



Cynulliad Cenedlaethol Cymru **The National Assembly for Wales**

Y Pwyllgor Iechyd a Gofal Cymdeithasol **The Health and Social Care Committee**

Dydd Iau, 27 Medi 2012
Thursday, 27 September 2012

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mark Drakeford	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Rebecca Evans	Llafur Labour
Vaughan Gething	Llafur Labour
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Lynne Neagle	Llafur Labour
Gwyn R. Price	Llafur (yn dirprwyo ar ran Mick Antoniwn) Labour (substitute for Mick Antoniwn)
Lindsay Whittle	Plaid Cymru The Party of Wales
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Christopher Brereton	Pennaeth Deddfwriaeth ynghylch Iechyd Amgylcheddol y Cyhoedd, Llywodraeth Cymru Head of Environmental Public Health Legislation, Welsh Government
Lesley Griffiths	Aelod Cynulliad, Llafur (Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour (Minister for Health and Social Services)
Christopher Humphreys	Yr Adran Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services Department, Welsh Government

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Fay Buckle	Clerc Clerk
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 8.59 a.m.
The meeting began at 8.59 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Mark Drakeford:** Bore da a chroeso i gyfarfod cyntaf y pwyllgor y tymor hwn. **Mark Drakeford:** Good morning and welcome to the committee's first meeting of

the new term.

Bil Sgorio Hylendid Bwyd (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 5
Food Hygiene Rating (Wales) Bill: Stage 1—Evidence Session 5

[2] **Mark Drakeford:** Croeso i'r Gweinidog, Lesley Griffiths. Gyda Lesley heddiw mae Christopher Brereton a Christopher Humphreys; rydym wedi cwrdd â chi o'r blaen, felly croeso i chi y bore yma. Diolch, Weinidog, am eich llythyr manwl, dyddiedig 8 Awst, ac am ddod yn ôl i'r pwyllgor heddiw er mwyn rhoi cyfle i Aelodau eich holi ac er mwyn cael eglurder ynghylch nifer fach o faterion a gododd yn sgîl eich llythyr manwl.

Mark Drakeford: A warm welcome to the Minister, Lesley Griffiths. Joining Lesley today are Christopher Brereton and Christopher Humphreys; we have met you before, so welcome to you this morning. Thank you, Minister, for your detailed letter, dated 8 August, and for returning to committee today to give Members an opportunity to question you and to gain some clarity on a small number of issues that arose from your detailed letter.

[3] Welcome back, Minister, to the session that was rudely interrupted last time you were with us. Thank you for the letter that you sent, which cleared up a large number of the points that we would have put to you orally if we had had a chance that morning. There are a small number of outstanding points that committee members are likely to want to explore further with you, so we will get straight on with that, as we have half an hour at the most to do it. Who wants to kick off with the first question?

[4] **Lindsay Whittle:** Good morning, Minister. We heard some evidence from some small businesses about the impact of the proposals on their business. Has any assessment been done on these food rating displays? Some businesses were telling us that they thought that it was putting customers off, and other businesses thought that it was attracting customers.

[5] **The Minister for Health and Social Services (Lesley Griffiths):** Attracting customers?

[6] **Lindsay Whittle:** Yes, attracting customers, which is more important, in my opinion.

[7] **Lesley Griffiths:** Absolutely; I am sure that businesses that have a food hygiene rating of 5 would say that. I am not sure about the impact. As we have gone through the consultation process, the Federation of Small Businesses has been involved.

[8] **Mr Brereton:** You have heard evidence from the FSB. We have taken evidence in relation to the display of stickers, and that relates to the ratings that have been obtained. However, all businesses have the opportunity to achieve the maximum rating. The scheme is designed so that it concentrates on factors that they can influence. I remember the evidence given last time when we were talking about kebab houses and were asked whether they could get a level 5 rating. When we went back and looked, we found that they could get such a rating; over 120 had done so, and were on the website. So, small businesses can achieve good ratings and everything that they need to do so is within their control, and they will get advice and guidance from local authorities to help them achieve that. They are not left alone in this process. They have their hands held along the way in terms of improving their business.

