Northern Ireland Assembly

Committee for Health, Social Services and Public Safety

OFFICIAL REPORT (Hansard)

Food Hygiene Rating Bill: Chief Environmental Health Officers Group

14 January 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Paula Bradley (Deputy Chairperson)
Mr Mickey Brady
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Paul Givan
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Fearghal McKinney
Mr George Robinson

Witnesses:

Mr Damien Connolly	Chief Environmental Health Officers Group
Mr Larry Dargan	Chief Environmental Health Officers Group
Ms Fiona McClements	Chief Environmental Health Officers Group

The Deputy Chairperson (Ms P Bradley): I welcome Fiona McClements, Larry Dargan, and Damien Connolly. Thank you very much for coming along today. If you have a presentation, please go ahead.

Ms Fiona McClements (Chief Environmental Health Officers Group): I am the director of environmental services in Dungannon and South Tyrone Borough Council. My colleagues and I represent the Chief Environmental Health Officers Group (CEHOG). On behalf of CEHOG, I thank the Committee for the invitation to provide comment on the Food Hygiene Rating Bill. The Committee is aware that CEHOG has already provided written evidence on the Bill. We are joined today by Larry Dargan, the principal environmental health officer at food control, western group environmental health committee, and chair of the Northern Ireland Food Liaison Group, and by Damien Connolly, the environmental health manager (food safety and port health) with Belfast City Council.

CEHOG supports the introduction of the Food Hygiene Rating Bill, which requires businesses to display food hygiene ratings, and recognises that the Bill has the potential to better inform consumers while encouraging businesses to comply with hygiene requirements. However, some councils have expressed concerns about the detail of the Bill and particularly that the scheme may be resource intensive. The review should include an assessment of the effectiveness of the scheme in delivering the stated objectives. The consultation was carried out with the existing 26 councils, and support for the mandatory scheme may need to be reassessed in line with the forthcoming local government reform. Corporate priorities for the 11 councils have not been fully developed yet and this mandatory scheme commits councils strategically within the food control section at this time of transition. Furthermore, the Food Standards Agency's (FSA's) focus is increasingly on food standards work, food

fraud and health improvement, while there is likely to be a reduction in the food safety grant to the councils from the FSA, which will inevitably contribute to the increasing budgetary pressures.

Taking account of the flexibility within the 'Food Law Code of Practice', which helps to reduce the inspection burden on businesses, and the financial stresses that councils are facing, it is likely that many food premises will not be inspected as often as they used to be or, in the case of lower-risk premises, may be removed from inspection programmes altogether. This may not be the expectation of consumers.

The proposed Food Hygiene Rating Bill appears to be prescriptive in nature, with specific response times and processes. CEHOG recognises the need for agreed standards but is of the opinion that they should not be absolute legal requirements and are more appropriate in statutory guidance than in the Bill itself.

I will now outline comments in reference to certain clauses highlighted by some CEHOG members. With respect to clause 1, which is on food hygiene rating, consumers may assume that all premises are subject to a reasonably frequent inspection programme to ensure that ratings are periodically updated. The 'Food Law Code of Practice' permits the removal of lower risk premises from inspection programmes and alternation between inspections and lighter-touch interventions for the majority of other premises. Light-touch interventions, which may replace inspections, would not collect sufficient information to produce a food hygiene rating. Therefore, for some premises, there is no mechanism to ensure the renewal of the rating and it will, over time, become outdated. What constitutes an inspection for rating purposes needs to be more clearly defined and be consistent with requirements for an intervention rating within the 'Food Law Code of Practice'.

Clause 2 is about notification and publication. CEHOG agrees that businesses should be notified of their rating in writing within 14 days, as is the case under the voluntary scheme. There may be exceptional circumstances where that might not be possible, and CEHOG suggests that the time frame be detailed in guidance rather than prescribed in law. As is the case with the voluntary scheme, councils should be permitted to apply their corporate branding to the stickers in addition to FSA branding. That will reflect the major role that councils have in delivering the scheme and raise awareness that businesses and consumers should contact the local council if they have any queries. The FSA should cover the total cost of producing the stickers including the council branding, as part of their contribution to the scheme.

Clause 3 concerns appeals. CEHOG believes that an appeal mechanism is an essential element of the food hygiene rating scheme, although some councils have expressed concerns about the potential resource implications. CEHOG supports provision for review of the operation of this appeal mechanism within the Bill.

