



The Food Hygiene Rating (Online Display) Regulations (Northern Ireland) 2023

Consultation response

Deadline 9 September 2022

About the Chartered Institute of Environmental Health (CIEH)

CIEH is the professional voice for environmental health representing over 7,000 members working in the public, private and third sectors, in 52 countries around the world. It ensures the highest standards of professional competence in its members, in the belief that through environmental health action people's health can be improved.

Environmental health has an important and unique contribution to make to improving public health and reducing health inequalities. CIEH campaigns to ensure that government policy addresses the needs of communities and business in achieving and maintaining improvements to health and health protection.

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Introduction

The Food Hygiene Rating Scheme ensures consumers are able to make informed choices about where they eat and purchase food. Food hygiene ratings are issued by district council environmental health professionals following inspections of food businesses within scope of the Scheme. Food businesses in Northern Ireland are required to display their ratings at or near each entrance to a food business establishment where it can be readily seen and easily read by customers before they enter the establishment when it is open for business.

Changes in the consumer landscape have seen an increase in online food sales. The proposed regulations will require an operator of a food business establishment which supplies a consumer with food ordered via an online facility to ensure that the facility displays an icon representing the valid food hygiene rating in respect of that establishment. This will enable consumers to make informed choices about where they purchase food online.

CIEH welcomes these proposed regulations which will not only benefit consumers but will ensure the food hygiene rating scheme is developed in line with changes in the consumer landscape and remains relevant.

Question 1:

Do you agree with the proposed commencement date which will be immediately following the legislative process (est. April 2023)? If you consider an alternative date appropriate, please specify this and provide a rationale.

CIEH would like to see the requirement for online display of food hygiene ratings by food businesses to be introduced at the earliest opportunity to ensure consumers are able to make informed decisions about where they purchase food online.

We are aware that following the pandemic, district councils are focusing their resources on recovery, addressing backlogs of inspections that were scheduled to take place in 2020 and 2021 but, because of restrictions and other priorities associated with the pandemic, were held in abeyance. District councils may therefore not have adequate resources to promote the requirements of these new regulations or prepare to implement them in 2022/23 as recovery will be the priority.

We note from the impact assessment that funding is available to district councils in 2022/23 to implement the new regulations. If the commencement date is later than April 2023 then it will be important for funding to be available to district councils in 2023/24.

Question 2:

Do you have any comments regarding the definition of an “online facility” which will bring certain businesses within scope of this requirement? If you think this definition has included or excluded certain business in the scheme that should or should not be, please provide details and a rationale of why they should be included or excluded.

We do not have any comments regarding the definition of an “online facility.”

Question 3:

Do you agree with the proposed specified relevant period of 7 days? If not, please state why and provide a rationale for an alternative period.

We agree with the proposed specified relevant period of 7 days (beginning on the day the rating is published on www.food.gov.uk/ratings) for online display as all businesses will have been through the appropriate notification and appeal period.

Question 4:

Do you have any comments regarding the definition of the “relevant point” which defines the location of where the food hygiene rating icon must be displayed?

We have no comments in relation to the definition of the “relevant point” as it is clearly explained in the interpretation section of the draft regulations.

Question 5:

Do you have any comments regarding the definition of a “social media service?”

We do not have any comments regarding the definition of a “social media service”.

Question 6:

- a) Does the wording in regulation 3 (2)(a) make it clear who the regulations apply to?
- b) Do you have any comments regarding regulation 3 (2)(a)?

a) Yes, it is clear i.e. those food business operators who use their own online facility from which food can be purchased and online facilities used by one or more food business operators to sell their foods.

b) We have no further comments regarding regulation 3(2)(a)

Question 7:

- a) Does the wording in regulation 3 (2)(b) make it clear who the regulations apply to?
- b) Do you have any comments regarding regulation 3 (2)(b)?

a) This information is provided in Regulation 3 (2) (a) (i) and (ii). Regulation 3 (2) (b) refers to how online facilities within scope of the regulations will display the name of the business, an indication of the food the business supplies and the business’s valid food hygiene rating online icon.

b) We are aware of the FSAs work with online aggregators and their willingness to display prescribed and valid food hygiene ratings is an important factor in the implementation of

the online display regulations. It is not clear whether failure to display a prescribed and valid food hygiene rating on an aggregator site constitutes an offence by the aggregator that can be enforced by a Fixed Penalty Notice (FPN). Failure to display an icon at the relevant point is an offence by the food business operator. Does this mean that the food business operator commits an offence if rating information is not available or incorrect on an aggregator site?

We are also aware of problems district councils are experiencing with food sold on social media platforms. Businesses do not always provide adequate information to enable district councils to identify where they are operating from. This means district councils are unable to verify whether they are registered. Further, because they cannot identify them, they are unable to take enforcement action. FSA engagement with social media platform providers will be essential to ensure they are aware of these problems. The introduction of these regulations is likely to result in an increase in complaints from consumers who purchase food on social media. This will likely add to the workload of already stretched district councils.

Question 8:

Do you have any comments regarding regulation 3 (3)?

Chains are permitted to provide a hyperlink to food hygiene rating information. They should be encouraged to do so in a way that does not provide consumers with an overwhelming amount of information which is not relevant to them. For example, a UK wide chain listing the ratings of all its establishments including those in mainland GB which consumers then have to search to find the relevant rating.

Question 9:

- a) Do you foresee issues with any of the proposed prescribed key branding parameters in Regulation 4? In particular, do you have any issues with the specification of the colour Green Pantone 376?
- b) Do you foresee any issues with the rating being within the rating scale (0 to 5), to provide some context to consumers, as shown in the FHR images in Figure 2 and Figure 4?
- c) Do you have any other comments on Regulation 4?

We do not have any comments in relation to question 9.

Additional comments

We are aware that officers in some district councils may not be able to monitor compliance with online display requirements due to security restrictions on their workplace IT systems. It may therefore be appropriate for the FSA to engage with local authority Chief Executives to

explain the requirements and request that IT restrictions are removed for authorised officers to enable them to monitor business compliance with the regulations.

It would not be appropriate to rely on officers using their personal IT equipment to monitor compliance, particularly as formal enforcement action may ensue.

It is likely that the percentage of businesses who have an online ordering facility may have been underestimated in the impact assessment and may not reflect changes that have occurred in the consumer landscape post pandemic. This has been acknowledged by the FSA.

We agree that district councils should adopt a risk based and proportionate approach to monitoring and enforcement of online display requirements and focus on those businesses that are not broadly compliant with food hygiene legislation.

To ensure a consistent approach to enforcement across Northern Ireland, it is recommended that the FSA provides training to local authority officers on the implementation of the regulations, particularly on the use of fixed penalty notices, evidence gathering and RIPA. Further we recommend that district councils in Northern Ireland work collaboratively to ensure their procedures are aligned. CIEH is able to assist with training and would welcome the opportunity to discuss this with the FSA.