



# UPDATE REPORT FOR THE NATIONAL ASSEMBLY FOR WALES

## Implementation and Operation of the Food Hygiene Rating Scheme in Wales

AUGUST 2015



# **Update report on the implementation and operation of the food hygiene rating scheme in Wales**

## **Overview**

This document implements one of the recommendations of the Food Standards Agency's [Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme in Wales and the Operation of the Appeals System](#). The Review, published in February 2014, recommended that the report be statistically updated with regard to migration, ratings issued, requests for re-rating inspections and appeals within three months of 28 May 2015.

## **Action required**

None – for information only

## **Further information**

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# 1 Executive Summary

- 1.1 In November 2013 The Food Hygiene Rating (Wales) Act (“the Act”) established a statutory Food Hygiene Rating Scheme (FHRS). This built on the existing non-statutory scheme being operated by local authorities across Wales. The non-statutory scheme had been developed by the FSA in consultation with industry, consumers and local authority stakeholders and aimed to provide information to consumers on the hygiene standards of food businesses.
- 1.2 The statutory Food Hygiene Rating Scheme, amongst other requirements made participation by local authorities compulsory and required food businesses supplying food to the final consumer to display their food hygiene ratings. Local authorities worked in partnership with the Food Standards Agency (FSA) and Welsh Government to successfully implement the statutory scheme.
- 1.3 The Food Hygiene Rating (Wales) Act places duties on the FSA, including the duty to conduct a review of the implementation and operation of the scheme one year after its commencement, with further reviews every three years.
- 1.4 The first [Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme in Wales and the Operation of the Appeals System](#) was published in February 2014 and made a number of recommendations.
- 1.5 One of the recommendations of the February 2014 report was to provide a statistical update with regard to migration, ratings issued, requests for re-rating inspections and appeals within three months of 28 May 2015.
- 1.6 This update report implements that recommendation and has found that between November 2014 and May 2015:
- Food businesses made 392 requests for re-rating inspections. This means that since the legislation was introduced in November 2013 a total of 1110 requests for re-rating inspections have been made (to 28 May 2015) ;
  - Seven food businesses exercised their “right to reply” making a total of 15 since the legislation was introduced;
  - 53 appeals against the ratings issued by local authorities were lodged by food businesses. This makes a total of 124 appeals lodged since the legislation came into force.

- Local authorities reported issuing 366 written warnings and 43 fixed penalty notices to food businesses for non-display of food hygiene ratings between 28 November 2014 and 28 May 2015. There were no prosecutions during this period although a number of local authorities reported that there were a number pending. Since the scheme became mandatory a total of 85 FPNs have been issued and there have been 7 successful prosecutions.
- 9,768 food businesses issued with a rating under the non-statutory scheme were migrated to the statutory scheme by 28 May 2015. This represents 99% of the businesses which required migration.
- Overall, food hygiene ratings have continued to improve with 59% of food businesses having a rating of 5 (very good), and 94% having a rating of 3 (generally satisfactory), 4 (good) or 5. Since the introduction of the statutory scheme the proportion of businesses with a rating of 0 (urgent improvement necessary) has fallen from 0.6% to 0.3%.

## 2 Introduction

- 2.1 The Food Hygiene Rating (Wales) Act 2013 established a statutory Food Hygiene Rating Scheme (FHRS) in Wales which came into force on the 28th November 2013. The details of how the statutory food hygiene rating scheme (FHRS) operates in Wales are contained in Food Hygiene Rating (Wales) Regulations 2013 (“the Regulations”).
- 2.2 The Act places a duty on the FSA to conduct a review of the implementation and operation of the scheme one year after its commencement, with further reviews following each subsequent period of three years. There is also a duty placed on the FSA to review the operation of the appeals system annually.
- 2.3 In February 2015 the FSA produced its first report on The Implementation and Operation of the Statutory Food Hygiene Rating Scheme in Wales, and the Operation of the Appeals System. The report has been published on the National Assembly’s website.
- <https://www.food.gov.uk/wales/news-updates/news/2015/13655/food-standards-agency-wales-report>
- 2.4 The report provided an overview of the first year of operation of the statutory Scheme and recommended that a statistical update be provided with regard to migration, ratings issued, requests for re-rating inspections and appeals within three months of 28 May 2015.
- 2.5 This report provides that update. It does not include a review of the operation of the appeals system to meet the duty to conduct an annual review of the operation of the appeals process under the Act. This will be the subject of a further, separate FSA report to the National Assembly in February 2016.

