, and the associated offence of failure to produce it to an authorised officer on request have been removed;
- (e) the time limit for food businesses to submit an appeal will now be 21 days and food authorities will also be allowed 21 days to consider and determine the appeal - the provisions relating to appeal now also make it clear there is no further right of appeal available to a food business operator following a food authorities determination of their original appeal;
- (f) the provisions relating to right to reply have been made clearer and time limits on the right to reply have been removed; it has been made clear in the Bill that this right may be exercised more than once in relation to any rating while the rating remains valid;
- (g) the provisions relating to re-rating inspections have been made clearer;
- (h) food authorities are now required to inform the operator of a food business establishment of the costs of a re-rating inspections and the way the costs have been calculated before carrying out the re-rating;
- (i) there is a new a duty on food businesses to verbally inform a person of the food hygiene rating for their establishment if requested and an

⁸ <http://wales.gov.uk/consultations/healthsocialcare/food/?lang=en&status=closed>

associated offence if they refuse to do so - this will allow people with impaired vision or enquiring by telephone to establish the hygiene rating of an establishment prior to use.

5. Power to make subordinate legislation

34. The Bill contains provisions to make subordinate legislation. Table 2 below sets out in relation to each provision:
- the person upon whom, or the body upon which, the power is conferred;
 - the form in which the power is to be exercised;
 - the appropriateness of the delegated power;
 - the applied procedure (affirmative, negative, no procedure) if any.

Table 2: Summary of powers to make subordinate legislation

Clause	Power Conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Clause 2(6)(a)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to amend the definition of food business establishment.	Affirmative resolution	These regulations will amend definition of food business establishment so as to reduce or expand the categories of food businesses establishment that must have a food hygiene rating. Therefore affirmative procedure is appropriate.
Clause 2(6)(b)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to amend the definition of food authority (for example, to include other bodies).	Affirmative resolution	These regulations will amend the definition of food authority. Therefore affirmative procedure is appropriate.
Clause 3(2)	Welsh Ministers	Regulations	Suitable for regulations because this provision gives the Welsh Ministers power to make provision for the transition from the voluntary FSA food hygiene rating scheme to the new compulsory scheme established by the Bill.	Affirmative resolution	These regulations will have the effect of bringing establishments that were rated under the voluntary FSA scheme within the scope of the new compulsory scheme by allowing new (statutory) food hygiene ratings

Clause	Power Conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					for those establishments to be based on assessments of the food hygiene standards of an establishment carried out prior to the commencement of the Bill. As this is more than a matter of detail.
Clause 3(3)(c)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe the form of the food hygiene rating sticker which must be issued by the food authority and displayed by the operator.	Negative resolution	These regulations will prescribe matters of detail which may change from time to time.
Clause 3(3)(d)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe what information (other than that required by clause 3(3)(a), (b) and (c)) a food authority must send to the operator of the establishment.	Negative resolution	These regulations will prescribe matters of detail which may change from time to time
Clause 3(5)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe that certain categories of establishment may be exempt from rating.	Affirmative resolution	These regulations will have the effect of taking certain categories of establishment outside the scope of the new compulsory scheme. Therefore affirmative procedure is appropriate.
Clause 5(4)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables	Negative resolution procedure	These regulations will prescribe matters of detail

Clause	Power Conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			the Welsh Ministers to prescribe the form that an operator must use when appealing against a food hygiene rating.		which may change from time to time
Clause 5(7)(d)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe what information (other than that required by clause 5(7)(a), (b) and (c)) a food authority must send to the operator of the establishment following a change to a food hygiene rating resulting from an appeal.	Negative resolution	These regulations will prescribe matters of detail which may change from time to time
Clause 6(2)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe what further information the food authority must to provide the FSA (in addition to that in clause 6(1)).	Negative resolution	These regulations will prescribe matters of detail which may change from time to time.
Clause 7(3)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe the location and manner in which the food hygiene rating sticker must be displayed.	Negative resolution	These regulations will prescribe matters of detail which may change from time to time.
Clause 11(2)	Welsh Ministers.	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe the form that an operator must when requesting a re-rating inspection.	Negative resolution	These regulations will prescribe matters of detail which may change from time to time.
Clause 11(9)(d)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables	Negative resolution	These regulations will prescribe matters of detail

Clause	Power Conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			the Welsh Ministers to prescribe what information (other than that required by clause 11(9)(a), (b) and (c)) a food authority must send to the operator of the establishment following a change to a food hygiene rating due to a re-rating inspection.		which may change from time to time.
Clause 14(1)	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe the information that a food authority must send to the operators of new food business establishments in its area within 14 days of an establishment's registration.	Negative resolution	These regulations will prescribe matters of detail which may change from time to time.
Clause 25	Welsh Ministers	Order	This provision is required because the Bill does not come fully into force upon receiving Royal Assent but is to be implemented by the Welsh Ministers.	No procedure.	This is normal for commencement orders because they simply bring provisions into force.
Schedule 1, Part 1 paragraph 3	Welsh Ministers	Regulations	Suitable for regulations because this provision enables the Welsh Ministers to prescribe different limits for the fixed penalty and discounted penalty to those provided in Schedule 1, Part 1, paragraphs 1 and 2.	Negative resolution	These regulations will prescribe matters of detail which may change from time to time

35. The Welsh Government intend to undertake a series of formal consultations on the subordinate legislation (other than the commencement orders) to be made under the Bill.