Clause 4 concerns requests for rerating. CEHOG supports the provision that businesses may request additional inspections for the purposes of rerating. The term "inspection for the purposes of rerating" should be clearly defined to be any official control. This is consistent with the brand standard under the voluntary scheme. The shorter time period from inspection to potential rerating visit may encourage temporary improvements, which would defeat the purpose of the scheme. CEHOG supports the requirement for the Food Standards Agency to review the operation of this clause, which should evaluate the fluctuations in compliance rates.

There is currently no limit on the number of revisits that a business owner can request and the payment of fees may favour larger businesses, due to their ability to pay for multiple revisits. CEHOG is of the opinion that businesses should be able to demand only one rerating inspection in any six-month period. That will help to reduce the demand on councils whilst allowing businesses sufficient opportunity for rerating. A flat fee for Northern Ireland has been suggested in previous consultation responses, to be set at a level to help prioritise only reasonable requests.

Clause 6 is about the validity of rating. Concerns have been raised about implications for council resources in monitoring the display and accuracy of stickers on premises. Some councils have concerns that the proposals allow a business to display its old rating until the end of the appeal period. Where a business's compliance has significantly fallen, that will mislead the consumer. CEHOG is of the opinion that a business should be required to display the new rating or an "awaiting rerating" sticker until the end of the appeal period. Furthermore, councils should be given the power to remove food hygiene rating stickers immediately should there be a significant drop in standards.

Clause 7 concerns the duty to display rating. CEHOG is of the view that the sticker should be visible to consumers before they enter the premises, so enabling them to make an informed choice prior to entering. It will be essential that the requirements of the regulations are clear and supported by guidance sufficient to ensure consistency of enforcement.

Clause 11 concerns fixed penalties. CEHOG notes that the fixed penalty amount under the Welsh scheme is set at £200 and considers this an appropriate penalty. CEHOG is of the view that a similar penalty is required in Northern Ireland to provide a suitable deterrent. An additional offence should be considered to prevent an establishment making any misleading claims or false advertising with respect to a valid rating.

Clause 12 concerns the provision of information for new businesses. A key objective of our enforcement and regulatory policy is to support the local economy and, in particular, to assist businesses in complying with their legal obligations. CEHOG is of the opinion that using a legislative instrument to require councils to provide information to all businesses within 14 days of making the registration is not appropriate, and should be included in guidance. Councils should have some flexibility in how they achieve the overall objective, providing information in the most appropriate way. These approaches should be included in the FSA review under section 14.

Clause 14 concerns review. CEHOG agrees that district councils should keep the operation of the Act under review. More detailed direction and agreement on the type and extent of review to be carried out by each district council should be outlined in guidance. Requests for information currently required by the FSA should be revised to reflect the additional requirements so as to avoid any further additional administrative burden. CEHOG supports the inclusion of a review by the FSA. The review should measure the progress of the statutory scheme in achieving the stated aims and objectives, particularly improving compliance as determined by ratings, not reratings, and reducing food-borne illness in Northern Ireland and providing value for money. The review should estimate the resource burden placed on councils and seek their views on how successful the scheme has been, considering value for money, and where they would like to see the scheme improved. The review should include consultation with all relevant stakeholders, especially consumers.

Clause 17 concerns transitional provision. CEHOG is of the opinion that historical data should be used to produce ratings for all premises within scope. It supports the introduction of transitional provisions to facilitate this. There must be a widely advertised campaign for food businesses, covering the whole of Northern Ireland, well in advance of the introduction of mandatory display legislation. There will be additional costs to fulfil these requirements.

Clause 20 concerns commencement. CEHOG believes that the timing of the enactment date is very important to councils as they are preparing for local government reform, and would welcome time for the reform process to be embedded prior to enactment.

In conclusion, I reiterate CEHOG's support for the introduction of a mandatory scheme for businesses to display food hygiene ratings. Consideration should be given to making the Bill less prescriptive in nature and transferring more detail into forthcoming guidance. There should also be a thorough review of the scheme to ensure its effectiveness in making the best use of council resources to improve the health and well-being of the citizens of Northern Ireland. Thank you very much for giving us the opportunity to provide evidence to the Committee. We would welcome any questions the Committee may have in relation to the briefing.

