

Food Hygiene Rating Bill

[AS INTRODUCED]

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B I L L

TO

Provide for the operation of a food hygiene rating scheme in Northern Ireland.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Preparation of rating

Food hygiene rating

1. —(1) Where a district council has carried out an inspection of a food business establishment in its district, it must rate the food hygiene standards of the establishment on the basis of that inspection.

(2) But the district council need not prepare a rating if it considers that it is not necessary to do so, in light of how long it is since it last did so.

(3) A rating under this section is referred to in this Act as a “food hygiene rating”.

(4) A “food business establishment” is an establishment which—

(a) is required to be registered with a district council under Article 6 of Regulation (EC) 852/2004 or to be approved by a district council under Article 4 of Regulation (EC) 853/2004, and

(b) supplies food direct to consumers.

(5) A reference to carrying out an inspection of a food business establishment is a reference to carrying out an activity in relation to the establishment as part of official controls under Regulation (EC) 882/2004.

(6) The Department may by regulations specify categories of establishment in relation to which the duty under subsection (1) does not apply.

(7) The Department may by order amend the definition of “food business establishment”.

Notification and publication

2.—(1) Within 14 days of carrying out an inspection of a food business establishment, a district council must, if it has prepared a food hygiene rating for the establishment on the basis of that inspection, notify the rating to the operator of the establishment.

(2) “Operator”, in relation to a food business establishment, has the same meaning as “food business operator” has in Regulation (EC) 882/2004.

(3) The notification must be in writing and must be accompanied by—

(a) a sticker showing the rating,

(b) a written statement of the reasons for the rating,

(c) information about compliance with Regulations (EC) 852/2004 and 853/2004,

(d) an explanation of the right of appeal under section 3,

(e) an explanation of the right to request a re-rating under section 4,

(f) an explanation of the right of reply under section 5,

(g) an explanation of the effect of section 6 and of the duties under sections 7 and 8, and

(h) such other information as the Department may specify in regulations.

(4) Having given a notification under this section, a district council—

(a) must inform the Food Standards Agency of the rating, and

(b) if the district council considers that it would not be appropriate to publish the rating, must inform the Food Standards Agency accordingly.

(5) The Food Standards Agency, having been informed of a food hygiene rating under subsection (4), must publish the rating on its website, unless it has been informed under subsection (4)(b) that publication would not be appropriate.

(6) The Department may by regulations prescribe the form of sticker to be provided under subsection (3)(a).

Appeal, re-rating etc.

Appeal

3.—(1) The operator of a food business establishment may appeal against the establishment’s food hygiene rating.

(2) The appeal must be made in writing to the district council which produced the rating; but no officer of the council who was involved in the production of the rating, or in the inspection on which the rating is based, may be involved in the determination of the appeal.

(3) The appeal may be made only on the ground that the rating does not reflect the food hygiene standards at the establishment at the time of the inspection on which the rating is based.

(4) The appeal must be made before the end of 21 days beginning with the day on which the operator receives the notification under section 2.

(5) The district council to which the appeal is made must, before the end of 21 days beginning with the day on which it receives the appeal—

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- (a) determine the appeal, and
 - (b) notify the operator of its determination.
- (6) The notification must be in writing and must be accompanied by—
- (a) where the district council has changed the establishment's food hygiene rating on the appeal, a sticker showing the new rating,
 - (b) a written statement of the reasons for the determination on the appeal,
 - (c) an explanation of the right to request a re-rating under section 4,
 - (d) an explanation of the right of reply under section 5,
 - (e) an explanation of the effect of section 6 and of the duties under sections 7 and 8, and
 - (f) such other information as the Department may specify in regulations.
- (7) A district council may, on an appeal under this section, inspect the food business establishment concerned in so far as the council considers it necessary to do so for the purpose of determining the appeal (and in so far as the operator of the establishment permits it to do so).
- (8) In the case of an establishment whose food hygiene rating is changed on an appeal under this section, references in this Act to the establishment's food hygiene rating are to the new rating.
- (9) A sticker provided under subsection (6)(a) must be in the form prescribed under section 2(6).
- (10) The Department may by order amend this section so as to provide for an appeal under this section to be determined by a person other than the district council which produced the rating in question.

