

APPENDIX 1

Consultation on the Food Standards Agency's Food Hygiene Rating (Online Display) Regulations (NI) 2023

Response from: Belfast City Council

Response prepared by: Belfast City Council Food Safety Unit

Document: [The Food Hygiene Rating \(Online Display\) Regulations \(Northern Ireland\) 2023 | Food Standards Agency](#)

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Introduction

Belfast City Council welcomes the opportunity to provide the comments below on The Food Hygiene Rating (Online Display) Regulation (NI) 2023.

While we welcome the aims of the legislation and in particular the opportunity to ensure consistency of Food Hygiene Rating display across all platforms and to provide authorised officers with the appropriate tools for enforcement, Belfast City Council has some reservations in respect of its implementation and ability to enforce the legislation. These are reflected in our responses and comments below:

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.

Belfast City Council's Food Safety unit are currently working to deliver the objectives of the FSA (post Covid Pandemic) recovery plan and are addressing the backlog of inspections that resulted from the pandemic. We would point out the Council's focus during the last quarter of the 22/23 year will be on delivery of the FSA recovery milestone of 31st March 2023. We would highlight that promotion of the FHRS online display regulations is not identified as a priority in the current FSA recovery plan and it may therefore be unlikely that the Food Safety unit would have the on the ground Environmental Health Officer resource available to provide dedicated technical/advisory/training support for a FSA PR campaign at that time.

Belfast City Council is also aware that should the NI Assembly not be sitting then it is likely that the suggested commencement date above may have to be extended.

Belfast City Council would point out that the impact assessment refers to additional funding given to all District Council's for the 22/23 year for use towards the costs of implementing these regulations. Consideration needs to be given to the possibility that not all work in this regard will be undertaken in the 22/23 financial year. Belfast City Council would welcome further updates in regard to changes to the proposed commencement date and expectations on the Council during the lead in period.

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.

Belfast City Council 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 (beginning on the day the rating is published on www.food.gov.uk/ratings) for online display? If not, please state why and provide a rationale for an alternative period.

Belfast City Council are in agreement with the proposed specified relevant period of 7 days for online display as all businesses will have been through the appropriate notification and appeal period prior to publishing.

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?

Belfast City Council 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?”

Belfast City Council 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?

Belfast City Council interprets the wording in regulation 3 (2)(a) to apply to those food business operators who use their own online facility from which food can be purchased and to online facilities that are used by one or more food business operators to sell their foods.

b) Do you have any comments regarding regulation 3 (2)(a)?

Belfast City Council 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?

Please see comments in b)

b) Do you have any comments regarding regulation 3 (2)(b)?

Belfast City Council is aware of the Food Standards Agency’s recent work with online aggregators and welcomes the opportunity for the Food Safety Officers to participate in such workstreams. The willingness of online aggregators to display prescribed and valid food hygiene ratings is an important factor in the implementation of the online display regulations. Belfast City Council would seek clarification on whether a failure to display a prescribed and valid FHR on an aggregator site constitutes an offence that can be enforced by a Fixed Penalty Notice (FPN), in that failure to display an icon at the relevant point is an offence by the FBO. As there does not appear to be any legal requirement in the draft regulations for aggregators to display ratings, Belfast City Council are concerned that there may be some reluctance from aggregators to do so. FBO’s could be committing offences through no fault of their own.

Clarification is being sought on the offence of failure to display a prescribed valid online food hygiene rating. The wording of the fixed penalty notice in Schedule 2 of the Food Hygiene Rating Regulations (NI) 2016 refers to the offence as failure to display an 'online link' contrary to section 10 (1) of the Food Hygiene Rating Act (NI) 2016. The draft online display regulations reference an 'icon'. It is the understanding of EHNI that a link is only to be used by food business operators that have a chain of establishments as detailed in section 3(3) of the draft regulations.

In Schedule 2 Part A of the Food Hygiene Rating Act should the FPN reference section 7(3) in the alleged offence for online display, in a manner similar to the reference of 7(1) in the alleged offence of failure to display a sticker?

Belfast City Council would welcome further engagement by the FSA with social media platform providers in order to address ongoing difficulties the Council are experiencing with food traders using such platforms. It is envisaged that there may be an increase in complaints from consumers with regard to the display of a FHR by businesses selling via social media. Businesses may not provide all the necessary information on these platforms to enable the Council to identify where the business is operating from, leaving them unable to register the business or take appropriate enforcement actions.

Question 8:

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

Belfast City Council would bring to the attention of the FSA that as per Regulation 3, a facility that operates in respect of an operator's chain who is permitted to provide a hyperlink to the required information should be encouraged to do so in a way that does not provide an overwhelming amount of information to the consumer on establishments that it would not be possible for them to order from. For example a UK wide chain listing the FHR of all its establishments including those in England, Scotland and Wales.

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?

Belfast City Council do not have any comments to question 9 or foresee any issues with the questions asked in parts a) and b).

Additional comments

Belfast City Council would welcome guidance and/or training for their Food Safety Officers in evidence gathering for FHR offences committed online, particularly to ensure compliance with RIPA. Currently RIPA investigations require the agreement and sign off by a magistrate.

Belfast City Council would welcome further guidance on the use of fixed penalty notices to ensure consistency of enforcement among District Councils. Currently Belfast City Council follow a Council wide procedure for FPN enforcement and this differs from other District Councils who operate different time scales for the enforcement of FHRS FPN's.

Belfast City Council are largely in agreement with the assessment of the potential impact and costs of implementation on food businesses and District Councils. Belfast City Council acknowledge the additional funding given to District Councils for the 22/23 financial year is to accommodate the estimated costs. Belfast City Council agree that the scoping estimate of 26% of businesses in NI that use an online ordering facility is low and would suggest a much greater percentage of food businesses will be required to display an online FHR. Belfast City Council note this is acknowledged by the FSA in the impact assessment in that the most up to date data is pre-pandemic and may not reflect the changes to consumer behaviour which resulted from the pandemic.

Belfast City Council also agree with the FSA suggestion that in order to minimise the impacts on the Council in the monitoring and enforcement of the online display regulations, the Council should adopt a risk based and proportionate approach and target resources to focus on businesses that are non-broadly compliant.