The Deputy Chairperson (Ms P Bradley): Thank you, Fiona. Larry and Damien, is there anything that you want to add at this stage? We will then just carry on with questions.

From your written submission, and in what you have told us today, you advise that the 'Food Law Code of Practice' and the Food Standards Agency's policy encourages the removal of lower-risk premises from inspection programmes and the use of lighter-touch interventions rather than full inspections. That light-touch intervention would not collect sufficient information to produce a rating. For some premises, therefore, there will be no mechanism to renew their ratings, and over time those will become outdated. Does this mean that businesses that have a three- or four-star rating will have no opportunity to renew and, therefore, achieve the five-star rating?

Mr Damien Connolly (Chief Environmental Health Officers Group): It is not as simple as the rating that they get under the food hygiene rating scheme.

The inspections are dictated by the 'Food Law Code of Practice'. The scoring mechanism is linked to the food hygiene rating scheme but considers other factors. It rates premises as "a", "b", "c" or "d". An inspection is frequency required to check compliance based on the risk rating, with "a" being the highest and "e" being the lowest. Under the 'Food Law Code of Practice', a category "d" premises that is not handling open, high-risk food is not required to be inspected. It is required to have an intervention, but those interventions do not necessarily collect sufficient information to give it a rating. Category "e" premises are not required to be inspected. In Belfast, that equates to about 25% of premises in the voluntary food hygiene rating scheme.

The Deputy Chairperson (Ms P Bradley): Could you give us an example of what a category "e" premises would be?

Mr Connolly: It is any premises that do not handle open, high-risk food. A corner shop might have a refrigerated cabinet and pre-packed, high-risk foods. Unless it handles open, high-risk foods, it would not necessarily be required to be inspected if it was a category "d" premises.

The Deputy Chairperson (Ms P Bradley): I will move on to clause 2. In your written submission, and today, you advised that you are concerned with introducing a mandatory 14-day notification period for councils, given there could be other emergency issues in councils, and believe the requirement should be removed and placed in guidance instead.

Would there be a danger, if the 14-day notification period was set out only in guidance, that some councils could let that slip and be slow to notify businesses of their ratings?

Ms McClements: Under the voluntary scheme, it is currently 14 days for businesses to be notified in writing. It does not appear to be a problem for councils to achieve that target. It was really to have it in guidance in case there were exceptional circumstances. It does not seem to be an issue at this point in time under the voluntary scheme.

Mr Connolly: The FSA has included the requirement in the Bill for local authorities to monitor how they are operating the scheme and report back to the committee. If local authorities are not delivering what is expected of them in this regard, there is the option, in three years' time, to seek by regulations to bring it back within the regulatory requirement.

The Deputy Chairperson (Ms P Bradley): You said that the current timescale is 14 days.

Ms McClements: Yes

Mr Connolly: In Belfast, for example, our current time frame for issuing letters is 10 days, which is stricter than the requirement in the brand standard.

The Deputy Chairperson (Ms P Bradley): Are you concerned that there is no time frame specified in the Bill in which the FSA must publish a business's rating on its website?

Mr Connolly: We looked at some of the concerns raised by industry, and one response made a bit of an issue of that. I am not aware of any unnecessary delays by the FSA in publishing information once it is given to them by local authorities. I would expect local authorities also to frequently upload.

In Belfast, we upload every Wednesday, although the requirement is no more than 28 days. I would not expect local authorities or the FSA to have a problem in complying with whatever standard is agreed.

The Deputy Chairperson (Ms P Bradley): Most of us in this room come from a local council background and know that our local councils are quick to upload the information. We would all be very supportive of them anyway. I just wanted to clarify that.

Another issue is the branding of the sticker. Is there a danger that it could confuse customers if we look at council branding on the stickers?

Mr Larry Dargan (Chief Environmental Health Officers Group): That is merely an issue about ownership of the scheme. Councils believe that they are significant partners in the food hygiene scheme and I think they simply wanted recognition of that.

Mr Connolly: From the point of view of the administration of the scheme, it is the councils. A consumer might be using the scheme and have an issue with the premises, and I think that it would be beneficial to consumers if they could see it, because the FSA is not enforcing the legislation. I think that it is in consumers' interests to say, "That is Belfast City Council. I know that I have to ring Belfast City Council to make the complaint and get action". I think that it is in consumers' interests.