Request for re-rating

- 4.—(1) This section applies where a district council receives a request from the operator of a food business establishment in its district for the council to review the establishment's food hygiene rating.
- (2) Within three months of receiving the request, the district council must—
- (a) inspect the establishment and review the establishment's food hygiene rating on the basis of that inspection, or
 - (b) if it does not propose to act under paragraph (a), provide the operator of the establishment with a written explanation of why it does not propose to do so.
- (3) Within 14 days of carrying out an inspection under subsection (2), the council must notify the operator of the establishment of its determination on reviewing the establishment's food hygiene rating.
- (4) The notification must be in writing and must be accompanied by—
- (a) where the district council has changed the establishment's food hygiene rating on the review, a sticker showing the new rating,
 - (b) a written statement of the reasons for the determination on the review,
 - (c) information about compliance with Regulations (EC) 852/2004 and 853/2004,

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- (d) an explanation of the right of appeal under section 3,
 - (e) an explanation of the right to make a further request under this section,
 - (f) an explanation of the right of reply under section 5,
 - (g) an explanation of the effect of section 6 and of the duties under sections 7 and 8, and
 - (h) such other information as the Department may specify in regulations.
- (5) A request under this section must—
- (a) be in writing,
 - (b) include an explanation of the steps taken by the operator to improve compliance with Regulations (EC) 852/2004 and 853/2004 since the inspection on which the food hygiene rating was based was carried out, and
 - (c) be accompanied by a fee of such amount as the Department may by order specify.
- (6) A request under this section may not be made—
- (a) before the end of the period within which an appeal against the food hygiene rating in question may be made under section 3;
 - (b) if an appeal against the rating is made under that section, before the appeal is determined or abandoned.
- (7) The matters which a district council may take into account in deciding whether to act under subsection (2)(a) include the extent to which the operator of the establishment is complying with the provisions of this Act.
- (8) In the case of an establishment whose food hygiene rating is changed on a review under this section, references in this Act to the establishment's food hygiene rating are to the new rating (and section 3 accordingly applies in relation to a food hygiene rating changed under this section).
- (9) A sticker provided under subsection (4)(a) must be in the form prescribed under section 2(6).

Validity of rating and related duties

30 Right of reply

- 5.**—(1) A district council must give the operator of a food business establishment in its district the opportunity to make written representations on the establishment's food hygiene rating (regardless of whether or when the operator appeals against or otherwise challenges the rating).
- (2) Where the district council receives representations under subsection (1), it may—
- (a) send them to the Food Standards Agency in the form in which it received them,
 - (b) edit them and send them to the Food Standards Agency in that edited form, or
 - (c) refuse to send them to the Food Standards Agency in any form.

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(3) The Food Standards Agency, having received representations under subsection (2)(a) or (b), must publish the representations on its website in the form in which it receives them alongside the food hygiene rating to which they relate.

5 (4) The duty under subsection (2) does not apply in a case where, as a result of section 2(4)(b), the food hygiene rating to which the representations relate is not published.

(5) Where the district council acts under subsection (2)(b) or (c), it must provide the operator of the food business establishment in question with a written explanation of its reasons for doing so.

10 **Validity of rating**

6.—(1) A food business establishment’s food hygiene rating—

(a) becomes valid when it is notified to the operator of the establishment under section 2, 3 or 4 (as the case may be), and

15 (b) unless it ceases to be valid as a result of subsection (2), continues to be valid until, where there is a new food hygiene rating for the establishment, the end of the appeal period in relation to that new rating.

(2) A food business establishment’s food hygiene rating ceases to be valid if—

(a) there is a change of ownership of the establishment,

(b) the establishment ceases trading, or

20 (c) the establishment is unable to trade, as a result of a hygiene prohibition order, a hygiene emergency prohibition notice or a hygiene emergency prohibition order under the Food Hygiene Regulations (Northern Ireland) 2006 (2006 No.3).

(3) The sticker provided under section 2, 3 or 4 showing a food business establishment’s food hygiene rating—

25 (a) becomes valid as soon as it is received by the operator of the establishment, and

(b) remains valid for as long as the rating to which it relates is valid.

(4) The “end of the appeal period”, in relation to a food hygiene rating, means—

30 (a) the end of the period within which an appeal against the rating may be made under section 3, or

35 (b) where an appeal against the rating is made under that section, the end of the day on which the operator of the establishment is notified of the determination of the appeal (or, if the appeal is abandoned, the end of the day on which it is abandoned).

Duty to display rating

40 **7.**—(1) The operator of a food business establishment must ensure that a valid sticker showing the establishment’s food hygiene rating is displayed in the location and manner specified by the Department in regulations for so long as the rating is valid.

