

Draft Regulations laid before the National Assembly for Wales under section 26(4) of the Food Hygiene Rating (Wales) Act 2013 for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2013 No. (W.)

FOOD, WALES

**The Food Hygiene Rating (Wales)
Regulations 2013**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to a food hygiene rating scheme for Wales under the Food Hygiene Rating (Wales) Act 2013 (“the Act”) (2013 anaw 2).

Regulation 1 includes provision for these Regulations to come into force on 00:01 hours on 28 November 2013, except for regulation 8 which comes into force on 28 November 2014.

Regulation 2 provides for a food business establishment that has a food hygiene rating under the non-statutory food hygiene rating scheme launched in Wales by the Food Standards Agency (“the FSA”) before the commencement of the Act to be given a new rating under the Act by no later than 28 May 2015.

Regulation 3 gives effect to Schedule 1, which prescribes the form of a food hygiene rating sticker.

Regulation 4 prescribes information that a food authority must send to the operator of a food business establishment when notifying the operator of the food hygiene rating given to the establishment following a food hygiene rating inspection. This information is in addition to the written notification of the rating, a written statement of the reasons for the rating, and a food hygiene rating sticker all of which the food authority must send to the operator in accordance with section 3(3)(a) to (c) of the Act.

Regulation 5 prescribes the categories of food business establishment that are exempt from rating under the Act.

Regulation 6 gives effect to Schedule 2, which prescribes the form for appealing against a food hygiene rating.

Regulation 7 prescribes information that a food authority must send to the operator of a food business establishment when notifying the operator of its decision to change the food hygiene rating of the establishment as a result of an appeal. This information is in addition to written notification of the new food hygiene rating, a written statement of the reasons for the new rating, and a food hygiene rating sticker for the new rating, all of which the food authority must send to the operator in accordance with section 5(10)(a) to (c) of the Act.

Regulation 8 provides for a food authority to send to the FSA a breakdown (“a rating breakdown”) of an establishment’s rating into its component scores for each of the rating criteria published by the FSA under section 14(1)(c) of the Act. The FSA must publish a statement explaining what the rating breakdown means, and a statement explaining that members of the public may request a copy of the inspection report relating to an establishment from the food authority, and that it will be for the food authority to determine whether the inspection report is to be disclosed.

Regulation 9 prescribes the location and manner in which a food hygiene sticker must be displayed at different types of food business establishment.

Regulation 10 gives effect to Schedule 3, which prescribes the form for requesting a re-rating inspection.

Regulation 11 prescribes information that a food authority must send to the operator of a food business establishment when notifying the operator of its decision to change the food hygiene rating of the establishment as a result of the operator’s request for the establishment to be re-rated in accordance with section 12 of the Act. Section 12(9)(d) requires this information to be sent to the operator within 14 days of the re-rating inspection being completed. The information prescribed by regulation 11 is in addition to written notification of the new food hygiene rating, a written statement of the reasons for the new rating, and a food hygiene rating sticker for the new rating, all of which the food authority must send to the operator within 14 days of the re-rating inspection being completed, as required by section 12(9) (a) to (c) of the Act.

Regulation 12 prescribes the information that a food authority must send to the operator of a new food

business establishment in its area within 14 days of the establishment's registration under Article 6 of Regulation (EC) No 852/2004 or approval under Article 4 of Regulation (EC) 853/2004 (or equivalent requirement) for registration or approval of food business establishments in accordance with section 15(1) of the Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

A draft of the Regulations was notified to the European Commission in accordance with Article 8 of Directive 98/34/EC of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical standards and regulations (OJ No L204, 21.7.1998, p 37) last amended by Council Directive 2006/96/EC (OJ No L363, 20.12.2006, p 81).

Draft Regulations laid before the National Assembly for Wales under section 26(4) of the Food Hygiene Rating (Wales) Act 2013 for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2013 No. (W.)