6. Regulatory Impact Assessment (RIA)

36. A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for Bill and it follows at Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options

37. This Regulatory Impact Assessment presents four different options in relation to the policy objectives of the Bill. Each of the options is analysed in terms of how far they would achieve the Government's objectives, along with the risks, costs and benefits associated with each.
38. The costs and benefits associated with each option have been assessed over a five year period, 2012-13 to 2016-17. The costs and benefits are presented in Present Value (PV) terms using a discount rate of 3.5 percent. This is in line with the guidance in HM Treasury's Green Book. All figures have been rounded to the nearest hundred pounds and some of the totals may not sum due to this rounding.
39. The Welsh Government proposes that the mandatory scheme should be modelled on the voluntary scheme.
40. The voluntary scheme in operation across Wales is both well-established and achieving its main aims. Because the existing scheme is operating well, and because of the high level of costs for developing and implementing a new scheme, the Welsh Government decided very early on that the main components of the voluntary scheme would – wherever possible - be replicated in the mandatory scheme.
41. The options presented below therefore relate to the adoption and adaption of the voluntary scheme operated by the FSA.
42. The options are –
 - (a) Option 1 – do nothing
 - (b) Option 2 – greater promotion of the existing voluntary scheme
 - (c) Option 3 – introduce the mandatory scheme
 - (d) Option 4 – introduce the mandatory scheme with cost recovery for food hygiene re-rating inspections.

Option 1 - do nothing

43. Under this option, the voluntary scheme would continue to operate on a voluntary basis only, and all food businesses within the scope of the scheme would continue to be given a hygiene rating. The FSA website would continue to display the hygiene ratings, and it would continue to be optional for food businesses to display their rating.
44. The key disadvantages of this option are that –
 - (a) Local authorities can currently cease their involvement in the voluntary scheme at any time. Any such withdrawal would lead to a fragmented approach to rating food hygiene in food businesses operating in Wales.

To be fully effective the scheme requires full participation by local authorities and food businesses in Wales.

- (b) Food businesses are not required to display their hygiene ratings at their establishments. Whilst some food businesses do choose to display their ratings, others do not. This results in an inconsistent and fragmented approach to display, and places consumers at a disadvantage where there is no hygiene rating upon which to make an informed choice about where to eat. Food business operators with low scores are likely to continue to avoid displaying their ratings.
45. This option offers no opportunity for developing and improving the voluntary scheme and could lead to a demise of the scheme in future if local authorities were to withdraw from it. The Welsh Government consider it important that consumers have the right to access food hygiene rating information in an easily understandable format and that to do nothing is not a viable option.

Option 2 - greater promotion of the existing voluntary scheme

46. This option proposes strengthening the existing voluntary scheme by increasing consumer awareness of it.
47. By increasing consumer awareness, it is expected that more consumers will look for a food business's food hygiene rating on the FSA website. Consumers may also challenge businesses that fail to display their rating voluntarily at their establishments. Market forces, driven by increased consumer focus, might encourage food business operators to display their rating but this is unlikely to be uniformly effective.
48. It can be anticipated that a publicity campaign would raise knowledge about the voluntary scheme, but it is unlikely that such a campaign would be able to deliver a significant improvement in the standards of food hygiene and access to food hygiene ratings to consumers at individual establishments.

Option 3 – introduce the mandatory scheme

49. This option proposes legislation to establish and operate the mandatory scheme for all food businesses in Wales providing food direct to consumers and the majority of business-to business trade.
50. The Bill is intended to create new obligations on food authorities and the FSA to operate the mandatory scheme, and for food businesses to participate in the scheme and display the rating which their establishment have been awarded.
51. The statutory requirement to establish and operate the mandatory scheme in Wales will encourage businesses to raise their food hygiene standards to obtain higher ratings in order to retain existing customers and attract new ones. Whilst all 22 local authorities in Wales currently participate in the

voluntary scheme on a voluntary basis, this option will require their mandatory participation in future.

52. This option will ensure that consumers in Wales have direct access to food hygiene ratings in Wales that will help them make informed decisions of where to buy or shop for food. The expected improvement of hygiene standards should reduce the risk of food poisoning. The mandatory scheme will include requirements for public institutions such as schools and hospitals to display their ratings and include the majority of business-to-business trade within the scope of the scheme. The introduction of the mandatory scheme would be supported by a number of other enforcement measures including fixed penalty notices.

Option 4 – introduce the mandatory scheme with cost recovery for re-rating inspections

53. This option is similar to Option 3 but includes an additional component in the form of mandatory charging of food businesses where they request re-rating inspections. Making the display of a rating a legal requirement is expected to lead to an increase in requests from food businesses for re-rating inspections solely for the purpose of attaining a higher rating. This in turn could lead to increased pressure on local authorities (who administer and operate the scheme) to deliver re-inspections and may result in resources having to be transferred away from carrying out their other statutory duties.
54. This proposal to charge for re-rating inspections for the purposes of a food hygiene rating under the mandatory scheme would not extend to charging for enforcement inspections under the existing Food Hygiene (Wales) Regulations 2006.
55. Local authorities do not charge for re-visits requested in connection with the voluntary scheme. They may only make a charge of this kind where there is a legal basis for such an action. This option proposes to place a duty on local authorities to recover the cost of carrying out a re-rating inspections where the request for that inspection comes from a food business operator seeking a higher rating. This option might lead to pressure on local authorities' resources prior to any mandatory requirement to charge coming into force as food businesses request re-rating inspections to avoid incurring any costs.
56. Because the charge would be used to recover the costs of local authorities undertaking the re-rating inspections, this option proposes the income generated being retained by local authorities rather than passed to the Welsh Government.