[9] **Vaughan Gething:** I will go back to some of the slightly picky points about the offences section. Question 16 dealt with the point about complying with a request to give a verbal notification of a rating and whether the Bill is clear enough that giving an incorrect response is an offence. I appreciate what you say, but the question is whether it would be helpful to have the additional clarity that either failing to provide a response or providing an

incorrect response is an offence. While some lawyers are good guys, of course, not every lawyer is deliberately purposive. Is there potential uncertainty there, and would it not be sensible to have that additional clarity?

[10] **Lesley Griffiths:** As I said in my letter to committee, I consider that the Bill makes this sufficiently clear. Obviously, unless a true rating is given, an offence has been committed and the request will not have been complied with.

[11] **Mark Drakeford:** I think that the point that Vaughan is putting to you, Minister, is that, with a very small amendment, that could be put clear beyond any doubt. Do you want to think about that?

[12] **Lesley Griffiths:** That is probably a legal issue. We could do it.

[13] **Vaughan Gething:** I think that it would be a fairly small drafting point to make your point absolutely clear. Some lawyers will be deliberately picky and want to be very literal about this, and there is just a small risk, is there not, that your intent is not going to be transformed and delivered.

[14] **Mr Humphreys:** Certainly, when the Bill was drafted, the opinion, from an economy of drafting point of view, was that the existing words do the job. However, I certainly take your point and it is something that we could probably look at.

[15] **Leslie Griffiths:** Yes, we could look at that.

[16] **William Graham:** I think that we are of a reasonably common mind about appeals. Have you given any thought to how those appeals will be monitored, so that you can see that there is a good standard among them when they go to an independent authority or perhaps the neighbouring local authority? Clearly, that is to be developed. What are your views on that?

[17] **Lesley Griffiths:** Yes, this is something that we have looked at very carefully because it is very important that we are fair to businesses. Obviously, there are a number of safeguards within the Bill. We are looking at whether one authority's appeals could be looked at by a neighbouring local authority because I accept that these departments are quite small. If a colleague is being asked to overturn a decision taken by someone sitting at the next table, it is very difficult. So, that is one thing we are looking at. We are also wondering whether we should have regional panels. A large authority, such as Cardiff, may have more appeals to deal with than somewhere in Gwynedd, for example, so it would be unfair if we had just one neighbouring local authority looking at its appeals. Therefore, it might be better to set up a regional panel. Officials are working with the Food Standards Agency to identify practical options at the moment so that we can strengthen the independence of the appeals process.

[18] **Mark Drakeford:** Thank you very much. Rebecca is next.

[19] **Rebecca Evans:** Actually, Chair, it was William Graham's question that I was going to ask. I want to welcome your response to that, Minister. I am pleased that you are looking at how we can ensure that the appeals process is robust. Perhaps you will be able to provide the committee with an update as your work on that goes forward.

[20] **Lesley Griffiths:** Yes. When I respond to the committee's report at the end of Stage 1 I will certainly do that. However, we need to look initially to the food authority retaining its own appeals and then look at neighbouring authorities and the issue of a regional panel. I will certainly report at the end of Stage 1.

[21] **Mark Drakeford:** Minister, I wish to put a point to you that came out of our

discussions. We rehearsed this with you at a very early stage and have taken the matter up with quite a number of our witnesses. The issue was whether takeaway and fast food outlets ought to display their ratings on publicity material. The point we came to in July was that we were probably persuaded in the end that there was too much potential for confusion in putting a rating on a leaflet that could then be kept past the point when it was out of date and so on. However, I think that we were still persuaded that websites were a different matter and that it was not unreasonable to expect an organisation that has a website to keep that properly up-to-date and that that should be a requirement. Have you had a chance to reflect on that point?