FOOD, WALES

**The Food Hygiene Rating (Wales)
Regulations 2013**

Made

Coming into force in accordance with the provisions of regulation 1(2) and (3).

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 3(2),(3)(c) and (d) and (5), 5(4) and (10)(d), 6(2) and (3), 7(3) and (4), 12(2) and (9)(d), and 15(1) of the Food Hygiene Rating (Wales) Act 2013 (1).

In accordance with section 26(4) of that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Food Hygiene Rating (Wales) Regulations 2013.

(2) Except as provided in paragraph (3), these Regulations come into force at 00:01 hours on 28 November 2013.

(3) Regulation 8 comes into force on 28 November 2014.

(4) These Regulations apply in relation to Wales.

(5) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Hygiene Rating (Wales) Act 2013;

(1) 2013 anaw 2.

“establishment” (“*sefydliad*”) means a food business establishment;

“the highest rating” (“*y sgôr uchaf*”) means a rating of “5 - Very Good”;

“including” (“*gan gynnwys*”) and “includes” (“*yn cynnwys*”) are to be construed without limitation;

“inspection report” (“*adroddiad arolygu*”) means a written report giving details of matters found by an authorised officer when carrying out a food hygiene rating inspection of an establishment in order to assess its food hygiene standards in accordance with section 3(1) of the Act;

“rating” (“*sgôr*”) means a food hygiene rating given under the Act but not a non-statutory rating as defined in regulation 2(4);

“rating breakdown” (“*dadansoddiad sgôr*”) in relation to a food business establishment means a breakdown of the rating given to that establishment into its component scores for each of the rating criteria; and

“sticker” (“*sticer*”) means a food hygiene rating sticker.

Food hygiene ratings for establishments assessed prior to the commencement of the Act

2.—(1) This regulation applies to an establishment that has been given a non-statutory rating prior to 28 November 2013 and has not been assessed for rating purposes after that date.

(2) The food authority for the area in which the establishment is registered or approved must give the establishment a rating by no later than 28 May 2015.

(3) In giving the establishment a rating under this regulation, the food authority must apply the rating criteria to the non-statutory assessment.

(4) In this regulation—

“non-statutory assessment” means an assessment of the food hygiene standards at an establishment produced by a food authority that contains all of the information that was used to calculate a non-statutory rating for the establishment; and

“non-statutory rating” means a food hygiene rating given to an establishment under the FSA’s non-statutory food hygiene rating scheme that was launched in Wales in October 2010(1).

(1) “The Food Hygiene Rating Scheme for England, Wales and Northern Ireland” available at <http://ratings.food.gov.uk/>

Form of sticker

3. Schedule 1 (Food Hygiene Rating Sticker) has effect.

Other information to accompany notification of food hygiene rating

4. The following information is prescribed under section 3(3)(d) of the Act (other information that the food authority must send to the operator when giving notification of a rating)—

- (a) where the highest rating has not been given to the establishment, details of the action that would need to be taken with reference to each of the rating criteria before the highest rating can be given;
- (b) details of when, where and how the rating is intended to be published;
- (c) a statement drawing attention to the provisions of regulation 9 (food hygiene rating stickers—location and manner of display);
- (d) a copy of the inspection report that was used to calculate the rating;
- (e) details of the procedure for appealing against the rating, which must include information about—
 - (i) the name and contact details of the officer who carried out the inspection;
 - (ii) the period within which an appeal must be made;
 - (iii) how to obtain the prescribed form for making an appeal;
 - (iv) the name and contact details of the person to whom the form must be sent after it has been completed; and
 - (v) the process by which an appeal will be decided and the result notified to the operator who made the appeal;.
- (f) information about the operator's right under section 11 of the Act (right to reply) to comment in writing on the establishment's rating, which must include—
 - (i) the name and contact details of the person to whom the comments must be sent;
 - (ii) details of the process by which the comments will be forwarded to the FSA; and
 - (iii) an explanation that the FSA may publish the comments on its website in accordance with section 6(3) of the Act;