8. Costs and benefits

57. This chapter contains the cost benefit of the options detailed in Section 7.

Costs

Option 1 – do nothing

58. As this option proposes no change it is considered that there are no additional costs associated with this option. There would be little improvement in food hygiene standards by doing nothing. The estimated annual cost of operating the Food Standards Agency Voluntary Scheme in Wales including one-off start up costs is £244,000 based on a UK figure of £4,247,996⁹.

Option 2 – greater promotion of the existing voluntary scheme

59. The Welsh Government considers that there would be recurrent costs of £200,000 associated with this option that would fall to the Food Standards Agency.

60. The direct costs associated with this option would be for an ongoing marketing campaign aimed at improving consumer awareness of the scheme. Such a campaign could include bus-stands, newspaper advertising. Such a campaign would be most appropriately run by the FSA, and the costs are estimated to be £200,000 per year that would be met from within the FSA's budget.

61. For local authorities, who have been operating the voluntary scheme since its introduction in October 2010, there have been costs associated with operating the scheme in addition to those previously incurred for undertaking food law enforcement inspections. The costs are principally around notifying a food business of a rating by issuing the sticker, administering any appeals submitted against the rating or right of reply, additional administration costs and the cost of hygiene rating re-inspections under the voluntary scheme. These costs have been met from local authorities' existing budgets.

62. The promotion of the voluntary scheme in the way proposed in this option would not result in direct costs falling to local authorities. It may however result in indirect costs associated with re-inspection of those establishments that the local authority would not otherwise re-visit, i.e. "3" and "4" rated businesses (those with lower ratings would automatically be revisited in any case). Such requests could arise because food business operators are keen to have the highest rating because of increased consumer awareness.

⁹ Food Standards Agency (November 2010) UK-wide scheme for rating of food hygiene standards www.food.gov.uk/multimedia/pdfs/iafhrs.pdf Page 17, Table 12.

63. For food business operators, the voluntary scheme has had little impact in terms of actual costs other than that of making improvements to better comply with food hygiene legislation, thereby securing a better food hygiene rating. The business is encouraged to display its rating sticker but this activity involves minimal associated costs. This option is unlikely to raise the costs for food business operators nor generate any improvement in food hygiene standards in Wales or reduce the economic cost of foodborne illness in Wales.

Summary table of additional costs (to the current voluntary scheme) of Option 2 (£)

	2012-13	2013-14	2014-15	2015-16	2016-17	Total	Present Value
Local Authorities							
Re-rating inspections						0	0
Trade to trade (postage)						0	0
Appeals						0	0
Informing Business						0	0
Enforcement						0	0
Food Standards Agency							
Marketing		200,000	200,000	200,000	200,000	800,000	734,616
Trade to trade (stickers)						0	0
Evaluation						0	0
Welsh Government							
Training						0	0
Food Businesses							
Re-visit Charge						0	0
Total Costs	0	200,000	200,000	200,000	200,000	800,000	734,616

Option 3 – introduce the mandatory scheme

64. The Welsh Government considers that there would be costs associated with this option that would fall to –
- local authorities;
 - food business operators;
 - the FSA; and
 - the Welsh Government.

Costs to Local Authorities

65. The introduction of the mandatory scheme is expected to generate additional interest in the scheme throughout Wales. Food businesses are likely to devote more attention to the hygiene ratings they have been awarded under a mandatory scheme. This is likely to result in local authorities having to invest more time to the scheme including undertaking more requested re-rating inspections to “3” and “4” rated businesses which they would not otherwise carry out.
66. There will be a one-off cost to local authorities to inform food businesses of the introduction of the mandatory food hygiene rating scheme in Wales. Informing 32,500 food businesses including business-to business trade operators using second class post at £0.50 will total £16,250. Administration costs are estimated at £5,300. The total cost is therefore £21,550.