[22] **Lesley Griffiths:** Yes, this is something that we are looking at. There are issues with websites where a third party is responsible for looking after that website. That is one area on which we are having to do some more investigative work, particularly from a legal point of view. I think that it would probably be more practical to require food businesses to place a statement on their websites regarding their food hygiene rating and then redirect consumers via an automatic hyperlink to the FSA website where the individual business rating can be viewed. This is what is done in Denmark with the smiley scheme, which I think we mentioned previously. However, we are having to look at the legal issues. I do not know whether Chris would like to say anything more about the issue of a third party being responsible for somebody's website.

[23] **Mr Humphreys:** I cannot add a great deal on that at the moment. It would depend on the specific proposals. However, we could certainly look at them; if anything came forward, we could help to shape them from a legal point of view.

[24] **Lesley Griffiths:** The issue is whether it would be the food establishment or the person looking after the website who would be legally responsible.

[25] **Mark Drakeford:** So, at the moment, your thinking is that, on a website, you would have to inform the public that there is a food rating and that, if anyone wanted to know what that rating was, they could click on the link and be taken straight to it.

[26] **Lesley Griffiths:** Yes, it would take you straight to the FSA website, where the information has to be displayed.

[27] **Darren Millar:** Minister, I just wish to explore this issue of takeaway leaflets. Some witnesses have suggested that there could be a date stamp with an expiry date for the food hygiene rating on the leaflet, which would obviously demonstrate that a new rating would have been given by a certain time. Or there could be a date on the leaflet by which the next inspection ought to have taken place and you could then obviously ask the question of the takeaway if you are phoning up to make an order. Is that not one way to solve this issue, still allowing people to have that information on the leaflet in a way that is as up-to-date as possible before they order some hot food from their local takeaway?

[28] **Lesley Griffiths:** No, I still anticipate that there could be problems with that suggestion. It places burdens on businesses and, taking further advice on that, we have also been told that it could undermine European food hygiene legislation, which requires food hygiene inspections to be unannounced, so if there were a date stamp on that, it could also cause problems.

[29] **Darren Millar:** But they know, basically, the frequency at which they would expect an inspection to take place, do they not?

[30] **Mr Brereton:** The inspection frequency—

[31] **Darren Millar:** Is determined by risk.

[32] **Mr Brereton:** The intervention frequency is determined by the food law code of practice and a risk rating is given to the premises. That is not a food hygiene rating, but a risk rating in terms of frequency of inspection, which can be every six, 12, 18 or 24 months or every three years, if it is very low risk or if there is an alternative intervention strategy. So, they will vary. You do not say that you are going to go back in six months' time to the date; premises will come up for inspection within that range and the local authority will make an unannounced inspection. It has to be unannounced, as the Minister said, to be a fair inspection of the premises. We had concerns about the display of the rating on takeaway leaflets. We always know that the rating as displayed on the FSA website is up-to-date and valid, and a hyperlink from a website is easy to do. We know that it is valid, it is good information and it does not entail any excessive costs of reprinting or withdrawing statements that are on takeaway leaflets. So, it is a sound move.

[33] The other point to consider and throw into the equation now is that we are moving on in terms of technology. For those of you with Android-type phones or the new iPhone, if you are rich enough to have one, the FSA's app now allows you to point your phone at a takeaway so that it brings up the FSA website and tells you the rating of that establishment, as well as the ratings of all the establishments around you. It is a wonderful tool, if you have tried it; if you have not, I suggest that you download it. I do not have one of those phones, but younger people tend to use that type of equipment when ordering food or looking at a rating. I still think that the website is probably the way to go.

[34] **Darren Millar:** If there will be a requirement for businesses to put a link on their websites to the FSA website, why not require them to put a link on their leaflets to the FSA website too, in order to encourage people to look at the FSA website? Would you consider that?

[35] **Mr Brereton:** It would say that, for further information, they should look at the FSA website.

[36] **Lesley Griffiths:** I just think that that complicates a very straightforward Bill.

[37] **Darren Millar:** If we want to encourage people to take note of an FSA rating, a way of encouraging them to take an interest in it is good, whether that is through written promotional material or a website. If there are issues relating to an expiry date, as you say, because you cannot point to a specific date by which a further inspection would have taken place, then I can appreciate that. However, encouraging people to look at a website for the latest information is not a bad idea.