- (g) information about the operator’s right under section 12 of the Act (food hygiene re-ratings) to request a further inspection and assessment of the food hygiene standards of the establishment for the purpose of enabling the food authority to decide whether to change the rating, which information must include—
 - (i) a statement that such a request may be made at any time and that the food authority must comply with it if the conditions set out in section 12(4) and, where applicable, section 12(5) of the Act are met;
 - (ii) details of those conditions;
 - (iii) a statement that, under the Act, the food authority may recover the reasonable costs of the re-rating;
 - (iv) details of those costs and how and when the operator must pay them;
 - (v) details of how to obtain the prescribed form for making the request;
 - (vi) the name and contact details of the person to whom the form must be sent after it has been completed;
 - (vii) details of the process for dealing with the request and notifying the result to the operator; and
- (h) a statement drawing attention to the provisions of sections 3(4) and 7(5) of the Act (which provide for the circumstances in which ratings and stickers respectively cease to be valid).

Exempt food business establishments

5.—(1) The following categories of establishment are exempt from rating under the Act—

- (a) an establishment where—
 - (i) the sale of food is not the primary activity of the establishment; and
 - (ii) the only food made available to consumers is food that is—
 - (aa) shelf stable at ambient temperature; and
 - (bb) wrapped or packaged before it is brought to the establishment and the wrapping or packaging remains sealed at all times before the food is supplied to consumers;
- (b) an establishment used by any of the following persons for the purpose of providing caring services where the establishment is also used as a private dwelling —

- (i) childminders;
- (ii) persons who are prescribed persons in regulations made under section 42(1) of the Care Standards Act 2000(1) for the purpose of providing adult placement care;

but not including an establishment used to provide catering services by which food is supplied from a private dwelling.

- (2) In paragraph (1)(b)(i), “childminders” includes—
- (a) childminders who are registered under Part 2 of the Children and Families (Wales) Measure 2010(2) or registered under equivalent alternative provisions for registering child minders; and
 - (b) childminders who would be required to be registered as mentioned in sub-paragraph (a) but for the fact that the children for whom they provide child care are over eight years of age.

Form for making an appeal

6. Schedule 2 (Form for making an appeal) has effect.

Other information to accompany notification of decision on an appeal

7. The following information is prescribed under section 5(10)(d) of the Act (other information that the food authority must send to the operator when giving notification of its decision on an appeal)—

- (a) where the highest rating has not been given to the establishment, details of the action that would need to be taken with reference to each of the rating criteria before the highest rating can be given;
- (b) details of when, where and how the rating is intended to be published;
- (c) a statement drawing attention to the provisions of regulation 9 (food hygiene rating stickers—location and manner of display);
- (d) the name and contact details of the person who determined the appeal;
- (e) if an inspection of the establishment has been carried out for the purpose of considering

(1) 2000 c.14. The following regulations have been made under section 42(1): S.I.2004/1756 (W.188), S.I. 2006/3251(W.295), S.I. 2008 /1976 (W.185), S.I. 2010/2585 (W.217), S.I. 2011/2686 (W.288), and S.I. 2013/253.

(2) 2010 nawm 1.

- matters raised by the appeal, a copy of the inspection report relating to that inspection;
- (f) information about the operator's right under section 11 of the Act (right to reply) to comment in writing on the establishment's rating, which must include—
 - (i) the name and contact details of the person to whom the comments must be sent;
 - (ii) details of the process by which the comments will be forwarded to the FSA; and
 - (iii) an explanation that the FSA may publish the comments on its website in accordance with section 6(3) of the Act;
 - (g) information about the operator's right under section 12 of the Act (food hygiene re-ratings) to request a further inspection and assessment of the food hygiene standards of the establishment for the purpose of enabling the food authority to decide whether to change the rating, which information must include—
 - (i) a statement that such a request may be made at any time and that the food authority must comply with it if the conditions set out in section 12(4) and (if applicable) section 12(5) of the Act are met;
 - (ii) details of those conditions;
 - (iii) a statement that, under the Act, the food authority may recover the reasonable costs of the re-rating;
 - (iv) details of those costs and how and when the operator must pay them;
 - (v) details of how to obtain the prescribed form for making the request;
 - (vi) the name and contact details of the person to whom the form must be sent after it has been completed;
 - (vii) details of the process for dealing with the request and notifying the result notified to the operator; and
 - (h) a statement drawing attention to the provisions of sections 3(4) and 7(5) of the Act (which provide for the circumstances in which ratings and stickers respectively cease to be valid).