67. It is estimated that local authorities will need to invest additional time in a mandatory scheme in the short term, in part because it is anticipated that the requests for re-rating inspections to all businesses will increase because of the desire to obtain a better food hygiene rating. The costs associated with sending new food businesses prescribed information was raised as an additional cost not covered in the original impact assessment. It is estimated that 2,500 food businesses start up each year in Wales. Postage and Administration time to issue information to 2,500 new businesses is estimated at £27,500. This figure is made up of £2,500 for postage and an administration cost of £10 per business. The Welsh Government consider that local authorities should be undertaking this work under the voluntary scheme (this cost is therefore not included in the table below) and that these recurrent costs should be met from local authorities' existing resources.
68. The Welsh Local Government Association calculate the overall cost of a typical inspection at about £150. In the first year of the voluntary scheme there were 500 re-rating inspections (estimated existing cost £75,000), and it has been estimated this would rise to an anticipated 1,800 visits on the introduction of the mandatory scheme. This would amount to an additional 1300 visits with an estimated recurrent cost of £195,000 each year falling to local authorities. This cost is estimated to reduce by about 50 percent after 4 years of the operation of the mandatory scheme. There is also expected to be an increase in the number of appeals with the introduction of the mandatory scheme from 40 to 80. An appeal on average takes 3 hours to consider at a rate of £40 per hour, a total of £120. This would amount to an additional 40 appeals at a recurrent cost of £4,800.
69. Food hygiene stickers will have to be issued to 2,500 trade to trade businesses at a cost of £3,000 (including postage and administration costs). The cost of the sticker falls to the FSA. The Bill enables Welsh Ministers to make regulations for food hygiene ratings to be based on assessments of the food hygiene standards of an establishment carried out prior to the commencement of the Act. These costs will be included in the Regulatory Impact Assessment on the regulations and are not included in the table below but it is estimated that that new hygiene stickers will need to be issued to 15,000 food businesses at a one-off cost of £17,500 (including postage and administration). There will be costs to local authorities for implementation and subsequent enforcement action for two years after commencement of the mandatory scheme estimated at £110,000 (per year) to be funded by the Welsh Government (paragraph 83 refers).
70. It is anticipated that the increased costs are likely to peak between 2012-2015 and it is expected that the majority of the remaining 12,500 food businesses without a hygiene rating will be provided with a rating during this period and also because food businesses will wish to improve hygiene ratings before the mandatory scheme comes into force. A gradual reduction is expected thereafter.
71. Option 4 (see below) proposes cost recovery for re-inspections; it is not a feature of this option.

Enforcement, including fixed penalty notices and prosecutions

72. It is proposed that the mandatory scheme will make it an offence for food business operators to fail to display or divulge their food hygiene ratings in the manner prescribed under the scheme or to tamper with or falsify those ratings. It is intended that local authorities will be able to issue Fixed Penalty Notices (FPNs) for non compliance.
73. The Bill sets out that FPNs will be £200, although the penalty will be discounted by £50 (25 percent) if the fine is paid within 14 days.
74. It is expected that the vast majority of food businesses will comply with the requirement to display their hygiene ratings in accordance with the mandatory scheme. Further, it is anticipated that the initial implementation of the scheme will be through persuasion rather than imposing penalties. It is therefore anticipated that the proceeds from FPNs will be minimal. In any case, the FPNs represent a transfer payment (from food business to Government) and are therefore excluded from this economic analysis. The proceeds from FPNs will be returned to Welsh Ministers for possible redistribution to the FSA or local authorities for use on food hygiene training, dependent on the actual sums involved.
75. We hope that with public support, consumers will report food businesses who are not displaying their ratings to local authorities. High levels of business compliance and public support should help limit the need for policing of the display of ratings by local authority officers. The option to prosecute will be available to the local authority to consider on a case by case basis. The powers are intended to be used as part of an overall graduated enforcement approach and to deal with the deliberate fraudulent display by a food business or to take action against persistent offenders.

Costs to food business operators

76. Food business operators must already comply with the existing legislation relating to hygiene standards and a rating is already provided as part of the existing process. As this option proposes creating a similar (but mandatory) scheme it is considered that there will be no additional costs to food business operators associated with the rating of the business. Similarly, the additional costs to businesses associated with the physical process of displaying the rating is expected to be minimal.
77. However, the mandatory display of the rating may have a negative impact on an individual food business in cases where a generally satisfactory '3' rating is awarded. In such cases, the business operator will need to invest (time and/or money) in improving hygiene standards and requesting a further inspection (and re-score) or risk losing customers and revenue to competitors. This would equally apply to food businesses with poorer ratings that the local authority would follow-up in any event.

78. The net economic impact of any re-distribution of revenue between food businesses is expected to be broadly zero with any decline in revenue in one business being matched by an increase in revenue at another business or businesses (with comparatively high ratings).
79. The Bill provides for a food business operator to request a re-rating inspection. It is very difficult to estimate how frequently requests for re-rating inspections will occur and the cost of improving hygiene standards is likely to vary on a case by case basis. It will be for food business operators to balance the costs of improving food hygiene standards against the negative impact on the business from retaining the original rating.

Costs to the Food Standards Agency (FSA)

80. The Welsh Government, in discussion with the FSA, considers that the anticipated increased interest in the mandatory scheme by food business operators is unlikely to result in major additional costs for the FSA. The costs for marketing the mandatory scheme of £100,000 and an evaluation of the mandatory scheme of £50,000 (every 3 years) can be met from within the existing FSA budget.
81. The FSA expect to deal with increased enquiries from businesses and consumers and an increased demand for stickers. The FSA will have to provide local authorities in Wales with an additional 2,500 stickers at a cost of £1,000 to provide trade to trade businesses with a food hygiene rating. FSA staff time for this activity will be met from within existing budgets but may have some impact on other FSA objectives. The legislation allows for regulations to provide for food hygiene ratings to be based on assessments of the food hygiene standards of an establishment carried out prior to the commencement of this Act. This will involve re-issuing food hygiene ratings to around 15,000 food businesses within a period of a year. This cost will need to be addressed in the RIA for the Regulations but on the basis of current production costs of £0.40 per sticker X 15,000 this is likely to cost £6,000. The FSA purchase the stickers that are provided to local authorities free of charge to issue. These costs are to be included in the impact assessment on the regulations and are not included in the table below.
82. The legislation places a number of duties on the Food Standards Agency most of which the Agency undertake delivering the voluntary food hygiene rating scheme in Wales, England and Northern Ireland. One exception to this is the duty imposed on the FSA to conduct a formal evaluation of the scheme and to make recommendations to the Welsh Ministers within 3 years of commencement of the mandatory scheme and at 3 year intervals thereafter. This is a new responsibility and is estimated to cost around £50,000 and would be met from within the existing FSA budget.