(2) Where, as a result of section 6(1)(b), a food business establishment’s food hygiene rating continues to be valid during a period in which a new food hygiene

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rating for the establishment is also valid, the operator may choose which of the two stickers to display for the purposes of subsection (1) during that period.

Duty to provide information about rating

5 **8.**—(1) The operator of a food business establishment or a relevant employee at the establishment must, on being requested to do so, orally inform the person making the request of the establishment’s food hygiene rating.

(2) A “relevant employee” of a food business establishment is a person who—

(a) is employed at the establishment, and

10 (b) is, in the opinion of the operator of the establishment, likely to be subject to a request of the kind referred to in subsection (1).

Enforcement

Enforcement and powers of entry

9.—(1) Each district council must enforce the provisions of this Act in its district.

15 (2) An authorised officer of a district council may, on producing the officer’s authorisation (if required to do so), enter the premises of a food business establishment in its district at any reasonable hour for the purpose of—

(a) ascertaining whether the duty under section 7 or 8 is being complied with, and

20 (b) if there is evidence that the duty is not being complied with, enforcing the duty.

(3) Where the premises of a food business establishment are also used as a private residence, an officer may not enter a part of the premises in reliance on subsection (2) unless the officer has given the occupier at least 24 hours’ notice of the intention to enter.

25 (4) An “authorised officer” of a district council is an officer authorised by the council in writing, either in general or specific terms, to act in matters arising under this Act.

Offences

30 **10.**—(1) The operator of a food business establishment commits an offence if, without reasonable excuse, the operator fails to comply with the duty under section 7.

(2) The operator of a food business establishment commits an offence if, without reasonable excuse, the operator displays at the establishment a sticker which—

35 (a) purports to show the establishment’s food hygiene rating, but

(b) is not valid.

(3) The operator of a food business establishment commits an offence if, without reasonable excuse, the operator or a relevant employee at the establishment—

40 (a) fails to comply with the duty under section 8(1), or

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(b) provides false or misleading information in response to a request of the kind referred to in section 8(1).

5 (4) In any proceedings for an offence under subsection (3) which relates to the conduct of a relevant employee, it is a defence for the operator to prove that the operator took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(5) A person commits an offence if the person intentionally alters, defaces or otherwise tampers with a valid sticker showing a food business establishment's food hygiene rating.

10 (6) A person commits an offence if, without reasonable excuse, the person obstructs an authorised officer of a district council in the exercise of functions under this Act.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

15 (8) For the purposes of this section, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (corporate liability for offences)—

(a) applies with the omission of the words “the liability of whose members is limited”, and

20 (b) where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the functions of management as if that member were a director of the body corporate.

(9) If an offence under this section is committed by a partnership or proved—

(a) to have been committed with the consent or connivance of a partner, or

25 (b) to be attributable to any neglect on the partner's part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(10) “Partner” includes a person purporting to act as such.

Fixed penalty

30 **11.**—(1) Where an authorised officer of a district council has reason to believe that an offence has been committed under section 10(1) or (2) in the case of a food business establishment in its district, the officer may give the operator of the establishment a fixed penalty notice.

35 (2) A “fixed penalty notice” is a notice offering the operator the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

(3) The Schedule (which makes further provision about fixed penalties) has effect.

Miscellaneous functions

Provision of information for new businesses

40 **12.**—(1) This section applies if an establishment which is or would be a food business establishment—

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- (a) is registered under Article 6 of Regulation (EC) 852/2004 by a district council, or
- (b) applies to a district council for approval under Article 4 of Regulation (EC) 853/2004.

5 (2) The district council must, within 14 days of making the registration or receiving the application, provide the person who is or would be the operator of the establishment with such information as the Department may specify in regulations.

Mobile establishments

10 **13.**—(1) The Department may by regulations make provision for enabling the transfer of the inspection and rating functions of a district council, in so far as they are exercisable in relation to mobile food business establishments registered with the council under Article 6 of Regulation (EC) 852/2004, to another district council.

15 (2) The “inspection and rating functions” of a district council are—

- (a) its function of carrying out inspections, and
- (b) its functions under this Act or under regulations made under this Act.

(3) The regulations may, in reliance on section 18(1), include provision to modify references in this Act to a district council doing something in relation to a food business establishment in its district.

