

FOOD HYGIENE RATING (WALES) ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Food Hygiene Rating (Wales) Act 2013 which was passed by the National Assembly for Wales on 22 January 2013 and received Royal Assent on 4 March 2013. They have been prepared by the Department for Health, Social Services and Children of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

COMMENTARY ON SECTIONS

Section 1 – Overview

2. **Section 1** provides an overview of the key provisions in the Act. The Act has 28 sections and one Schedule. Many key expressions in the Act are defined in section 25.

Section 2 – Programme of food hygiene inspections

3. **Section 2** 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 Food Standards Agency (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.
4. The meaning of “food authority”, “food business establishment” and “operator” for the purpose of the Act is set out in section 2(5). The Welsh Ministers may, by regulations, amend the definitions of “food business establishment” and “food authority”.

Section 3 – Food hygiene ratings

5. **Section 3** requires a food authority to assess the food hygiene standards of a food business establishment and produce a food hygiene rating, scored against the rating criteria published by the FSA.
6. The food authority must send to the operator of the establishment:
 - written notification of its food hygiene rating;
 - a written statement of the reasons for the rating;
 - a food hygiene rating sticker (the form of the sticker is to be prescribed in regulations); and
 - any other information which may be set out in regulations.
7. The notification, statement, sticker and information must be sent within 14 days of the inspection by the food authority.

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8. 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.
9. The Welsh Ministers may make regulations exempting certain categories of establishment from rating.
10. Subsection (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 previous voluntary FSA scheme could be relied upon when the food authority issues a rating under the statutory scheme after the Act is commenced.

Section 4 – Rating criteria

11. This section requires the rating criteria (published by the FSA under section 14(1)(c)) to include a system to score a food business establishment's hygiene standards.

Section 5 – Right of appeal

12. **Section 5** establishes 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 guidance on appeals being included in guidance to be issued by them under section 23.
13. The operator has 21 days to appeal, from the date the rating notification is received. A food authority must determine 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 conducted 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.
14. 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.
15. The Welsh Ministers may make regulations providing for an appeal to be determined by a person other than the food authority.

Section 6 – Notification and publication of food hygiene ratings

16. **Section 6** 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.
17. Subsection (2) provides the Welsh Ministers with power to make regulations to require a food authority to provide the FSA with further information when informing the FSA of ratings.
18. Subsection (3) provides the Welsh Ministers with power to make regulations to require the FSA to publish additional information on its website.

Section 7 – Requirement to display food hygiene rating stickers

19. **Section 7** 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 within which 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.

20. The Welsh Ministers will prescribe, in regulations, 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.
21. The sticker ceases to be valid when the rating to which it relates ceases to be valid (see paragraph 8 above). When a sticker ceases to be valid the operator must remove the sticker from display and destroy it, unless instructed not to destroy it by a food authority.

Section 8 – Requests for information about food hygiene ratings

22. This section requires a food business operator and employees at a food business establishment who deal with customers to respond to requests from members of the public for verbal confirmation of the establishment's food hygiene rating. The operator must ensure that the employees are aware of the rating so that they can respond to requests.

Section 9 - Offences

23. **Section 9** creates criminal offences relating to the proper display and retention of stickers and failure to respond to requests for verbal confirmation of ratings. These offences apply to food business operators and are all subject to a reasonable excuse defence.
24. This section also makes it an offence for anyone to intentionally alter, deface, or tamper with a sticker, except where the sticker is invalid and is to be destroyed in accordance with section 7(6). There is no reasonable excuse defence in relation to these offences.

Section 10 – Promoting food hygiene ratings

25. **Section 10** provides the Welsh Ministers with power to make regulations to require an operator of a food business establishment (or a person acting on the operator's behalf) to promote the establishment's food hygiene rating.
26. The regulations may prescribe how the operator must publicise their establishment's rating electronically and in material promoting the food provided by the establishment. The regulations may also make different provision for different types of establishment, create an offence, impose a penalty or allow for enforcement of the requirement.

Section 11 – Right to reply

27. **Section 11** requires a food authority to give the operator of a food business establishment the opportunity to comment (in writing) to the food authority on the establishment's rating. Any comments received by the food authority under this section must be forwarded to the FSA, who may publish the comments on their website with the food business establishment's rating.

Section 12 – Food hygiene re-ratings

28. This section enables the operator of a food business establishment to 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 section 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.
29. 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.

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

Section 14 – Duties of Food Standards Agency

31. **Section 14** sets out the general duties of the FSA in relation to the food hygiene rating scheme, which includes publishing the rating criteria (established under section 3), reviewing the operation of the food hygiene rating scheme established under this Act, and the operation of the appeals system (established under section 5), and promoting the scheme to food business establishments and consumers in Wales.
32. A copy of the report(s) prepared by the FSA on the operation of scheme and the appeals system must be laid before the National Assembly for Wales, and sent to the Welsh Ministers.

Section 15 – Other powers and responsibilities of food authorities

33. **Section 15** 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).
34. The section also provides that the food authority must have regard to recommendations made by the FSA and guidance issued by the Welsh Ministers and must make arrangements to enforce the obligations under the Act on food business establishments in its area. The food authority must 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 (for example under section 14).

Section 16 – Other responsibilities of operators of food business establishments

35. **Section 16** 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.

Section 17 – Power of entry

36. **Section 17** 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 Act.

Section 19 – Offences by bodies corporate

37. **Section 19** provides that where a body corporate (such as a company, or any other body incorporated by statute) commits an offence under this Act, 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.

Section 20 – Penalties

38. **Section 20** provides that offences under this Act are triable in the Magistrates Court and punishable by a fine not exceeding level 3 on the standard scale (currently £1,000).

Section 21 – Fixed penalties

39. **Section 21** 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 Act. 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

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penalty is not paid, the food authority retains the power to prosecute. This section also introduces Schedule 1.

40. **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 Act. 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.
41. **Part 2** of Schedule 1 makes provision in relation to the form and content of fixed penalty notices.

Section 23 – Guidance

42. **Section 23** gives the Welsh Ministers power to issue guidance to food authorities and the FSA in relation to the exercise of their functions under the Act. The food authority and the FSA must have regard to this guidance.

Section 25 – Interpretation

43. This section defines terms used in the Act and also confirms that reference to a food hygiene sticker in the Act includes reference to more than one sticker (where the context requires).

RECORD OF PROCEEDINGS IN THE NATIONAL ASSEMBLY FOR WALES

44. The following table sets out the dates for each stage of the Act’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales’ website at: <http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?IId=3812>

<i>Stage</i>	<i>Date</i>
Introduced	28 May 2012
Stage 1 - Debate	16 October 2012
Stage 2 Scrutiny Committee – consideration of amendments	7 November 2012
Stage 3 Plenary - consideration of amendments	22 January 2013
Stage 4 Approved by the Assembly	22 January 2013
Royal Assent	4 March 2013