Costs to the Welsh Government

83. The voluntary scheme is operated by local authorities in Wales and co-ordinated by the FSA. The Welsh Government funds the FSA in Wales, and

for the financial year 2011/12 this funding was £3,242,000. The FSA budget for 2012-13 is currently £3,242,000.

84. The main cost implications for the Welsh Government will be in relation to providing funding for local authorities in Wales to enforce the mandatory scheme and training for local authority staff in Wales. A total of £120,000 is expected to be incurred in the first year of the operation of the mandatory scheme. This includes £110,000 for enforcement and one-off costs of £10,000 for training local authority staff. The £110,000 for enforcement will be repeated in the second year. Staff time for this activity will be met from within existing budgets.
85. This option is likely to generate improvement in food hygiene standards in Wales and may have a positive impact to reduce the economic cost of foodborne illness in Wales. If a reduction in the economic cost of food borne illness is seen in Wales it will be very difficult to measure the extent that the introduction of the mandatory food hygiene rating scheme in Wales would have led to any such reduction.

Summary table of additional costs (to the current voluntary scheme) of Option 3 (£)

	2012-13	2013-14	2014-15	2015-16	2016-17	Total	Present Value
Local Authorities							
Re-rating inspections		195,000	165,000	135,000	100,000	595,000	551,342
Trade to trade (postage)		3,000				3,000	2,899
Appeals		4,800	4,800	4,800	4,800	19,200	17,631
Informing Business		21,550				21,550	20,821
Enforcement		110,000	110,000			220,000	208,966
Food Standards Agency							
Marketing		100,000	100,000			200,000	189,969
Trade to trade (stickers)		1,000				1,000	966
Evaluation					50,000	50,000	43,572
Welsh Government							
Training		10,000				10,000	9,662
Food Businesses							
Re-visit Charge						0	0
Total Costs	0	445,350	379,800	139,800	154,800	1,119,750	1,045,828

Option 4 – introduce the mandatory scheme with cost recovery for food hygiene re-rating inspections

86. The costs associated with this option are broadly similar to Option 3, the exception being how re-visits are funded.

Costs to food business operators

87. Under this option, local authorities will charge food businesses for cost recovery where they request a re-visit. As noted above, if the mandatory scheme is introduced, the demand by food business operators for re-inspections to potentially improve their ratings could increase significantly and become a burden for local authorities. Whilst local authorities are resourced to meet their statutory obligations, significant numbers of re-rating inspections

could impact on resources to undertake statutory enforcement visits. The introduction of cost recovery power to charge for re-rating inspections for the mandatory scheme would allow local authorities some flexibility in managing the implications of that scheme but would impinge on the food business.

88. Making the display of a rating mandatory is expected to lead to an increase in the number of re-rating inspections requested from 500 to approximately 1,500. The number of anticipated re-visits is 300 less than in Option 3 above because there is an associated charge under Option 4. Based on an estimated average cost of £150 per visit, this represents an additional cost of £150,000. The total cost of re-inspections (including the 500 per annum that are currently undertaken) will be approximately £225,000. This cost is likely to reduce by about 50% after 4 years of the operation of the mandatory scheme. In this option, this cost is borne by food businesses. The number of re-rating inspection requests may rise prior to the mandatory scheme taking effect and may also increase in anticipation of the introduction of a charge for re-rating inspections. We estimate a potential additional pressure of £166,500 (notional figure) arising from requests by food businesses for re-rating inspections prior to the mandatory scheme coming into force. In the table below, all of this cost is assumed to be incurred in 2012-13 (although in reality a proportion may be incurred in the first half of 2013-14). Local Authorities currently undertake these re-inspections as participants in the voluntary scheme but are not under a statutory duty to do so. They are unable to recover the cost of such inspections.
89. The impact that charging for cost recovery may have on the demand for re-rating inspections is unclear. Businesses will need to balance the cost of the re-rating inspection and likelihood of an improvement in rating against the negative impact on the business from retaining the original rating.

Summary table of additional costs (to the current voluntary scheme) of Option 4 (£)

	2012-13	2013-14	2014-15	2015-16	2016-17	Total	Present Value
Local Authorities							
Re-rating inspections	166,500					166,500	166,500
Trade to trade (postage)		3,000				3,000	2,899
Appeals		4,800	4,800	4,800	4,800	19,200	17,631
Informing Business		21,550				21,550	20,821
Enforcement		110,000	110,000			220,000	208,966
Food Standards Agency							
Marketing		100,000	100,000			200,000	189,969
Trade to trade (stickers)		1,000				1,000	966
Evaluation					50,000	50,000	43,572
Welsh Government							
Training		10,000				10,000	9,662
Food Businesses							
Re-visit Charge		225,000	195,000	155,000	115,000	690,000	639,443
Total Costs	166,500	475,350	409,800	159,800	169,800	1,381,250	1,300,429

Benefits

Option 1 – do nothing

90. It is considered that there are no additional benefits for consumers, food business operators, the FSA or local authorities from this option.