(4) The regulations may confer a discretion on a district council (in particular, in making provision in reliance on section 17(5) of the Interpretation Act (Northern Ireland) 1954 (power to make different provision for different cases etc.)).

Review of operation of Act

25 **14.**—(1) Each district council—

- (a) must keep the operation of this Act in its district under review, and
- (b) must provide the Food Standards Agency with such information as it may request for the purpose of carrying out a review under this section.

30 (2) The Food Standards Agency must, within three years of the commencement of section 1, review the operation of this Act throughout Northern Ireland.

(3) The review must include a consideration of the following matters—

- (a) where this Act specifies a period in which something may or must be done, whether that period is adequate for the purpose;
- (b) whether section 3 is operating satisfactorily;
- 35 (c) whether section 4 is operating satisfactorily and, in particular, whether there should be a limit on the number of occasions on which the right to make a request for a re-rating under that section may be exercised.

(4) The Food Standards Agency may carry out subsequent reviews of the operation of this Act throughout Northern Ireland as and when it considers appropriate.

(5) Having conducted a review under this section, the Food Standards Agency—

- (a) must prepare a report of the review, and

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(b) must send the report to the Department.

(6) Where, in the light of a review under this section, the Food Standards Agency has recommendations to propose for improvements to the operation of this Act, the report under subsection (5) must specify those recommendations.

5 (7) The Department must, on receiving the report under subsection (5), publish the report.

(8) The Department may by order amend this Act so as to implement the recommendations proposed by the Food Standards Agency.

Guidance

10 **15.** In exercising a function under this Act, a district council must have regard to—

- (a) guidance issued by the Department, and
- (b) guidance issued by the Food Standards Agency.

Supplemental

15 **Interpretation**

16.—(1) In this Act—

“authorised officer” has the meaning given in section 9,

“the Department” means the Department of Health, Social Services and Public Safety,

20 “establishment” means an establishment within the meaning of Regulations (EC) 852/2004 and 853/2004,

“food” has the same meaning as in Regulation (EC) 882/2004,

“food business establishment” has the meaning given in section 1,

25 “food hygiene rating” has the meaning given in that section (but see also sections 3(8) and 4(8)),

“operator”, in relation to a food business establishment, has the meaning given in section 2,

30 “Regulation (EC) 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (as amended from time to time),

“Regulation (EC) 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (as amended from time to time), and

35 “Regulation (EC) 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (as amended from time to time).

40 (2) A reference in this Act to inspecting, or carrying out an inspection of, a food business establishment is (except in sections 3(7) and 4(2) and (3) where the context requires otherwise) to be read in accordance with section 1.

Transitional provision

17.—(1) The Department may by order make transitional or saving provision in connection with the commencement of a provision of this Act.

5 (2) An order under this section may provide that where, before the commencement of section 1, a district council has inspected an establishment and rated its food hygiene standards on the basis of that inspection, the council may treat that rating as the establishment's food hygiene rating until it prepares a new food hygiene rating for the establishment under this Act.

10 (3) An order making provision under subsection (2) must require the district council to notify the establishment's food hygiene rating to the operator of the establishment within such period as is specified; and such provision is to have effect instead of section 2(1).

15 (4) Where a district council has rated an establishment's food hygiene standards on more than one occasion before the commencement of section 1, the reference in subsection (2) to the rating is to the last one it carried out before the commencement of that section.

Regulations and orders

18.—(1) Regulations or orders under this Act may contain incidental, supplementary, consequential, transitional, transitory or saving provision.

20 (2) Regulations under this Act are subject to negative resolution.

(3) Except as provided by subsections (4) and (5), orders under this Act are subject to negative resolution.

(4) No order shall be made under any of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

25 (a) section 1(7) (power to amend definition of “food business establishment”);

(b) section 3(10) (power to provide for a person other than a district council to hear appeals);

(c) section 14(8) (power to amend Act in light of review by Food Standards Agency);

30 (d) paragraph 4 of the Schedule (power to specify level of fixed penalty).

(5) Subsection (3) does not apply to an order under section 20 (commencement).

(6) Subsection (4)(c) does not apply to an order under section 14(8) which provides only for the extension of the duration of a time period.

Crown application

35 19.—(1) This Act, and regulations and orders under it, bind the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland, and apply in relation to Crown land as they apply in relation to other land.