Publication of additional information

8.—(1) When informing the FSA of an establishment's rating in accordance with section 6(1) of the Act, the food authority must also send to the

FSA a copy of the rating breakdown relating to that rating.

(2) The other information prescribed under section 6(3) of the Act (other information that the FSA must publish) is—

- (a) the rating breakdown referred to in paragraph (1);
- (b) a statement explaining what the rating breakdown means; and
- (c) a statement to the effect that anyone may request a copy of the inspection report used to calculate the rating for an establishment from the food authority in whose area the establishment is located, and that it will be for the food authority to determine whether the inspection report is to be disclosed.

Food hygiene rating stickers – location and manner of display

9.—(1) This regulation applies when the operator of an establishment is required to display a sticker at the establishment in accordance with section 7(1) of the Act.

(2) A sticker showing an establishment's valid rating must be displayed at or near each entrance to the establishment that is available for use by customers in a conspicuous place where it is capable of being easily read by customers before they enter the establishment when it is open for business.

(3) If the establishment is one where food is provided to customers but customers are not permitted or invited to enter the establishment or it is incapable for all practical purposes of being entered by customers, the sticker showing the establishment's valid rating must be displayed in a conspicuous place at the establishment where it is capable of being easily read by customers when the establishment is open for business.

(4) Where food is provided to customers by or on behalf of an operator at outlets away from the operator's establishment (such as market stalls and vehicles) that are part of the operator's business, and those outlets are not eligible for a rating in their own right, a sticker showing the valid rating for the establishment must be displayed in a conspicuous place at each outlet where it is capable of being easily read by customers when the outlet is open for business.

(5) Each sticker referred to in paragraph (2) must be displayed—

- (a) on a window that forms part of the relevant entrance; or
- (b) on an exterior window that is adjacent to the relevant entrance; or

- (c) inside the establishment but capable of being read through such a window; or
- (d) if there is no such window, at some other place at or near the relevant entrance; or
- (e) where there is no surface available that is suitable for displaying the sticker in accordance with sub-paragraphs (a) to (d), on a wall or other surface where it is capable of being easily read by customers.

(6) In paragraph (5) “the relevant entrance” (“*y fynedfa berthnasol*”) means each entrance at or near to which a sticker showing an establishment’s valid rating must be displayed in accordance with paragraph (2).

Form for requesting food hygiene re-rating inspection

10. Schedule 3 (Form for requesting a re-rating inspection) has effect.

Other information to accompany notification of re-rating

11. The following information is prescribed under section 12(9)(d) of the Act (other information that the food authority must send to the operator when giving notification of a change of rating (“the new rating”) (“*y sgôr newydd*”) following a re-rating request)—

- (a) where the highest rating has not been given to the establishment, details of the action that would need to be taken with reference to each of the rating criteria before the highest rating can be given;
- (b) details of when, where and how the new rating is intended to be published;
- (c) a copy of the inspection report that was used to calculate the new rating;
- (d) a statement drawing attention to the requirements of regulation 9 (food hygiene rating stickers—location and manner of display);
- (e) details of the procedure for appealing against the new rating, which must include information about—
 - (i) the name and contact details of the officer who carried out the inspection;
 - (ii) the period within which an appeal must be made;
 - (iii) how to obtain the prescribed form for making an appeal;

