



Food Hygiene Rating Scheme

A Report for the National Assembly of Wales

Review of the Implementation and Operation of
the Statutory Food Hygiene Rating Scheme and
the Operation of the Appeals System in Wales.



February 2018

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1. Executive Summary

- 1.1. The Food Hygiene Rating (Wales) Act 2013 (the Act) places a duty on the Food Standards Agency (FSA) to conduct a review of the implementation and operation of the statutory Food Hygiene Rating Scheme (the Scheme) one year after its commencement, with further reviews every three years. The FSA is also required to review the operation of the appeals system annually. These review reports must be laid before the National Assembly for Wales and a copy sent to the Welsh Ministers.
- 1.2. This report has been prepared to meet the requirement for the FSA to undertake a three-year review of the implementation and operation of the Scheme from 28 November 2014 to 27 November 2017, and a further annual review of the operation of the appeals system to 27 November 2017.
- 1.3. The report presents an overview of the operation of the Scheme and how the Welsh Ministers, the FSA and local authorities have discharged their responsibilities. Information is also provided on engagement with food businesses and consumers, as well as an update on action taken to address the recommendations of previous reports.
- 1.4. The report provides evidence of the commitment of the Welsh Ministers and the FSA to support the effective and consistent operation of the Scheme in Wales. It also confirms that the FSA is fulfilling its functions as set-out in legislation. Changes to the Scheme, introduced within the last three years, have delivered improvements in consumer access to ratings at the point of ordering food. These changes have also enabled businesses involved in the procurement of foods and other organisations to use, and benefit from, published ratings information. This has ensured the continuing success of the Scheme.
- 1.5. Local authorities are responsible for securing business compliance with legislation, generating ratings through programmed food hygiene inspections.

Information provided by local authorities demonstrates overall improvements in the delivery of planned interventions in Wales using a risk based approach. The report explains how local authorities are working to meet their statutory obligations whilst ensuring a current and equitable service is provided. A FSA focused audit programme to verify how local authorities are meeting their obligations will report its findings during 2018.

- 1.6. The review of the operation of the appeals systems has found that, between 28 November 2016 and 27 November 2017, local authorities in Wales were largely operating the Scheme in accordance with the Act and statutory guidance. Only four of the 100 appeals received were determined outside the 21-day period and all were concluded within 25 days. Appeals against ratings were made in less than 2% of the food businesses rated; of these, 84% were not upheld and only 16% resulted in changes to food hygiene ratings.
- 1.7. Mandatory display of food hygiene ratings has been a success in Wales. Food businesses with a rating of 5 (very good) have increased by 21 percentage points, 95% of businesses have a rating of 3 (generally satisfactory) or better and there has been a 16-percentage point increase in display, to 84% in 2017, across all ratings. Consumer recognition continues to rise with 89% recognising images of the ratings in 2016 compared with 76% in 2014 and 43% in 2012. The research provides sound evidence that mandatory display has driven improved and sustained food safety compliance by food businesses and provided greater transparency for consumers in Wales.
- 1.8. It is important that ratings are up to date and that they are applied consistently to ensure fairness and maintain confidence in the Scheme. Analysis carried out by the FSA shows that less compliant food businesses had been inspected more frequently, and that nearly half of all rated businesses in Wales had been inspected within the last 12 months¹. Food hygiene ratings older than 12 months were of concern to some consumers who expect ratings

¹ The minimum frequency of interventions is determined by the intervention risk rating scheme in the Food Law Code of Practice (Wales). Intervention frequencies can range from six monthly to once every three years.

to reflect current hygiene standards. The report highlights the FSA's role in facilitating and funding consistency activities and training. Participation by local authorities in consistency exercises has been high and outcomes have demonstrated that local authorities in Wales are generally consistent in their application of ratings, although consistency presents an ongoing challenge.

- 1.9. The report also recognises key areas in terms of policy and regulatory framework developments; increased use of digital services and the need to cater for those with food allergies. The report acknowledges the need to consider the impact of both policy and regulatory landscapes on the Scheme and identifies areas for further work to ensure accessibility to meaningful information for consumers.
- 1.10. Local authorities are highly committed to delivering the Scheme and play a significant role in ensuring it remains credible, current and equitable for all food businesses in Wales. Overall, local authorities are delivering the Scheme in accordance with legal requirements and guidance, despite experiencing some pressures on resources. The sustainability of the Scheme in the face of diminishing local authority resources needs careful consideration, and the FSA will work with all relevant stakeholders to explore how the future of the Scheme can be assured.
- 1.11. This review has identified 14 recommendations about the ongoing implementation and operation of the Scheme in Wales.