The Deputy Chairperson (Ms P Bradley): Pam has just said that it is a very good point. We all recognise that in our own council areas and our constituents recognise it as well.

Mr Brady: Thanks for the presentation. Unusually, I do not come from a local council background. I have never been a councillor.

The Deputy Chairperson (Ms P Bradley): Never.

Mr Brady: I do not know whether that is good or bad. Anyhow, my question is about the appeals process. In your submission, you state that you are in favour of appeals, but it is really about determining whether there is sufficient clarity about who will be involved in determining the appeals. Do you think that there is sufficient clarity around that for the people who may want to go ahead with an appeal? What type of support might they receive?

Mr Connolly: I do not have a problem with the appeals system as it is written. It certainly introduces an element of independence. We currently operate an appeals system. We get very few appeals, which I look at as being reassuring with respect to how we are delivering the scheme and the consistency we are applying. One of the big things regarding who deals with appeals is that the scheme introduces a degree of independence. In Belfast, we could have a senior manager who checks the scores to make sure they are consistent, and that person could also hear the appeal. The Bill is looking for a different person to do this, and I think that it is a good idea and is something that we have to look at. I do not know whether it may cause some difficulties for smaller councils that have fewer staff.

Ms McClements: Because of the group system in the environmental health family, there is also the independence of the food control people, and, with the local government reform, the councils will be larger, with more environmental health staff working together. So, it may not be an issue from an independence point of view or having staff who are separate outside the process having a look at the appeals. From a personal point of view, it has not been an issue in our area to date under the voluntary scheme.

Mr Brady: Do you think that, with more resources, there is a greater likelihood of more independence? With most appeals, whatever area they are in, independence is usually more acceptable.

Ms McClements: In general, there is a very good working relationship between councils and, if there are issues, those can be ironed out. A very good system already exists.

Mr Connolly: None of the councils raised any objections to the clause introducing a higher degree of independence in the appeal process.

Ms McCorley: I am interested in asking about the ratings. If a business is awaiting an appeal, should it be forced to display the rating under appeal rather than the previous one? Would that not place a business in a difficult position where it might lose custom if it has to display a rating it has an issue with?

Mr Dargan: I can understand that from the business perspective. However, if we take the consumer perspective, then it is important to give a rating that reflects what the officer found at that time. I know there are opportunities, in some cases, to fix things very quickly, but I think that the idea of the scheme is that there will be some confidence that standards will be maintained and improved when people are not being inspected. To have a degree of integrity, the scheme needs to maintain that.

Mr Connolly: There are a couple of ways of looking at this. We might go to premises that have had a very good rating but there has been a significant drop in standards. If that business is allowed to continue to display the good rating, when the conditions are poor, that, to me, puts consumers at risk. The Bill, as currently written, allows a business to do that. On the other hand, if the business is forced

to put up the bad rating, that prejudices the right of appeal and could affect businesses. In response, we have suggested that there is a third option, which is that the business can put up the new rating. If that is a lower rating and they do not want to display it but want to appeal, another notice can be put up to say that that rating is awaiting appeal or some words to that effect. Currently, under the voluntary scheme, there is a display sticker that does not give a rating but says that the business is awaiting inspection. That is currently used, and, that way, neither the consumer nor the business is prejudiced.

Mrs Cameron: Thank you for your presentation. On the subject of stickers and of the councils displaying their logo, I think that that is quite a good idea, especially given the move to the new super-councils come April. I might even suggest that no matter what is put on the sticker, people might not recognise what council it is, especially Kieran's old council.

Mr McCarthy: We will be all right. We will get sorted out. This is Ards and North Down we are talking about.

Mrs Cameron: In relation to clause 4, you have noted that there is currently no limit on the number of times that a business can request a rerating, and you believe that it should be limited to once every six months. Do you think that there is a danger that businesses will request multiple reratings, even if they have not made the necessary improvements?

Mr Dargan: Yes, that is a possibility. I suppose that we would like to limit it to once every six months to preclude that possibility.

Mrs Cameron: Is it more to put the pressure on the business having to have it as right as they can from the start?