- (iv) the name and contact details of the person to whom the form must be sent after it has been completed; and
 - (v) the process by which an appeal will be decided and the result notified to the operator who made the appeal;
- (f) information about the operator's right under section 11 of the Act (right to reply) to comment in writing on the establishment's rating, which must include—
- (i) the name and contact details of the person to whom the comments must be sent;
 - (ii) details of the process by which the comments will be forwarded to the FSA; and
 - (iii) an explanation that the FSA may publish the comments on its website in accordance with section 6(3) of the Act;
- (g) information about the operator's right under section 12 of the Act (food hygiene re-ratings) to request a further inspection and assessment of the food hygiene standards of the establishment for the purpose of enabling the food authority to decide whether to change its rating, which information must include—
- (i) a statement that such a request may be made at any time and that the food authority must comply with it if the conditions set out in section 12(4) and, where applicable, 12(5) of the Act are met;
 - (ii) details of those conditions;
 - (iii) a statement that, under the Act, the food authority may recover the reasonable costs of the re-rating;
 - (iv) details of those costs and how and when the operator must pay them;
 - (v) details of how to obtain the prescribed form for making the request;
 - (vi) the name and contact details of the person to whom the form must be sent after it has been completed;
 - (vii) details of the process for dealing with the request and notifying the result to the operator; and
- (h) a statement drawing attention to the requirements of sections 3(4) and 7(5) of the Act (which provide for the circumstances in which ratings and stickers respectively cease to be valid).

Information that a food authority must send to operators of new food business establishments in its area

12. The information that a food authority must send to operators of new food business establishments in its area in accordance with section 15(1) and (2) of the Act is an explanation of the following matters —

- (a) the ratings that may be given to an establishment;
- (b) how ratings are calculated, including what levels of achievement are required for each rating;
- (c) who produces the rating for an establishment and when that will first be done;
- (d) when, where and how a food hygiene rating sticker for an establishment must be displayed;
- (e) the fact that the operator of an establishment will be notified of the rating for the establishment before it is published;
- (f) the operator's right to —
 - (i) appeal against a rating,
 - (ii) request a re-rating,
 - (iii) comment on a rating; and
- (g) how to obtain further information about the matters referred to above.

Name

Title of Minister, one of the Welsh Ministers

Date

SCHEDULE 1

[Regulation 3]

FOOD HYGIENE RATING STICKER

1. A food hygiene rating sticker must be in one of the forms shown below.



2. The appropriate form of sticker for an establishment is whichever form shown in paragraph 1 displays the current rating for that establishment.

3. Every sticker must conform to the following specifications—

- (a) Colour references: Green: c43 m0 y100 k0& Black
- (b) The dimensions for the stickers (0-5) are 190 mm(wide) x 158 mm (tall)

SCHEDULE 2

[Regulation 6]

FORM FOR MAKING AN APPEAL

1. The form to be used by a food business operator when making an appeal against a rating must, subject to such adaptations as circumstances may reasonably require, be in the form set out below.



**The Food Hygiene Rating (Wales)
Regulations 2013, Schedule 2**

Form for making an appeal

Notes for businesses

- As the operator of a food business you have a right, under Section 5 of the Food Hygiene Rating (Wales) Act 2013, to appeal the food hygiene rating given to the establishment if:
 - a) you do not agree that the rating properly reflects the hygiene standards found at the time of the inspection;
 - b) you believe that the rating criteria were not applied correctly when producing your food hygiene rating.
- **You have 21 days (including weekends and bank holidays) from the date of receipt of the notification letter to lodge an appeal.**
- Please use the form below and return it to your local authority – contact details are provided with the written notification of your food hygiene rating.
Your appeal will be determined by an authorised officer and the outcome of your appeal will be communicated to you within 21 days from the date the appeal was received.