Option 2 – greater promotion of the existing voluntary scheme

91. It is considered that the key benefit of this option would be increased consumer awareness, generated from publicity campaigns, about the voluntary scheme. However it considered unlikely that this awareness, in isolation, would generate a significant change in behaviour that would influence all food businesses to display their ratings. The option is therefore very unlikely to have any impact on food hygiene standards, or consumer choice.

Option 3 – introduce the mandatory scheme

92. The mandatory display of hygiene ratings represents a natural progression from the voluntary scheme. In order for the scheme to work effectively it needs all food businesses to participate and for them to display the hygiene ratings provided by their respective local authorities. If there is a choice of whether to display or not, as is now the case, food businesses would be unlikely to show a low hygiene rating that could deter customers from frequenting their food business. The only fair and equitable way is for all food businesses to be required to display their rating – this is also the most logical way to ensure that consumers are provided with relevant information in all establishments that are subject to the scheme.
93. This will require those businesses with low ratings to display them, allowing consumers to make informed choices of where to eat or to buy food. Businesses with low ratings could find themselves losing custom and this would act as an incentive for them to improve their hygiene standards. Food businesses with good hygiene ratings are likely to see a commensurate increase in their custom. The more businesses that decide to take action to improve their ratings, the better in terms of increasing food law compliance. The benefits of mandatory schemes have been identified in other countries and represent a positive step forward for Wales in attempting to address and reduce the public health risks associated with food.
94. There is international evidence on the benefits of mandatory food hygiene rating schemes. For example, research in Denmark¹⁰ suggests that 19 percent of food business operators had implemented improvements to hygiene standards in their establishments whilst Jin and Leslie (2003)¹¹

¹⁰ Available at <http://www.findsmiley.dk/en-US/Forside.htm>

¹¹ Jin,G; Leslie,P (2003). *The effect of information on product quality: Evidence from restaurant hygiene grade cards*. Quarterly journal of Economics 118(2) 409-451 and Jin, G; Leslie P(2005). *The Effect of Information on Product Quality: Evidence from Restaurant Hygiene Grade Cards*

reported that a similar scheme in Los Angeles led restaurants to increase hygiene standards by about 5 percent and commented that in the period following the introduction of the scheme, food related hospitalisations had decreased by approximately 20 percent.

95. It is very difficult to quantify the impact the policy will have on the number of food poisoning cases in Wales, not least because there is currently no data on how many of the existing cases are a result of poor hygiene standards in food establishments and how many are the result of poor hygiene in the home. If making the display of a rating mandatory results in a 0.5 percent reduction in the number of food poisoning cases in Wales each year, the benefit to the Welsh economy would be approximately £0.5 million per annum. Such a saving would be sufficient for the scheme to generate a positive Net Present Value.
96. All local authorities in Wales have agreed to participate in the voluntary scheme. In future, mandatory participation will recognise the major role of local authorities in delivering the mandatory scheme in Wales and that without their input the scheme would not function. The mandatory requirement to participate secures the sustained involvement of all local authorities in Wales in the mandatory scheme and the future of the scheme in Wales.

Option 4 – introduce the mandatory scheme with cost recovery for food hygiene re-rating inspections

97. This also secures all the benefits of Option 3 but additionally the mandatory charging for re-inspections under the mandatory scheme will contribute to the local authorities' resources for food law enforcement inspections, and offer some protection against the expected increased demand associated with the introduction of the mandatory scheme.
98. There are currently approximately 500 requests for a re-visit and re-inspection, with the cost of each re-visit currently borne by the relevant local authority. Under this option, the cost of the re-visit will fall upon the food business and therefore, compared to the 'Do Nothing' option, there is a cost-saving (benefit) to the local authority. Based on the assumed cost of £150 per re-visit, this represents a cost saving to local authorities of approximately £75,000 per annum. The present value of this benefit (cost-saving) is approximately £275,500 during the first four years of the scheme.

Summary and preferred option

99. Whilst the voluntary scheme has been operating in Wales for little more than one year, it is evident that its main weakness is the inability of the FSA or local authorities to require food businesses to display their ratings, particularly when these might be lower scores of '0', '1', and '2'.

100. In order for the mandatory scheme to work effectively to the best advantage of the consumer, all food businesses must display their hygiene ratings. At the same time, local authorities' resources for food law enforcement must be protected.
101. The Welsh Government considers that Option 4 (introduction of the mandatory scheme with cost recovery for food hygiene re-rating inspections) offers the best way forward to achieve improved food hygiene standards in Wales. It will have the maximum impact on improving food standards and reduce the risks of food poisoning whilst not increasing the burden on local authorities' financial resources.
102. Under these proposals Wales will be the first country in the UK to introduce a mandatory scheme. The mandatory scheme will place a requirement on food businesses to display the sticker and a requirement for local authorities in Wales to implement it. The proposal to introduce mandatory powers for local authorities to charge for full cost recovery for food hygiene rating re-inspections will ensure that they can accommodate the anticipated additional requests for re-rating inspections and also to protect resources to maintain enforcement inspections under the Food Hygiene (Wales) Regulations 2006.
103. The table below presents a comparison of the additional costs and benefits associated with Options 2, 3 and 4. The data is taken from the summary tables for each option (above). The Net Present Value (NPV) for each option is negative but this does not take into account the positive health benefits that are expected to accrue following the introduction of Options 3 or 4. As is noted above, it is difficult to quantify the impact that the scheme will have on the cost of food poisoning cases in Wales each year, however, an annual benefit of £500,000 (based on a 0.5 percent reduction in the number of food poisoning cases in Wales each year – see paragraph 103) would be sufficient to generate positive a positive NPV under Options 3 and 4.