### **3 Operation of the Statutory Food Hygiene Rating Scheme**

- 3.1 In February 2015, when the report on the first year of implementation of the statutory scheme was published, the food hygiene ratings of some 25,274 food businesses in Wales were available to consumers on the FSA website. In August 2015 this had increased to 26,451.
- 3.2 In November 2014, to coincide with the first anniversary of the statutory scheme, the scope was extended to include business to business trade establishments. Further information, enabling consumers to see how the ratings are made up is now also provided on the FSA website and consumers are advised that they can see the food safety officer's report on which the rating is based by requesting it from the local authority that carried out the inspection.
- 3.3 Businesses supplying other businesses that have received a food hygiene inspection since 28 November 2014 will have received a food hygiene rating reflecting the standards observed at the time of the inspection. Their ratings are now available for consumers on the FSA website.
- 3.4 In respect of food businesses inspected after the first anniversary of the introduction of the scheme, a narrative breakdown of their rating is published on the FSA website. This enables consumers to see how well a business did in relation to each of the three rating criteria that determine the overall food hygiene rating:
- how hygienically the food is handled – how it is prepared, cooked, re-heated, cooled and stored;
  - the condition of the structure of the buildings – the cleanliness, layout, lighting, ventilation and other facilities;
  - how the business manages and records what it does to make sure food is safe.
- 3.5 An example of the information now provided on the website, including the narrative breakdown, for a food business with a food hygiene rating of 3 is shown over:



Area inspected by food safety officer	Standards found
<b>Hygienic food handling</b> Hygienic handling of food including preparation, cooking, re-heating, cooling and storage	<b>Generally satisfactory</b>
<b>Cleanliness and condition of facilities and building</b> Cleanliness and condition of facilities and building (including having appropriate layout, ventilation, hand washing facilities and pest control) to enable good food hygiene	<b>Generally satisfactory</b>
<b>Management of food safety</b> System or checks in place to ensure that food sold or served is safe to eat, evidence that staff know about food safety, and the food safety officer has confidence that standards will be maintained in future.	<b>Generally satisfactory</b>

3.6 The FSA website has been further enhanced to include additional information where food businesses have been subject to recent inspection. The statement “*Recently inspected- new rating to be published soon*” is now added to the rating information of businesses that have recently been inspected. This provides additional information for consumers, and food businesses, making them aware that a new rating will be available soon. This additional information is useful as food hygiene ratings are not published immediately following inspection, as the rating does not become valid until after expiry of the appeal period. Consumers will see the following information on the website:



**Recently inspected – new rating to be published soon**

## 4 Migration

- 4.1 The Food Hygiene Rating (Wales) Regulations allowed an 18 month period for food hygiene ratings issued under the non-statutory scheme to be migrated to the statutory scheme. The Act and Regulations came into force on 28 November 2013, with the 18 month migration period running until 28 May 2015.
- 4.2 Migration applied to those businesses within the scope of the statutory scheme which had previously received a rating under the non-statutory scheme, but were not scheduled for a further food hygiene inspection within the 18 month period to 28 May 2015.
- 4.3 The statutory food hygiene ratings issued to migrated businesses were based on the assessments used to inform their non-statutory ratings (the findings of the last inspection). Migrated businesses benefited from the safeguards built into the scheme, specifically, the right to appeal, the right to reply and the right to request a re-rating. Food business operators are required to display their statutory food hygiene ratings following expiry of the appeal period.
- 4.4 9,768 businesses were migrated from the non-statutory scheme to the statutory scheme. Under the scheme, local authorities were able to use their discretion to determine whether to inspect food businesses identified for migration or to migrate their ratings issued under the non-statutory scheme as part of an administrative exercise.
- 4.5 Local authorities advised businesses in writing of their rating and the migration process before their ratings were published under the statutory scheme. This enabled them to request a re-rating inspection if they believed their hygiene standards had improved since the most recent inspection.
- 4.6 As a consequence of the built in safeguards for businesses, local authorities reported that the migration process was not always a straightforward administrative exercise. A significant number of additional inspections were carried out to approximately 50% of the businesses due to be migrated. This provided additional confidence that the statutory ratings issued reflected any improvements that had been made.
- 4.7 Local authorities reported that they were able to migrate 99% of food businesses due to be migrated to the statutory scheme before the deadline of 28 May 2015. Of the remaining businesses, 75% were migrated by the end of July 2015. The small number of businesses

awaiting migration have been included in local authorities' 2015/16 work programmes.

## **5 Requests for Re-Rating Inspections**

- 5.1 Food businesses can request re-rating inspections at any time. Whilst the number of re-rating requests they can make is not limited, they must use the prescribed form, provide information on the improvements that have been made and pay a reasonable cost. Most local authorities in Wales are currently charging £150 for a re-rating inspection.
- 5.2 Local authorities must carry out re-rating inspections no later than 3 months after the request has been received.
- 5.3 Food businesses made 392 requests for re-rating inspections between 28 November 2014 and 28 May 2015. This makes the total number of such requests 1103 since the scheme was introduced in November 2013 (up to 28 May 2015). A small number of re-rating requests received by local authorities either did not meet the conditions of the Act or were awaiting inspection as they had been received shortly prior to the 28 May 2015.
- 5.4 327 (95%) of businesses subject to a re-rating visit between 28 November 2014 and 28 May 2015 had made improvements in their food hygiene standards that resulted in a higher FHRs, with 13 staying the same and 7 resulting in a lower rating where compliance with food hygiene legislation had deteriorated.
- 5.5 Of those businesses that made requests for re-ratings inspections 267 had been rated 0-2, 95 had been rated a 3 while 22 had a rating of 4.

## 6 Right to Reply

- 6.1 The Act provides food business operators with an additional safeguard, through the “right to reply” option. This enables food business operators to provide an explanation of actions that have been taken following the inspection at which the rating was given, or to give any information on particular circumstances at the time of the inspection, rather than to complain or criticise the FHRS or ‘inspecting officer’.
- 6.2 The “right to reply” comments must be made in writing and submitted to the local authority for inclusion on the FSA website. A standard template form is available although there is no requirement for this form to be used. Food business operators may submit their comments in a different written format, clearly marked as their “right to reply”. The text is published by the FSA at [www.food.gov.uk/ratings](http://www.food.gov.uk/ratings)
- 6.3 Any “right to reply” that contains offensive, defamatory, clearly inaccurate or irrelevant remarks is unacceptable. In such cases the food business operator is advised that the text does not meet the requirements and invited to revise their text.
- 6.4 There were 7 “right to reply” responses submitted to local authorities in Wales between 28 November 2014 and 28 May 2015. Each of the 7 businesses who submitted a “right to reply” had been issued with a food hygiene rating of 1. Each of the businesses then went on to request a re-rating inspection and received an improved rating. Since the regulations were introduced a total of 15 “right to reply” responses have been made.
- 6.5 Businesses are informed of the safeguards, including their “right to reply”, when they are notified of their rating. However local authority officers also encourage food business operators to use the facility, in particular to highlight any corrective actions that they have undertaken following the inspection.

