



## EXPLANATORY NOTES

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### Food Hygiene Rating Act (Northern Ireland) 2016

#### Chapter 3



# **FOOD HYGIENE RATING ACT (NORTHERN IRELAND) 2016**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Food Hygiene Rating Act (Northern Ireland) 2016 which received Royal Assent on 29 January 2016. They have been prepared by the Department of Health, Social Services and Public Safety (the Department) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Food Hygiene Rating Scheme is designed to provide consumers with information about food hygiene standards (found at the time of inspection by district council food safety officers) in the places where they eat out or shop for food.
4. The objective is to enable consumers to make informed choices which in turn will provide a strong incentive for businesses to achieve and maintain compliance with existing food hygiene law. The overarching aim is to reduce the incidence of foodborne illness.
5. The information is provided to consumers through a simple numerical scale operating from 0 to 5 – where 0 means that ‘urgent improvement is necessary’ and 5 means a food business fully complies with legal requirements and has ‘very good’ standards. The rating is made available on the Food Standards Agency website but businesses are also provided with a food hygiene rating sticker to place in the window or door at their premises so the information is available to consumers before they enter the establishment.
6. The scheme currently operates on a voluntary basis. This means that display of food hygiene ratings at food businesses is voluntary. Ongoing research shows that voluntary display remains low, with only 56% of establishments choosing to display their rating. Display is much lower among establishments with a rating of 0-2.
7. The Act’s main objective is to make it mandatory for food businesses to display their food hygiene rating sticker, thus ensuring consumers have access to the information at the point of choice. It also enables the Department to make regulations which would require food businesses that supply consumers with food through an online facility, to provide their rating online in the manner to be specified.

8. A number of safeguards are built into the scheme for businesses. These include a right for food business operators to appeal against their rating; to request to have their rating re-assessed where they have made necessary improvements and a right to reply to explain to consumers any mitigating circumstances.

## **OVERVIEW**

9. The Act consists of 21 sections and one Schedule.

## **COMMENTARY ON SECTIONS**

### **Section 1: Food hygiene rating**

This section requires district councils to rate the food hygiene standards of food business establishments supplying food direct to consumers, following inspections carried out as part of official controls required by EU law. It allows the Department to make regulations to specify categories of establishment that would not be rated and to amend the definition of 'food business establishment', to enable other categories of establishment to be rated, for example, food establishments that supply food other than direct to consumers, such as trade to trade supply.

### **Section 2: Notification and publication**

This section requires district councils to notify a rating to the operator of the establishment within 14 days of carrying out an inspection. Additional information must be provided including a sticker showing the rating. District councils must inform the Food Standards Agency of ratings within 34 days of carrying out the inspection who in turn must publish them on its website within 7 days of the end of the appeal period. The Department will prescribe the forms of the rating sticker in regulations and specify whether the cost will be borne by the Food Standards Agency and/or the district councils.

### **Section 3: Appeal**

This section provides operators of food business establishments with a right of appeal against the rating. The appeal must be made to the council that produced the rating within 21 days. An officer of the council who was involved in the production of the rating cannot be involved in determining the appeal. The district council must determine the appeal within a further 21 days and notify the outcome to the food business operator in writing along with additional information, including a new food hygiene rating sticker where the rating has changed. Within the same timescale the district council must notify the Food Standards Agency of the outcome of the appeal and where the rating has changed, the Food Standards Agency must publish the new rating online within 7 days. The Department can make an order to provide for an appeal to be determined by another person other than the district council that produced the rating.

### **Section 4: Request for re-rating**

This section provides operators of food business establishments with a right to request a re-rating. The request, which can be made after the appeal period, must be made in writing to the council that produced the rating; must include an explanation of the steps taken to improve compliance and must be accompanied by a fee (to be specified by the Department).

Within three months of receiving a request, the district council must inspect and review the rating (unless it does not propose to do so, in which case it must inform the operator along with an explanation). The outcome of the re-rating must be notified to the operator within 14 days of the inspection and be accompanied with additional information, including a new food hygiene rating sticker where the rating has changed. District councils must inform the Food Standards Agency of ratings within 34 days of carrying out the inspection who in turn must publish them on its website within 7 days of the end of the appeal period. The Department can make an order to limit the number of occasions on which the right to request a review of a rating may be exercised.

### **Section 5: Right of reply**

This section allows operators of food business establishments to make a written reply to the establishment's rating to the district council, for publication alongside the rating on the Food Standards Agency's website. The purpose is to provide operators with an opportunity to explain to potential customers any actions that have been taken to improve hygiene standards or any particular circumstances at the time of inspection that might have affected the rating. The text of the reply may be edited by the council (for example, to remove any inaccurate or defamatory remarks) before sending to the Food Standards Agency for publication on its website. The Food Standards Agency must publish the right of reply within 7 days of receipt or within 7 days of publishing the rating.

### **Sections 6 & 7: Validity of rating and duty to display the rating**

These sections set out when a food hygiene rating is valid and place a duty on food business operators to display their valid rating sticker at their establishment. Section 7 also allows the Department by regulations to require them to provide their rating online where they supply consumers with food through an online facility. A food hygiene rating becomes valid when a food business operator is notified of their rating following an inspection, appeal or re-rating request. During and until the end of an appeal period, food business operators can choose either to display their newly notified rating or previous rating sticker. A rating ceases to be valid where there is a change of ownership of an establishment or where the establishment ceases to trade, either voluntarily or due to the service of particular enforcement notices.