Mr Connolly: That is the absolute value of the scheme. The value of the scheme, in my mind, is that a premises gets an unannounced inspection by an officer and the findings on that unannounced inspection are published. Those inspections are indicative of how that business is proactively managing hygiene. If a rerating is requested and a reassessment is done, the findings are indicative of the business addressing what they were told to address. I think that the former is the more reliable, but it is about striking the balance between, yes, telling the consumers how we are finding the businesses are managing compliance without our intervention but yet giving them a right to remedy it. There are two sort of competing agendas, but, certainly, the fact that the scheme does require what we found in our initial inspection to be displayed for a period of time is where the incentive for self-regulation comes. We have sufficient regulatory powers to deal with non-compliance as we find it. It is the encouragement of self-regulation that the scheme really delivers.

Mr Dargan: If I may say so, you could view it as the inspection bringing the opportunity to find out what your problem areas are and then you fix them. You then go for another rating, and, if you continually do that, there is not really much of an incentive to maintain standards, and you do not know exactly when an inspection might be due. So, the incentive should be there for self-regulation.

Mrs Cameron: On the back of that, would guidance be available to a new business on how it could achieve the best rating possible before it would get its very first inspection?

Mr Connolly: As we say in our submission, absolutely fundamental to councils is to try to assist businesses in compliance and to support the local economy, and we realise how important it is to support our food businesses. I would expect every council to do that. We look at the applications made to the planning authority for new food premises, and we look at the building control applications, and we try to engage businesses, before they actually spend money fitting out premises, to make sure that they get it right from the start. So, we very much see it as a major role to give them advice on how to comply before they start spending money on the premises and opening.

I noticed in one of the industry responses that they had some concerns about the fact that, when a new business does open, there is no requirement in the Bill for local authorities to inspect those new businesses. I would advocate that that is adequately dealt with in the 'Food Law Code of Practice', which requires the councils to inspect new businesses within 28 days of registering.

Mr McCarthy: Thanks very much for your presentation. I have a quick question. Clause 8 requires a business to verbally inform customers of their rating. In your submission, you have noted that that

may be difficult to enforce. Would councils plan to do any test purchases to check that businesses are complying? In other words, would you propose to go out and check unannounced that businesses are complying with what they are supposed to be doing?

Mr Dargan: We acknowledge that that is perhaps the only way to test that. We have some experience of using test purchasing in other areas of work, such as underage sales of tobacco, but that is difficult to do and difficult to plan. I think that it is important that that clause is there and that the onus is on the businesses to give information to a consumer, should they ask for it, but I guess that we have not ever had to do that yet. If we found that we had a problem, we would develop a process to deal with it.

Mr McCarthy: Or you might telephone to say that you had a concern.

Mr Connolly: If we got a complaint, we would probably look at our options for enforcing. The fact that it is there and we are dealing with businesses and telling them, "This is a requirement, and you need to address it" is a massive plus for people who are impaired. The fact that it is an offence gives us the option that, if we get a complaint or we think that somebody is not compliant, we can look at the best strategy to enforce that clause. That would give consideration to the option of a test purchase-type exercise.

Mr Dargan: Typically, our first reaction — because we hope that councils have established very good relationships with businesses — is that we would simply talk to them and explain it to them. It may be an issue of communication or understanding.

Mr McCarthy: I will just take this opportunity, as a former councillor for 28 years, unlike my colleague across the table, to pay tribute to you for keeping us all right and keeping us all safe. Keep up the good work.

Mr G Robinson: You are very welcome to our Committee. Regarding clause 12, in your written submission, you have stated that requiring councils to provide new businesses with information within 14 days is not appropriate. Can you give the Committee any examples of how councils could be prevented from being able to meet that deadline?

Ms McClements: It is not that councils feel that it is not appropriate for the 14 days; it is that different councils have different approaches. As Damien has said, long before a lot of the businesses are operational — long before the 14 days — that information is already with them because certain work has been done through planning and building control. This was to give councils options for how they would engage and provide that information to businesses. It was not that councils were reluctant to do so; it was that they did not want it to be prescribed as within the 14 days of the businesses being registered. What they wanted was the flexibility to do their seminars to the businesses and to write to them long before they opened. It was to give that degree of flexibility. It was not that they did not feel that the message getting across was inappropriate; it was just about how it was done, because each council, in different areas and for different types of business, has found different solutions and methods of communicating with businesses. That was why; it was not that it was inappropriate. The council and environmental health try to work with businesses to get them as compliant as possible. So, it was not the issue of the communication; it was just how it was done to give that degree of flexibility. Hopefully, I have answered that for you.

