



2016 CHAPTER 3

Preparation of rating

Food hygiene rating

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 (in so far as the district council has not already provided the operator with the following) 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) Within 34 days of carrying out an inspection of a food business establishment on the basis of which it prepares a food hygiene rating, 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 online, unless it has been informed under subsection (4)(b) that publication would not be appropriate; and, if it is required to publish the rating, it must do so no later than 7 days after the end of the appeal period in relation to the rating.

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

- (a) the end of the period within which an appeal against the rating may be made under section 3, or
- (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 on the appeal (or, if the appeal is abandoned, the end of the day on which it is abandoned).

(7) The Department may by regulations prescribe the form or forms of stickers to be provided under subsection (3)(a); and, in the case of each form so prescribed, the regulations must specify whether the cost of producing stickers in that form is to be borne—

- (a) by the Food Standards Agency,
- (b) by the district council which provides the stickers, or
- (c) by the Food Standards Agency and the district council jointly in the specified manner.

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—

- (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) The district council to which the appeal is made must also, before the end of the period under subsection (5)—

- (a) inform the Food Standards Agency of its determination on the appeal (or, if the appeal is abandoned, that it has been abandoned), and
- (b) if the district council has changed the establishment's food hygiene rating on the appeal but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.

(8) The Food Standards Agency, having been informed under subsection (7) (a) of the determination on the appeal, must, if the rating has been changed on the appeal, publish the new rating online, unless it has been informed under subsection (7)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so within 7 days of having been informed of the determination on the appeal.

(9) 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).

(10) 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.

(11) A sticker provided under subsection (6)(a) must be in a form prescribed under section 2(7).

(12) 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,

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- (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,
 - (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) Within 34 days of carrying out an inspection under subsection (2), a district council—
- (a) must inform the Food Standards Agency of its determination on the review, and
 - (b) if the district council has changed the establishment's food hygiene rating on the review but considers that it would not be appropriate to publish the new rating, must inform the Food Standards Agency accordingly.
- (6) The Food Standards Agency, having been informed under subsection (5) (a) of the determination on the review, must, if the rating has been changed on the review, publish the new rating online, unless it has been informed under subsection (5)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so no later than 7 days after the end of the appeal period in relation to the new rating.
- (7) 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.
- (8) 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.
- (9) 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.

(10) 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, with such modifications as are necessary, in relation to a food hygiene rating changed under this section).

(11) A sticker provided under subsection (4)(a) must be in a form prescribed under section 2(7).

(12) The Department may by order amend this section so as to limit, in the case of each food hygiene rating for an establishment, the number of occasions on which the right to request a review of the rating may be exercised.

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.

(3) The Food Standards Agency, within 7 days of receiving representations under subsection (2)(a) or (b), must publish the representations online in the form in which it receives them alongside the food hygiene rating to which they relate.

(4) But where, at the time when the Food Standards Agency receives the representations, it has yet to publish under section 2(5) the rating to which the representations relate, the duty under subsection (3) instead applies as a duty to publish the representations within 7 days of publishing the rating under section 2(5).

(5) The duty under subsection (3) does not apply in a case where, as a result of section 2(4)(b), 3(7)(b) or 4(5)(b), the food hygiene rating to which the representations relate is not published.

(6) 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.

Validity of rating and related duties

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
 - (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
 - (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—
- (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.

Duty to display rating

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 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.

(3) The Department may by regulations provide that, in the case of a food business establishment which supplies consumers with food which they order by means of an online facility of a specified kind, the operator must ensure that the establishment's food hygiene rating is provided online in the specified manner.

(4) The regulations may, for example, require a food hygiene rating to be provided online by means of a link to the rating in the form in which it is published by the Food Standards Agency under section 2(5).

Duty to provide information about rating

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
 - (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.

(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
- (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.

(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

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(1) or a duty in regulations under section 7(3).

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

- (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—

- (a) fails to comply with the duty under section 8(1), or
- (b) provides false or misleading information in response to a request of the kind referred to in section 8(1).

(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.

(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.

(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
- (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
- (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

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.

(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

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

- (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.

(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 (in so far as the district council has not already done so).

Mobile establishments

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.

(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 19(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

14.—(1) Each district council—

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- (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.
- (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;
 - (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
 - (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.
- (7) The Department must, on receiving the report under subsection (5), publish the report.
- (8) The Department must publish its response to the report; and its response must indicate—
- (a) whether it proposes to exercise one or more of the powers under sections 1(7), 3(12), 4(12) and 16(1),
 - (b) in so far as it does so propose, the amendments it proposes to make and its reasons for doing so, and
 - (c) in so far as it does not so propose, its reasons for not doing so.
- (9) The Food Standards Agency must promote the scheme provided for by this Act.

Guidance

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.

Adjustment of time periods

16.—(1) The Department may by order amend a provision of this Act which specifies a period within which something may or must be done by substituting a different period for the period for the time being specified.

(2) Where the period under section 2(1), (4) or (5), 3(8), 4(3), (5) or (6) or 5(3) includes the last working day before Christmas Day, the period is to be extended by 7 days; and for this purpose, “working day” means a day which is not a Saturday or Sunday.

(3) Where, because of exceptional circumstances, it is not reasonably practicable for a district council to comply with section 2(1) or (4) or 4(3) or (5), or for the Food Standards Agency to comply with section 2(5), 3(8), 4(6) or 5(3), within the period for the time being specified (including any extension of that period under subsection (2) above), it must comply as soon as it is reasonably practicable for it to do so.

Supplemental

Interpretation etc.

17.—(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,

“end of the appeal period”, in relation to a food hygiene rating, has the meaning given in section 2(6);

“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,

“food hygiene rating” has the meaning given in that section (but see also sections 3(10) and 4(10)),

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

“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

“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).

(2) A reference in this Act to inspecting, or carrying out an inspection of, a food business establishment is (except in sections 3(9) and 4(2) and (3) where the context requires otherwise) to be read in accordance with section 1.

(3) A notification under section 2, 3 or 4 may, without prejudice to any method of service authorised under section 24 of the Interpretation Act (Northern Ireland) 1954, be sent by ordinary post; and accordingly, unless the contrary is proved, a notification sent by ordinary post is to be treated as received on the day on which it would have been delivered in the ordinary course of post (with references in this Act to when a notification, or something with it, is received being read in light of this subsection).

Transitional provision

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

(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.

(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).

(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

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

(2) No regulations shall be made under section 7(3) (online provision of ratings) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(3) Regulations under any other provision of 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—

- (a) section 1(7) (power to amend definition of “food business establishment”);
- (b) section 3(12) (power to provide for a person other than a district council to hear appeals);
- (c) section 4(12) (power to limit number of requests for review of rating);
- (d) section 16(1) (power to amend time periods);
- (e) paragraph 4 of the Schedule (power to specify level of fixed penalty).

(5) An order under any other provision of this Act, other than section 21 (commencement), is subject to negative resolution.

(6) An order under section 1(7) may, in reliance on subsection (1) of this section, amend sections 7, 10 and 11 (duty to display rating, offences and fixed penalties).

Crown application

20.—(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.

(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.

(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
- (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

21.—(1) This Act may be cited as the Food Hygiene Rating Act (Northern Ireland) 2016.

(2) This section and sections 17 to 20 come into operation on the day after Royal Assent.

(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.