## 7 Appeals

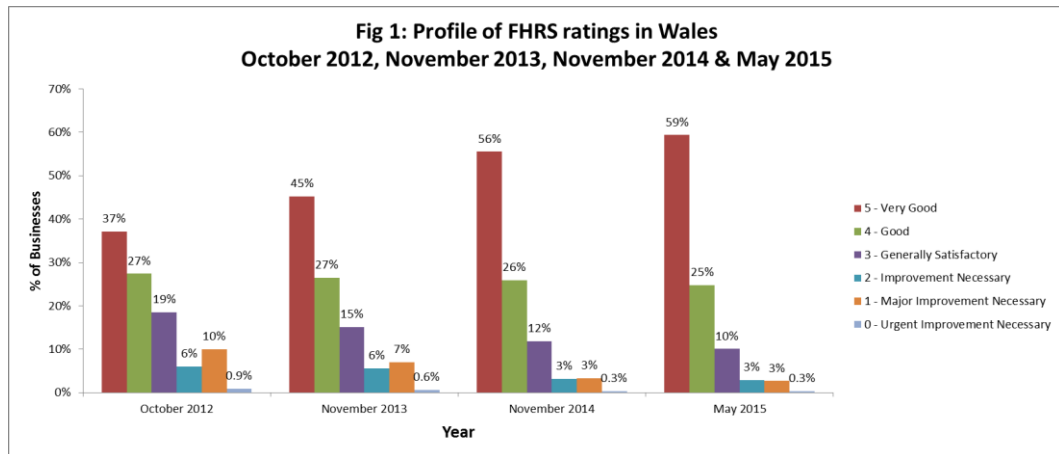
- 7.1 The Act provides food business operators with the right to appeal their food hygiene rating. Appeals can be made on the following grounds:
- that the rating does not properly reflect the food hygiene standards at the establishment at the time of the inspection
  - that the rating criteria were not applied correctly when producing the food hygiene rating.
- 7.2 Appeals must be made within 21 days from the date of receipt of notification of the food hygiene rating and must be made in writing on the prescribed form.
- 7.3 The local authority must determine the appeal and notify the food business and the FSA of the outcome within 21 days from the date on which the appeal was received. A local authority may conduct a further inspection of the establishment for the purpose of considering matters raised in an appeal.
- 7.4 The Act requires the appeal to be conducted by an authorised officer who was not involved in the assessment of the food hygiene rating being appealed.
- 7.5 Between 28 November 2014 and 28 May 2015, 53 appeals were received making a total of 124 appeals received since the legislation came into force (up to 28 May 2015)
- 7.6 Of the appeals received between 28 November 2014 and 28 May 2015:-
- 46 (87%) remained the same;
  - 5 (9%) resulted in a higher rating;
  - 2 (4%) resulted in a lower rating.
- 7.7 The majority (64%) of the appeals were made by food businesses with a rating below 3. 19% were made by businesses with a rating of 3 and 17% with a rating of 4.
- 7.8 The Act requires the FSA to review the operation of the appeals process annually. Following each review the FSA must produce a report making any recommendations for change to the process, and provide a copy of the report to the Welsh Ministers. The annual report will be laid before the National Assembly for Wales within 3 months of 28 November 2015.