Mr G Robinson: That is grand. Thank you very much.

Mr McKinney: You say that clause 14 should measure the progress of the scheme in achieving the aims of improving compliance and reducing food-borne illness and should estimate the resource burdens placed on councils. Do you think that needs to be specified in the Bill?

Mr Dargan: Yes, we do. We note that most of the review refers to detail about time limits, as we have just discussed, but we understand that the rationale for producing a mandatory scheme versus a voluntary scheme, which we have at the minute, is to make long-term improvements in food-borne illness reduction. We think that should be measured in any review.

Mr McKinney: You said that clause 16 should contain a definition of inspection for rating and rerating purposes. Can you explain the possible areas for confusion if such a definition were not included?

Mr Connolly: Again, that could be accommodated in statutory guidance rather than the Bill, but the Bill uses the term "inspection" in a couple of places when it means two completely different things. I do not think that it is the intention to confuse; we are just making the point that, for example, an inspection for the purposes of rating is a specific process, as defined in the code of practice. As such, it gathers enough information to totally rate the premises. So, it is quite a significant intervention in the business. That is defined in the 'Brand Standard' as what we call an inspection, partial inspection or audit. The Bill's wording for the purposes of rerating also uses the term "inspection". We know that inspection for rerating is a lesser intervention that verifies that they have carried out the corrective action but would not collect enough information to rerate the compliance of the premises. I appreciate that the point is quite technical, but they are two different levels of intervention, as defined in the 'Food Law Code of Practice'.

Mr McKinney: Does the test not get done again?

Mr Connolly: No. Currently, under the voluntary scheme, you have to do a thorough inspection that looks at all the aspects of the business to collect enough information to check the various elements of the score. When you get a rerating request, you basically go out and check the things that you have asked them to put right or in place — that they have corrected the non-conformance — and you look out for any other observations, but you do not have to do a complete inspection. It is a much lighter-touch intervention that is primarily focused on the remedial action that they have carried out. That needs to be clarified in the legislation or the statutory guidance, because the Bill uses the same term "inspection".

Mr McKinney: But it is in the context of a rerating.

Mr Connolly: Yes.

Mr McKinney: Therefore, is that not understood?

Mr Connolly: No. The term "inspection" means two different things, and that is made clear if you look at clause 16. It refers to the fact that inspection for the purposes of rerating is not the same as inspection for the purposes of section 1, which is a rating inspection. A rating inspection is different from a rerating inspection.

Mr McKinney: Yes. But given that those are two different things, I think that we are getting caught on the word "inspection". In fact, if one is against an initial examination and the other is against rerating, it is surely understood that the secondary one is an inspection because it is an inspection; it just is not the full inspection because it is against the term "rerate".

Mr Connolly: Yes. Our point is that the guidance should clarify what is meant by an inspection for the purposes of rating and what is meant by an inspection for the purposes of rerating.

Mr McKinney: OK. I get the point, but I am not sure that we should get entirely hung up about it.

I am not a councillor either. I am not entirely persuaded that the council name should go on. This is about establishing, in the public mind, a brand around the nature of public safety and identifying that organisations providing food are complying. That is the exercise rather than additional or other vanity information, potentially.

Mr Givan: Thank you for your presentation. I note your point that the 14 days should be in guidance. Is that your view in respect of the 21 days that is referred to when it comes to appeals? Should that, similarly, be in guidance rather than in the Bill?

Ms McClements: The number of days for appeal is more of a procedural deadline. No issues were raised regarding that. It is the same as in the voluntary scheme that councils currently operate. It would also have a defined cut-off for the 21 days for appeal, and it would allow the rating to be displayed.

Mr Givan: You were of the view that 14 days should be in guidance for the provision of information to new owners as well. I have some sympathy as to the question of why we should be putting 14 days or 21 days in primary legislation and not in subordinate legislation, because, obviously, if we decided that it should be 21 days rather than 14 days, it would be much easier to change a regulation than to

amend primary legislation. It is more a technical point: if you are consistent around 14 days, why not have 21 days in regulations as well, rather than in primary legislation?

Mr Connolly: It is my opinion that as much of the detail that can be left to subordinate regulations and guidelines should be left to them, because, as you said, it is far easier to change that than it is to change an enabling act. An enabling Act should be kept to the bare minimum. That is my opinion.

