

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

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

**Response submission:** [executive.support@food.gov.uk](mailto:executive.support@food.gov.uk)

**Closing Date:** 9<sup>th</sup> September 2022

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

Mid Ulster District Council welcomes the introduction of the above regulations to implement the online display provision within the statutory Food Hygiene Rating Scheme. While it should be anticipated that these regulations will ensure consistency of Food Hygiene Rating display across all platforms and provide authorised officers with the appropriate tools for enforcement, Mid Ulster District Council has some reservations in respect of being able to enforce this piece of legislation.

### **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.**

Mid Ulster District Council is aware that District Councils are addressing the backlog of inspections that resulted from the pandemic and would point out the focus for the last quarter of the 2022/2023 year will be on working to the FSA recovery milestone of 31<sup>st</sup> March 2023. Promotion of the FHRS online display regulations is not a priority in the current FSA recovery plan and it may be likely that DCs will not have the resources to support a PR campaign at that time.

Mid Ulster District Council is also mindful that should the appropriate legislative processes not be in place then it is likely that the suggested commencement date above may have to be extended. Mid Ulster District Council would point out that the impact assessment refers to additional funding given to all DCs for the 2022/2023 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 2022/2023 financial year. Mid Ulster District Council would welcome further updates in regard to changes to the proposed commencement date and expectations on DCs during the lead up 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.**

Mid Ulster District Council does 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](http://www.food.gov.uk/ratings)) for online display? If not, please state why and provide a rationale for an alternative period.**

Mid Ulster District Council is 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?**

Mid Ulster District Council has 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?”**

Mid Ulster District Council does not have any comments regarding the definition of a “social media service”.

**Question 6:**

**a) Does the wording in regulation 3 (2)(a) make it clear who the regulations apply to?**

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

a) Mid Ulster District 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) Mid Ulster District Council has no further comments regarding regulation 3(2)(a)

**Question 7:**

**a) Does the wording in regulation 3 (2)(b) make it clear who the regulations apply to?**

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

a) Please see comments below under b).

b) Mid Ulster District Council is aware of the Food Standards Agency’s work with online aggregators and welcome the opportunity for District Councils 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. Mid Ulster District 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, Mid Ulster District Council is concerned that there may be some reluctance from aggregators to do so. FBOs 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 Mid Ulster District Council 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, clarification is also sought on whether the FPN should make reference to 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?

Mid Ulster District Council would welcome further engagement by the FSA with social media platforms providers in order to address ongoing issues District Councils 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 District Councils 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)?**

Mid Ulster District Council would suggest consideration is given to the following:

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 mainland GB.

**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?**

Mid Ulster District Council does not have any comments on question 9, nor do we foresee any issues with the questions asked in parts a) and b).

**Additional comments**

Mid Ulster District Council would welcome guidance and/or training in evidence gathering for FHR offences committed online, particularly to ensure compliance with RIPA (Regulation of Investigatory Powers legislation). Currently RIPA investigations require the agreement and sign off by a magistrate.

Mid Ulster District Council would bring to the attention of the FSA that not all District Councils can carry out online monitoring checks due to internal security restrictions on their IT systems. The use of personal technology would not be acceptable for enforcement purposes. Mid Ulster District Council acknowledges that the additional funding can be used to facilitate exploration into overcoming these barriers however there are still concerns that District Councils will have difficulty enforcing this legislation.

Mid Ulster District Council would welcome further guidance on the use of Fixed Penalty Notices to ensure consistency of enforcement among District Councils. Currently District Councils may operate different time scales for the enforcement of FPNs based on internal procedures. Mid Ulster District Council would also welcome guidance and/or training in evidence gathering for offences committed online, particularly to ensure compliance with RIPA

Mid Ulster District Council is largely in agreement with the assessment of the potential impact and costs of implementation on food businesses and District Councils. Mid Ulster District Council acknowledges the additional funding given to District Councils for the 2022/2023 financial year is to accommodate the estimated costs. Mid Ulster District Council agrees that the scoping estimate of 26% of businesses in Northern Ireland 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. Mid Ulster District Council notes that 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.

Mid Ulster District Council also agrees that in order to minimise impacts on District Councils in the monitoring and enforcement of the online display regulations, they should adopt a risk based and proportionate approach and target resources to focus on businesses that are non-broadly compliant.