[38] **Lesley Griffiths:** We will look at that.

[39] **Kirsty Williams:** I can see that there could be a huge amount of complications in trying to put links and ratings on a leaflet that could be massively time-sensitive—I am thinking about the leaflets in my house, which are years and years old, and the takeaways might not even be owned or operated by the same people. The point of sale is less complicated and when we looked at this previously, there seemed to be differences about where the ratings should be displayed. For example, you could have a manufacturer who was making sausages as a microbusiness at his premises but whose point of sale was farmers' markets. However, there did not seem to be a requirement for the certificate or the rating to be displayed at the farmers' market, only at the premises where the food produce was being made. I have seen stallholders displaying their food rating on a farmers' market stall because they have a rating of 5 and they are very proud and want to promote that. Have you considered whether we could move along so that, at the point of sale in a farmers' market scenario, the certificate could be displayed?

[40] **Lesley Griffiths:** Farmers' markets and market stalls, as you say, can display their leaflets under the voluntary scheme and will have to do so under the mandatory scheme. When a market trader sets up his or her stall in another local authority area, that local authority will also have to take account of the information supplied by the inspecting authority. We have covered farmers' markets and market stalls regarding this.

[41] **Kirsty Williams:** So, a farmers' market stallholder would have to display the rating not only at the premises where the product was being made, which may be never seen by a consumer, because that is not their outlet, but at the point of sale.

9.15 a.m.

[42] **Lesley Griffiths:** Yes.

[43] **Vaughan Gething:** I just wanted to return to the provision of information on a different point to the rating. Again, I have some real sympathy for not requiring the rating to be displayed on printed material—you could get into specifying fonts and all sorts of things to make that meaningful. However, I am interested in the information that is provided to the public. One of the questions that we asked was question 15, about the requirement to publish inspection reports. Have you reconsidered this? We have had some feedback from authorities in England that have the scheme, where they do actually publish versions of the report. They have a standard template that is available and is published. Is that something that you would be prepared to look at again, to ensure that there was a consistent way in which information could be provided? It would make it easy for the food authority to make that available, either on its own website or potentially through the FSA.

[44] **Lesley Griffiths:** You will be aware that I was not minded to have full reports published and I am still of that thinking. One way we could go is that, rather than people having to go down the freedom of information route to get that information, the report should be available on request. That would make things easier. From talking to people, and looking at the responses that we have had back, I do not think that many members of the public or businesses want a full report—they want a summary. That could be one way of looking at it. I have also considered whether we should have reports published fully on the FSA website. One concern is that, under the Welsh language scheme, the FSA would have to produce it bilingually, and that would put a financial burden of about £750,000 on it, so that is something that would need to be considered too. However, I do not think that people want the full report all the time. They would like a summary, and that should be available on request, without their having to go down the freedom of information route.

[45] **Vaughan Gething:** Could I ask one follow-up on that? When you say 'available on request', is that on request from the business, or from the food authority?

[46] **Lesley Griffiths:** From the food authority.

[47] **Mark Drakeford:** Just as a point to note, Minister, the Welsh language issue is one that we have heard about and thought about. The FSA has been publishing its meat audit inspection reports on its website since April of this year, and those are not done bilingually. It has been suggested to us that that might be a parallel; if it does not have to produce those bilingually, why would it have to publish these bilingually?

[48] **Lesley Griffiths:** I will clarify that with the FSA.

[49] **Mark Drakeford:** If it is the bilingual issue that is causing you to hesitate about publishing them automatically on the FSA website—which I would understand, if it were—

then it might be worth going back to that, if it is not a barrier in that way.

[50] **Lindsay Whittle:** I am just trying to get my head around pointing phones at establishments to see their ratings. How I long for the days when we simply went down the shop for fish and chips and it was wrapped in newspaper. I suppose that is quite old-fashioned, but I do not recall anybody dying because of that, although who knows? I recall that, when the FSB businesses came to give evidence, they were asking whether there was any financial assistance to help smaller, struggling businesses to bring their premises up to a better standard. Would there be any financial assistance available at all?