Mr Givan: I share that. Currently, an officer who did not carry out the original inspection helps with the appeal. Do you think that the fact that it is a different officer from the same council goes far enough, or should it be someone from a different council?

Mr Dargan: Currently, I work for the western group of councils. There are five councils in our area. On the rare occasion that there has been an appeal, one of my colleagues who work centrally for all five councils but not specifically at each council, has helped with the appeal process. So, there is a removal from the actual inspection and that enforcement scenario. They are able to give an overview. In that situation, it is quite easy, because that office is also charged with a degree of oversight in monitoring and auditing. So, it falls quite easily to that.

Councils in Northern Ireland are very comfortable with inter-authority auditing in relation to environmental health. We have lots of peer review processes going on. So, it would not be a problem to ask a neighbouring council. That said, the new councils are much larger than the existing ones, so the danger of getting connectivity between the officer who carried out the initial rating and someone who might look at that in an appeal is disappearing or becoming wider.

Mr Connolly: If a problem with the appeals process materialised through the review, I would be very supportive of an additional stage in the process to make the independence more robust. An additional process will obviously be an additional administrative burden, and I would be reluctant to implement it unless it was needed, but I am totally supportive of it being kept under review and being a fundamental part of the three-year review of the FSA. If there is a problem, let us put additional controls in place.

Mr G Robinson: I have one small supplementary question. There is a difference of opinion regarding Ballymoney and Fermanagh councils. I am wondering what it is. Are you in a position to state what the problems are as far as Ballymoney and Fermanagh are concerned?

Mr Dargan: Can you remind us specifically of —

Mr G Robinson: The Committee received submissions on the Bill from Ballymoney and Fermanagh councils, which take a more critical stance. Are you aware of a difference in opinion regarding the Bill among the councils? What impact might that have in implementing the Bill?

Mr Dargan: We collected responses from all 26 councils, through CEHOG, the Chief Environmental Health Officers Group. That was not invited before we constructed our written response to the Committee. So, we have attempted to include everything that was said. To be honest, I am not aware of exactly the nature of the differences in Ballymoney or Fermanagh. I could comment if I knew them specifically, but I am not aware of them.

Mr Connolly: I looked at them. I remember that there were a few wee differences, but I got the overall impression that most of what they were saying was fairly consistent. Maybe they took a different stance on a few wee areas, but I cannot recall what they were.

Ms McClements: I think that one of them was payment for appeal, but the majority of the responses were similar to what we have said. There were a few minor differences. I think that one was payment for appeal. That puts a new dimension on things, because what you are doing in the appeal process is appealing the decision of the officer who was out to visit you. There is recourse to appeal in most other issues that you do not have to pay for. If you are not happy and you disagree with the officer's inspection, should you pay for that? Fermanagh has taken a different stance. That is the only one that I am aware of from memory, but if anybody else has —

The Deputy Chairperson (Ms P Bradley): Our main concern is that, if there are differences, especially with those two councils, which, incidentally, we will have in anyway to give us a briefing, do

you think that they will impact on the implementation of the Bill, or will we be able to come together on a lot of the issues?

Ms McClements: All I can say is that, with the work that has been collated for today, the 26 councils were all asked for their opinions. They have submitted them. I can only assume that all were submitted, unless they were later and consideration happened afterwards. I am not aware of any significantly different viewpoints.

The Deputy Chairperson (Ms P Bradley): As I said, we will have them in front of the Committee anyway; they will be invited along to give their witness session.

Finally, I want to look at clause 20, which is the short title and commencement. From what I gather, you believe that the timing of the enactment date is important. I understand the difficulties with us moving into our larger councils. Do you have a realistic enactment date in mind? When could that take place?

Mr Dargan: It is terribly hard to visualise that at the minute because we are right in the middle of convergence. With 10 weeks to go, there are lots of uncertainties. In terms of food control, councils have looked very carefully, with the cooperation and instigation of our colleagues in the Food Standards Agency, at things that we should concentrate on in the future. I do not know, at this stage, what that will end up looking like, so I guess that councils will need time to come together, sort out their policies — whether they are two or three — and plan whatever strategic direction they want, before they manage to go through a mandatory scheme.

The Deputy Chairperson (Ms P Bradley): OK. There are no further questions. Thank you very much for your time today.