Summary table

	Present Value of Costs	Present Value of Benefits	Net Present Value
Option 2	734,616	0	-734,616
Option 3	1,045,828	0	-1,045,828
Option 4	1,300,429	275,481	-1,024,948

Notes:

(1) The benefit of £275,000 shown under Option 4 represents the cost-saving to local authorities from being able to charge for re-inspections.

Specific Impact Assessments

104. A series of impact assessments on the draft Bill were completed as part of this RIA. These impact assessments were reviewed following the consultation of the draft Bill. An overview of the consultation responses on the policy impacts is contained within the draft Bill Summary Report. There were no differential impacts identified from the review of impact assessments or consultation responses.

Impact on small business

105. The estimated financial costs to the food business operators are detailed in the summary table above.
106. The Bill will apply equally to all food businesses that are registered for inspection under the Food Hygiene (Wales) Regulations 2006. There have been concerns expressed from small food businesses such as guesthouses of the impact that the introduction of a mandatory scheme will have on their businesses. The impact of paying for a re-rating inspection is likely to be greater for a smaller business than a larger one or for food chain businesses. The Welsh Government believes that guesthouses should maintain the highest standards of food hygiene for their customers and be subject to the same enforcement process as restaurants and take-aways. Small businesses will be able to use good food hygiene ratings as a promotional tool for their business.

Impact on voluntary sector

107. Voluntary sector organisations that operate as a food business within the scope of the scheme will be subject to the mandatory scheme and will therefore incur costs similar to other food business operators. There will be little or no other impact on the voluntary sector from introducing these legislative controls.

Equality impact assessment

108. The voluntary scheme has been in operation in Wales for just over a year and the FSA published a regulatory impact assessment (RIA) on that scheme (for the UK) in November 2010¹². This reported that there was no evidence to indicate a differential impact on race, gender or disability with the operation of the scheme.
109. The duties and responsibilities of Welsh Ministers, the FSA and Local Authorities are contained within the Bill. The Welsh Government will encourage the FSA and local authorities to take into account equality impacts as part of their duties and responsibilities.

¹² <http://www.food.gov.uk/foodindustry/regulation/betregs/ria/ria2010/fhrs>

110. Currently, the voluntary scheme requires ratings to be published on the FSA national website. The requirement for the mandatory display of hygiene ratings at the food business premises will reduce inequalities in Wales for those people who do not have access to the internet (30 percent of people in Wales). Having a food hygiene rating displayed at food establishments that can be easily seen by the consumer is an effective way of ensuring that all have equality of access to information. The equality of access to information also has a positive impact on age discrimination as 73 percent of people aged over 65 do not use the internet and are more vulnerable to food borne disease (according to Consumer Focus Wales).
111. The mandatory scheme is not considered to have a significant impact on disability; however, the display and positioning of a food hygiene rating sticker will impact on those visually impaired. This will form part of the equality policy impact assessment of the regulations. The Bill provides that a food business operator must verbally inform a customer of their food hygiene rating if requested and that it is an offence for failure to do so. The training needs of food business operators during the transitional period from a voluntary to a mandatory scheme will have disability impacts for example the choice of venue to deliver the training.
112. To meet impacts on race equality, the delivery of the mandatory scheme will require consideration of a variety of languages as part of the development of training and promotional material. For the enforcement of the FHRS, where inspections need to be carried out in languages other than that of the inspecting officer, the local authority need to make a provision in advance of the planned inspection.
113. The Human Rights Act 1998 has been considered as part of the screening equality assessment. The Bill is compatible with Convention Rights.
114. 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

115. As part of the policy impact screening for the draft Bill, consideration has been given to the five headline indicators in the Welsh Government's Sustainable Development Scheme. Two indicators were relevant being a Sustainable Economy and a Sustainable Society.
116. The policy objectives of the draft Bill have been considered in terms of potential impact against the indicators for a sustainable economy and society.
117. The mandatory 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 will drive 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. There is considered to be a low risk to increased unemployment where FBOs do not meet hygiene standards and close their business.

118. Supporting a sustainable society is at the heart of the policy intent for a mandatory 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 mandatory scheme is expected to lead to an improvement of food hygiene standards that will help protect the health and the interests of consumers.

Rural proofing checklist

119. The introduction of the draft Bill will see a small increase in the amount of travel within rural areas where local authority inspectors meet demand for an anticipated increase in food hygiene rating re-rating inspections. Local 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 local authority area offices. The Bill proposes a mandatory cost recovery from food business operators for re-rating inspections. It is proposed that local authorities are required to inform the food business in advance of the re-rating inspection, the charge to be levied in such a way that the food business operator is reasonably informed of the amount.
120. 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.