40 (2) No contravention by the Crown of a provision of this Act, or of regulations or an order under this Act, makes the Crown criminally liable; but the High Court may, on the application of the Department, the Food Standards Agency or a district council, declare unlawful an act or omission of the Crown which constitutes such a contravention.

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(3) Despite subsection (2), this Act, and regulations and orders under it, apply to persons in the public service of the Crown as they apply to other persons.

(4) “Crown land” means land an estate in which—

(a) belongs to Her Majesty in right of the Crown, or

5 (b) belongs to a Northern Ireland department or a department of the government of the United Kingdom or is held in trust for Her Majesty for the purposes of any such department.

Final

Short title and commencement

10 **20.**—(1) This Act may be cited as the Food Hygiene Rating Act (Northern Ireland) 2015.

(2) This section and sections 16 to 19 come into operation on the day after Royal Assent.

15 (3) The other provisions of this Act come into operation on such day as the Department may by order appoint; and different days may be appointed for different purposes.

SCHEDULE

FIXED PENALTIES

Contents of fixed penalty notice

- 5 1. A fixed penalty notice must—
- (a) state the alleged offence, and
 - (b) give such particulars of the circumstances alleged to constitute it as are necessary for giving reasonable information about it.
- 2.—(1) A fixed penalty notice must also state—
- 10 (a) the amount of the penalty and the period for its payment,
- (b) the consequences of not paying the penalty before the end of the period mentioned in paragraph (a),
- (c) the person to whom and the address at which the payment may be made,
- (d) the method by which the payment may be made, and
- 15 (e) the person to whom and the address at which representations relating to the offence may be made.
- (2) The person mentioned in sub-paragraph (1)(c) and (e) must be the district council for which the authorised officer was acting when giving the notice.
3. A fixed penalty notice must also—
- 20 (a) inform the person to whom it is given of the person's right to be tried for the alleged offence, and
- (b) explain how that right may be exercised.

Amount of penalty and period for payment

4. The fixed penalty is such amount as the Department may specify by order.
- 25 5.—(1) The period for payment of the fixed penalty is 28 days beginning with the day on which the notice is given.
- (2) But where the notice so provides, the amount payable is reduced by 25% if payment is made within the first 14 days of that period.

Effect of notice and payment

- 30 6.—(1) Proceedings for the offence in respect of which a fixed penalty notice was given may not be brought before the end of the period for payment of the fixed penalty.
- (2) Sub-paragraph (1) does not apply if the person to whom the notice was given has asked in accordance with paragraphs 11 and 12 to be tried for the alleged
- 35 offence.
7. If the fixed penalty is paid in accordance with the fixed penalty notice before the end of the period for payment of the fixed penalty, no proceedings for the offence may be brought and paragraph 11 does not apply.

8. If proceedings have been brought following a request under paragraph 11, but the penalty is then paid as mentioned in paragraph 7, the proceedings may not be continued.

9. In proceedings for the offence in respect of which a fixed penalty notice was given, a certificate is evidence of the facts which it states if it—

- (a) purports to be signed by or on behalf of the person responsible for the financial affairs of the district council for which the authorised officer who gave a fixed penalty notice was acting, and
- (b) states that payment of the fixed penalty in response to the notice was or was not received by the expiry of the period within which that fixed penalty may be paid.

10. Any sum received by a district council under this Schedule accrues to it; but the district council may use the sums received only for the purposes of its functions under this Act.

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Trial

11. If the person to whom a fixed penalty notice is given asks to be tried for the alleged offence, proceedings may be brought against that person.

12. Any request to be tried must be made—

- (a) by notice given to the district council in question before the end of the period for payment of the penalty, and
- (b) in the manner specified in the fixed penalty notice.

Withdrawal of fixed penalty notices

13.—(1) The district council must, having received any representations made by or on behalf of the recipient of a fixed penalty notice, decide whether to withdraw the notice.

(2) Where a fixed penalty notice is withdrawn under sub-paragraph (1)—

- (a) the district council must give notice of the withdrawal to the person to whom the fixed penalty notice was given,
- (b) the district council must repay any amount which has been paid under the fixed penalty notice, and
- (c) no proceedings may be brought or continued against that person for that offence.

Regulations

14. The Department may by regulations—

- (a) provide that fixed penalty notices may not be given in specified circumstances;
- (b) provide for the form of a fixed penalty notice;
- (c) provide for the method by which fixed penalties may be paid;
- (d) amend paragraph 10 so as to enable a district council to use sums received for specified purposes;
- (e) provide for the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.