Food business operator	<input type="text"/>		
Business name	<input type="text"/>		
Business addresses	<input type="text"/>		
Business tel no	<input type="text"/>		
Business email	<input type="text"/>		
Date of inspection	<input type="text"/>	Food hygiene rating given	<input type="text"/>
Date notified of rating	<input type="text"/>		
Name of Inspecting Officer	<input type="text"/>		

Contact name (if different to that of food business operator)	<input type="text"/>
Head Office address or contact addresses (if different to that of food business operator)	<input type="text"/>
Contact tel no	<input type="text"/>

I do not agree with the food hygiene rating given by the food safety officer because:

- I believe that the rating criteria were not applied correctly, or,
- I do not agree that the rating properly reflects the hygiene standards found at the time of the inspection.

(please explain, under each of the three headings):

Compliance with food hygiene and safety procedures	<input type="text"/>
Compliance with structural requirements	<input type="text"/>
Confidence in management/control	<input type="text"/>

procedures	<input type="text"/>		
Signed	<input type="text"/>		
Name in capitals	<input type="text"/>		
Position	<input type="text"/>	Date	<input type="text"/>

Please now return this form to your local authority

SCHEDULE 3

[Regulation 10]

FORM FOR REQUESTING A RE-RATING INSPECTION

1. The form to be used by a food business operator when requesting a re-rating inspection must, subject to such adaptations as circumstances may reasonably require, be in the form set out below.



The Food Hygiene Rating (Wales)
Regulations 2013, Schedule 3

Form for requesting a re-rating inspection

Notes for businesses

- As the operator of a food business you have a right, under Section 12 of the Food Hygiene Rating (Wales) Act 2013, to request at any time, an inspection for the purposes of re-rating, provided that you have paid the reasonable costs of the re-rating in accordance with Section 13 of the Food Hygiene Rating (Wales) Act 2013 (unless the food authority has not required payment of those costs in advance as provided for in section 12(6) of the Act, in which case the costs may be paid after the re-rating inspection has been completed) **and** the following conditions have been met:
 - a) any appeal against the current food hygiene rating has been determined;
 - b) you have notified the food authority of improvements made to hygiene standards at the establishment;
 - c) the food authority considers it reasonable to further inspect and assess the establishment in view of the improvements said to have been made;
 - d) the current food hygiene rating sticker is displayed at your establishment in accordance with the requirement of Section 7 of the Food Hygiene Rating (Wales) Act 2013 and regulation 9 of the Food Hygiene Rating (Wales) Regulations 2013 ;
 - e) you have agreed to ensure that the food authority will be given access to carry out an inspection of the establishment for the purpose of re-rating.
- The local authority officer will give you a 'new' food hygiene rating based on the level of compliance that is found at the time of the re-visit - you should be aware that your rating could go up, down or remain the same.
- To make a request for a revisit, please use the form below and return it to the food safety officer from your local authority – contact details are provided with the written notification of your food hygiene rating.
- The re- rating visit will take place within 3 months of the request being made, and will usually be made without prior notification.

Food business operator

Business name

Business addresses

Business tel no	<input type="text"/>
Business email	<input type="text"/>
Date of inspection	<input type="text"/>
Food hygiene rating given	<input type="text"/>

Contact name (if different to that of food business operator)	<input type="text"/>
Head Office address or contact addresses (if different to that of food business operator)	<input type="text"/>
Contact tel no	<input type="text"/>

Please describe the improvements that you have made with reference to the issues identified in the inspection letter/report provided to you by your local authority with your food hygiene rating:

Compliance with food hygiene and safety procedures	<input type="text"/>
Compliance with structural requirements	<input type="text"/>
Confidence in management/control procedures	<input type="text"/>

Please provide any other supplementary evidence (e.g. photographs, invoices, copies of relevant documentation etc.).

Signed	<input type="text"/>
Name in capitals	<input type="text"/>
Position	<input type="text"/>
Date	<input type="text"/>

Please now return this form to your local authority