### **Section 8: Duty to provide information about rating**

This section requires the operator of a food business to orally inform a person of the food hygiene rating when requested. The purpose is to provide the information to persons who would not see the rating sticker displayed at the establishment – for example, blind or partially sighted people or people making a telephone order. This duty also extends to an employee, who in the opinion of the food business operator would be likely to be asked for the information, for example personnel in customer services or persons taking telephone orders.

### **Section 9: Enforcement and powers of entry**

This section requires district councils to enforce the provisions of the Act within their districts and provides authorised officers of district councils with a power of entry to ascertain if the duty to display the rating and provide information orally where requested, is being complied with.

## **Sections 10 & 11: Offences and Fixed Penalty**

These sections create a number of offences. An operator of a food business establishment commits an offence if they fail to display a valid rating sticker, display a non-valid rating sticker, or fail to provide their rating online where they supply consumers with food through an online facility. It would also include failure to orally inform a person of the rating when requested; however, where this relates to the conduct of an employee, it would be a defence for the operator to prove they had taken all reasonable precautions and exercised all due diligence.

A person commits an offence where they intentionally alter, deface or tamper with an establishment's valid rating sticker or if they obstruct an authorised officer of a district council in exercising their functions.

A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale; however, for offences of failing to display a valid rating sticker or displaying a non-valid rating sticker, the operator can be given a fixed penalty notice. This section also introduces the Schedule which makes further provision about fixed penalties and liability of partnerships.

These sections also provide for corporate liability.

## **Section 12: Provision of information for a new business**

This section requires district councils to provide new food business establishments with information on the Act (to be specified by the Department).

## **Section 13: Mobile establishments**

This section relates to mobile establishments. It provides a regulation making power for the Department to enable transfer of the inspection and rating functions of a district council to another district council in relation to mobile establishments. The reason is that a mobile establishment may be registered with a council but not trade in its district; instead, for example, it may trade exclusively in another district council area. For this reason and where the district councils agree, the inspection and rating functions could transfer to the council in whose area the mobile establishment is trading.

## **Section 14: Review of operation of Act**

This section requires the Food Standards Agency to carry out a review of the operation of the Act within three years of its commencement. The review in particular must consider whether the appeal process is operating satisfactorily; whether there should be a limit on the number of re-ratings that can be requested; whether time periods specified in the Act are adequate and whether the fixed penalty procedure is operating satisfactorily. The Food Standards Agency can carry out subsequent reviews as and when it considers appropriate.

On conclusion of the review the Food Standards Agency must prepare and send a report, containing any recommendations for improvements to the operation of the Act, to the Department. The Department must publish the report and a response to it indicating whether or not, along with reasons, it intends to exercise certain order making powers to make amendments to the Act.

District councils must also keep the operation of the Act in its area under review and provide the Food Standards Agency with information as requested to inform the review.

It also requires the Food Standards Agency to promote the scheme provided for by the Act.

### **Section 15: Guidance**

This section requires district councils to have regard to guidance issued by the Department or the Food Standards Agency, in exercising functions under the Act.

### **Section 16: Adjustment of time periods**

This section allows the Department to amend, by order, time periods in the Act within which something may or must be done. It provides flexibility for district councils and the Food Standards Agency to comply with certain time bound requirements as soon as is reasonably practicable where, due to exceptional circumstances, they have been unable to do so within the required period. It also extends certain time bound requirements by 7 days over the Christmas period, to take account of office closures.

### **Section 17: Interpretation**

This section contains definitions of terms used in the Act. References to the relevant EU Regulations are defined so as to ensure that they will include any amendments that are made to the Regulations in the future.

### **Section 18: Transitional provision**

This section allows the Department to make, by order, transitional provisions. The purpose is to provide establishments with a food hygiene rating within a transitional period. In particular the order may provide for ratings assessed prior to the commencement of the legislation to be treated as the establishment's food hygiene rating, until a new rating is prepared under the legislation.

### **Section 19: Regulations and orders**

This section contains general provisions for making regulations and orders under the Act. The regulations which require online operators to provide ratings will be subject to draft affirmative resolution before the Assembly.

### **Section 20: Crown application**

This section states that the Crown is bound by the provisions of the Act.

### **Section 21: Short title and commencement**

This section contains provisions for the commencement of the legislation. The Act will, for the most part, come into operation by commencement order.

## Schedule

The Schedule sets down provisions for a fixed penalty notice scheme. In particular, the Department will by order specify the level of the fixed penalty; however, there will be a 25% discount for early repayment. Any sums received by district councils will have to be applied for the purposes of the legislation; however, the purposes can be amended by the Department.

## HANSARD REPORTS

10. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly

STAGE	DATE
First Stage	3 November 2014
Second Stage	11 November 2014
Committee Stage - briefing from the Food Standards Agency (NI)	26 November 2014
Committee Stage - briefing by the Chief Environmental Health Officers Group	14 January 2015
Committee Stage - briefing by Pubs of Ulster	21 January 2015
Committee Stage - briefing from the Food Standards Agency (NI)	11 February 2015
Committee Stage - briefing from the Food Standards Agency (NI)	4 March 2015
Committee Stage - Informal Clause-by-clause scrutiny	18 March 2015
Committee Stage - briefing from the Food Standards Agency (NI)	15 April 2015
Committee Stage - Formal Clause-by-clause scrutiny	22 April 2015
Committee's report on the Act – Report Number NIA 204/11-16	29 April 2015
Consideration Stage	29 June 2015
Further Consideration Stage	30 September 2015
Final Stage	8 December 2015
Royal Assent	29 January 2016

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