## **8 Business Compliance and enforcement**

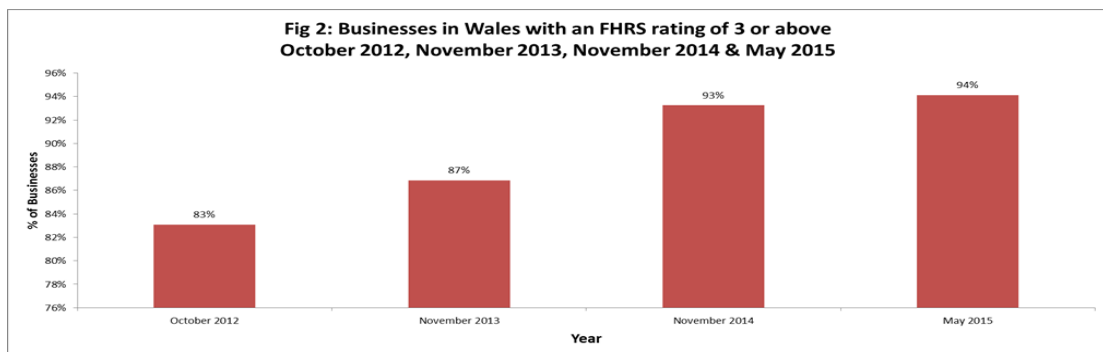
- 8.1 The Act imposes a duty on local authorities to make arrangements to enforce the obligations imposed on food business establishments in their respective areas.
- 8.2 The statutory guidance issued to local authorities on enforcement advised that they should work with food businesses, wherever possible, to resolve issues voluntarily through constructive dialogue and that formal enforcement action should only be taken when informal approaches of education and advice have failed. Where formal enforcement action is taken the Act allows the local authority to issue a Fixed Penalty Notice (FPN) or to prosecute the food business operator.
- 8.3 A FPN offers a person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty. The full amount of the fixed penalty (£200) must be paid within 28 days beginning with the day on which the notice is given. However, a discounted penalty (£150) is payable instead of the full amount if payment is made before the end of the period of 14 days from when the notice is given.
- 8.4 Local authorities have issued increasing numbers of written warnings for non-display of stickers, with 366 warnings reported to have been issued between 28 November 2014 and 28 May 2015. Local authorities also issued 42 fixed penalty notices in the same time period. There were no prosecutions during this time although a number of local authorities reported that there are a number pending. In total 366 written warnings and 85 fixed penalty notices have been issued since the inception of the statutory scheme. Seven food businesses have been prosecuted for failing to display their ratings.

## 9 Impact of the Scheme

- 9.1 From January 2013 until the Act came into force on 28 November 2013, some 1,588 requests were made for re-ratings under the non-statutory scheme, a significant increase on the 918 that were made the previous year.
- 9.2 In October 2012 the number of Welsh food businesses with a rating of 5 was 37%, with 83% having a rating of 3, 4 or 5. By November 2013, just prior to the legislation coming into force, the number of businesses with a 5 rating had increased to 45% with 87% having a rating of 3 or above. After 12 months operation of the scheme 56% of Welsh food businesses had a rating of 5, with 93% having a rating of 3, 4 or 5. Ratings have continued to improve with 59% of businesses having a rating of 5 as of 28 May 2015, and 94% having a rating of 3, 4 or 5. These improvements are illustrated in Fig.1 below.



- 9.3 The increase in the number of food businesses with a rating of 3 or above is illustrated in Fig. 2 below.



- 9.4 Since the introduction of the statutory scheme the number of businesses with a 0 rating has fallen from 0.6% to 0.3%

## **10 Conclusions**

- 10.1 The introduction of the statutory food hygiene rating scheme, compelling food businesses to display their food hygiene ratings, has enabled consumers in Wales to make better informed choices about where they eat and buy food.
- 10.2 In consumer research commissioned by the FSA, 35% of consumers reported that they had used the food hygiene rating scheme before deciding where to eat.
- 10.3 Food business compliance with food hygiene legislation since the introduction of the statutory scheme has also increased significantly.
- 10.4 Overall, local authorities have implemented the statutory scheme in accordance with the legislation and guidance and have successfully migrated 99% of food hygiene ratings from the non-statutory food hygiene scheme to the statutory scheme in accordance with the statutory deadline of 28 May 2015.
- 10.5 In the small number of businesses where migrations have not take place, local authorities have provided the FSA with assurances that they will be completed as part of their 2015/16 work programmes.