Impact on Welsh Language

121. The FSA has a Welsh Language Policy, and all material related to the delivery of the voluntary scheme complies with the FSA's Welsh Language Scheme.
122. There is no risk that the mandatory scheme will have a negative impact on the Welsh Language. The proposed move from a voluntary scheme to the mandatory scheme in Wales will need to comply with the Welsh Government's Welsh Language Scheme. The Welsh Government will encourage local authorities to incorporate changes to their individual Welsh Language policies to take into account the delivery of the mandatory scheme.

9. Competition assessment

123. The competition filter is required to be completed if the legislation affects business, charities and/or the voluntary sector. The policy will have an impact on food businesses in Wales in that they will have to display their food hygiene rating. The requirement to display will affect the vast majority of food business operators.

124. 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?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Note: The market affected in Questions 1 to 3 is the supermarket sector.

10. Post implementation review

125. Clause 13 of the Bill requires the FSA within three years of the commencement of the scheme, and subsequently every three years, to conduct a formal evaluation of the scheme and make recommendations to the Welsh Ministers. These evaluations will consider the effectiveness of the mandatory scheme and whether the scheme is delivering improvements for the people of Wales taking account of the delivering results principles.

FOOD HYGIENE RATING (WALES) BILL

EXPLANATORY NOTES

Introduction

1. These Explanatory Notes relate to the Food Hygiene Rating (Wales) Bill as introduced into the National Assembly for Wales on 28 May 2012. They have been prepared by the Welsh Government's Department for Health, Social Services and Children in order to assist the reader of the proposed Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the National Assembly for Wales.
2. These Explanatory Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause is self-explanatory, no further explanation or comment is provided.
3. The powers to make the Bill are contained in Part 4 and paragraph 8 of Schedule 7 to the Government of Wales Act 2006. The National Assembly for Wales has the requisite legislative competence to make provision for and in connection with the provisions of the Bill by virtue of the subject which relates to *"Food and food products. Food safety (including packaging and other materials which come into contact with food). Protection of interests of consumers in relation to food."*

List of terms and abbreviations used in the Explanatory Notes

4. The following terms and abbreviations are used in the Explanatory Notes:

FSA – the Food Standards Agency
FPN – fixed penalty notice
rating – the food hygiene rating
the Bill – the Food Hygiene Rating (Wales) Bill

Commentary on clauses of the Bill

Clause 1 – Overview

5. This clause provides introduces of the key provisions in the Bill. The Bill has 26 clauses and 1 Schedule. Many key expressions in the Bill are defined in clause 23.

Clause 2 – Programme of food hygiene inspections

6. 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. The food authority must carry out all inspections of food businesses in its area in accordance with the programme.

7. The meaning of “food business establishment”, “operator” and “food authority” for the purpose of the Bill is set out in clause 2(5). The Welsh Ministers may, by regulations, amend the definitions of “food business establishment” and “food authority”.

Clause 3 – Food hygiene ratings

8. 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.
9. 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.

10. 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.
11. The Welsh Ministers may make regulations exempting certain categories of establishment from rating.
12. Clause 3(2) provides the Welsh Ministers with powers to make regulations to enable ratings to be given for assessments carried out before the commencement of the Act. For example, the findings of a previous inspection undertaken by the food authority as part of the voluntary FSA scheme could be relied upon when the food authority issues a rating under the statutory scheme after the Act is commenced.

Clause 4 – Rating criteria

13. 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

14. 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 Welsh Ministers anticipate including guidance on appeals in guidance to be issued by them under section 22.
15. 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.
16. If, on the basis of appeal, the food authority decides to change the rating, a new rating sticker must be sent to the operator at the same time as the food authority notifies the operator of its decision.

Clause 6 – Notification and publication of food hygiene ratings

17. 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

18. 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. This 21-day period provides the operator with the opportunity to appeal against the rating. If the operator appeals, the obligation to display the rating does not apply until the operator receives notification of the outcome of the appeal.
19. The Welsh Ministers in regulations will prescribe the location and manner in which the sticker must be displayed; regulations may also prescribe the proper location and manner for displaying a sticker at different types of establishment.
20. The sticker ceases to be valid when the rating to which it relates ceases to be valid (see paragraph 9 above). When a sticker ceases to be valid the operator must remove the sticker from display and destroy it, unless instructed not to do so by a food authority.

Clause 10 – Right to reply

21. 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

22. 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.
23. 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.
24. The right of appeal and of reply apply to any new food hygiene rating, and any unaltered rating.

Clause 13 – Duties of the Food Standards Agency

25. 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

26. 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. (Food hygiene legislation requires most food business establishments to register with their food authority, but some businesses have to obtain approval from their food authority.)
27. This clause also provides that the food authority must have regard to recommendations made by the FSA and guidance given by the Welsh Ministers, make arrangements to enforce the obligations under the Bill on food business establishments in its area, and review the operation of the scheme in its area to ensure that the rating criteria are assessed fairly and consistently and assist the FSA in any evaluation of the scheme undertaken by the FSA.

Clause 15 – Other responsibilities of operators of food business establishments

28. 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

29. 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 18 – Offences by bodies corporate

30. 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

31. 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

32. 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

33. 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

34. This clause provides general arrangements (at sub-clause (1), (2) and (3)) for making orders and regulations under this Bill. Sub-clauses (4) and (5) then establish the Assembly procedure for making those orders and regulations.
35. Chapter 5 in Part 1 of the Explanatory Memorandum provides a summary table of the regulations and orders which may be made under this Bill.

Schedule 1 – Fixed penalty notices

36. 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.

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