[51] **Lesley Griffiths:** Not that I am aware of.

[52] **Lindsay Whittle:** So, they are on their own.

[53] **Lesley Griffiths:** Absolutely, and as you heard Chris say earlier, every business—and I am sure that Kirsty will tell us about her chip shop in Brecon—knows about this, so there is no excuse for anybody, no reason, and no barrier to anybody getting their food establishment up to a five-star rating.

[54] **Lindsay Whittle:** And for those who do not—who are, say, summonsed for offences—what happens to that money? Is that ploughed back in to anywhere in particular, do we know?

[55] **Lesley Griffiths:** I am sorry; I do not understand the question.

[56] **Lindsay Whittle:** If somebody is summonsed for having a poor-standard outlet, what happens to the money?

[57] **Mr Brereton:** If they are prosecuted in court for offences and they are fined, the local authority could make a bid for costs, and sometimes the court might award costs if it was not a custodial issue. Having done this in the past, the environmental health department would ask for a proportion of those costs back from the legal department, and if it is lucky, it might get it. That money goes into the public purse, effectively, but the local authority recovers its costs of taking the prosecution.

[58] **Mark Drakeford:** Just for the record, regarding the fixed penalty issue, which I think we rehearsed with you before, and whether the money should be retained by the local authority or come to the Welsh Government, your view is that it should come to the Welsh Government because of fears that were expressed to us by some businesses that if local authorities were able to retain the fixed penalties, it would encourage them to regard this as a revenue-raising exercise, rather than as a food hygiene exercise.

[59] **Lesley Griffiths:** That is right. We are still of the same opinion.

[60] **Mark Drakeford:** Minister, I think that we have managed to explore with you all the issues that we thought were outstanding following your letter, but I will just see whether anyone wants to raise any further questions. I see that they do not.

[61] **Diolch yn fawr unwaith eto am ddod** Thank you very much again for your yma heddiw. attendance today.

9.20 a.m.

Papurau i'w Nodi Papers to Note

[62] **Mark Drakeford:** Mae nifer o bapurau i'w nodi. Rwyf hefyd yn gofyn ichi gytuno ar gofnodion y cyfarfodydd a gynhaliwyd yn ôl ym mis Gorffennaf. A yw pob un yn hapus gyda'r cofnodion? Gwelaf eich bod.

Mark Drakeford: There are a number of papers to note. I also ask you to agree the minutes of the meetings held back in July. Is everyone content with the minutes? I see that you are.

[63] Dylwn ddweud hefyd nad wyf wedi croesawu Gwyn Price i'r cyfarfod eto. Gwyn, croeso i'r cyfarfod. Nid yw Mick Antoniwn yn gallu dod tan ail hanner y bore, felly mae Gwyn gyda ni am yr eitem hon a'r nesaf.

I should also say that I have not yet welcomed Gwyn Price to the meeting. Gwyn, welcome to the meeting. Mick Antoniwn cannot be here until the second part of the morning, so Gwyn is with us for this item and the next.

9.21 a.m.

Cynnig dan Reol Sefydlog Rhif 17.42(vi) i Benderfynu Atal y Cyhoedd o'r Cyfarfod **Motion under Standing Order No. 17.42(vi) to Resolve to Exclude the Public from the Meeting**

[64] **Mark Drakeford:** Cynigiau

yn unol â Rheol Sefydlog Rhif 17.42(vi) fod y pwyllgor yn penderfynu cwrdd yn breifat ar gyfer gweddill busnes y cyfarfod.

Mark Drakeford: I move that

the committee resolves to meet in private for the remainder of the business of the meeting in accordance with Standing Order No. 17.42(vi).

[65] A yw'r Aelodau i gyd yn fodlon? Gwelaf eich bod.

Are all Members content with that? I see that you are.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 9.22 a.m.
The public part of the meeting ended at 9.22 a.m.*