2. Introduction

- 2.1. The Act² came into force on 28 November 2013. The Act established a statutory Scheme which provides consumers with a quick and easy way to obtain information about the hygiene standards at food businesses. Food hygiene ratings are determined by local authorities following inspections carried out to verify food business compliance with food hygiene laws. Food businesses are given a rating from 0 (urgent improvement necessary) to 5 (very good) which reflects the standards found at the time of inspection.
- 2.2. Food hygiene ratings must be displayed using a prescribed sticker at customer entrances to food establishments. Where there are no entrances, e.g. market stalls, stickers must be displayed in a conspicuous place where they are visible to consumers. Ratings are also available on the FSA's website³. In addition, businesses that supply food to take away are required to provide information on certain publicity materials directing consumers to ratings information.
- 2.3. The Scheme empowers consumers; helping them to make informed choices about where they eat and purchase food. Consumers can use the information to select those food establishments with the highest ratings. This provides an incentive for food businesses to improve their hygiene standards.
- 2.4. The Act places a number of duties on the FSA, including that of conducting a review of the implementation and operation of the Scheme one year after its commencement, with further reviews every three years. The FSA is also required to review the operation of the appeals system annually. These review reports must be laid before the National Assembly for Wales and a copy sent to the Welsh Ministers.

² Food Hygiene Rating (Wales) Act 2013: <http://www.legislation.gov.uk/anaw/2013/2/contents/enacted>

³ Food Hygiene Ratings Website: <http://www.food.gov.uk/ratings>

- 2.5. 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 2015⁴. A related report providing a statistical update with regards to migration, ratings issued, requests for re-rating inspections and appeals was published in August 2015⁵. Subsequent annual reports on the Operation of the Appeals System were published in February 2016⁶ and February 2017⁷.
- 2.6. This report has been prepared to meet the requirements of the Act and provides an update on action taken to address the recommendations of previous reports.

⁴ Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme in Wales and the Operation of the Appeals System, February 2015:

<http://www.assembly.wales/laid%20documents/gen-ld10113%20-a%20report%20for%20the%20national%20assembly%20for%20wales%20review%20of%20the%20implementation%20and%20operation%20of%20the%20statutory%20food/gen-ld10113-e.pdf>

⁵ Review of the Implementation and Operation of the Food Hygiene Rating Scheme in Wales, August 2015:

<https://www.food.gov.uk/sites/default/files/FHRS%20Year%201%20Update%20Report%20.pdf>

⁶ Food Hygiene Rating Scheme Review of the Operation of the Appeals System, February 2016:

<http://www.assembly.wales/laid%20documents/gen-ld10597/gen-ld10597-e.pdf>

⁷ Food Hygiene Rating Scheme Review of the Operation of the Appeals System, February 2017:

<http://www.assembly.wales/Laid Documents/AGR-LD10952/AGR-LD10952-e.pdf>

3. Background

- 3.1. The Act and the Food Hygiene Rating (Wales) Regulations 2013⁸ (the 2013 Regulations) set-out the initial requirements of the Scheme. When the statutory Scheme was launched in November 2013, it applied to all establishments supplying food directly to consumers, provided they were not made exempt by the 2013 Regulations.
- 3.2. In November 2014, the scope of the Scheme was extended by the Food Hygiene Rating (Wales) Act 2013 (Commencement No 2) Order 2014⁹ to include food establishments involved in business to business trade, for example food manufacturers and food packers. In November 2016, the Scheme was further developed with the introduction of the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016¹⁰ (the 2016 Regulations). These Regulations require businesses that supply takeaway food to publish a bilingual statement on certain hardcopy publicity materials directing consumers to food hygiene ratings information.
- 3.3. Statutory guidance¹¹ on the Scheme has been produced by the FSA and Welsh Government in collaboration with local authorities and other key stakeholders. Local authorities must have regard to the guidance when exercising their functions under the Act.
- 3.4. The legislation creates a number of offences, including several relating to failure to display a valid food hygiene rating sticker, failure to provide information about a rating verbally on request, and failure to display the necessary statement on relevant publicity materials. There is the provision for these offences to be dealt with through use of Fixed Penalty Notices (FPNs)

⁸ The Food Hygiene Rating (Wales) Regulations 2013: <http://www.legislation.gov.uk/wsi/2013/2903/contents/made>

⁹ Food Hygiene Rating (Wales) Act 2013 (Commencement No 2) Order 2014: <http://www.legislation.gov.uk/wsi/2014/3089/contents/made>

¹⁰ The Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016: <http://www.legislation.gov.uk/wsi/2016/429/contents/made>

¹¹ Statutory Guidance: <https://www.food.gov.uk/sites/default/files/multimedia/pdfs/enforcement/fhrs-wales-food-authorities-guidance.pdf>

instead of prosecution. The Public Health (Wales) Act 2017¹² introduced a provision to the Act enabling local authorities to retain fixed penalty receipts for the purpose of enforcing the legislation.

- 3.5. In 2016, Northern Ireland followed Wales in launching its own statutory scheme which came into force on the 7 October. The FSA has also confirmed plans to explore options for introducing a mandatory scheme in England.

¹² The Public Health (Wales) Act 2017: <http://www.legislation.gov.uk/anaw/2017/2/contents>

4. Review of the Functions of the Welsh Ministers and the FSA

- 4.1. As well as placing obligations on food businesses, the food hygiene rating legislation sets-out a number functions for the Welsh Ministers, the FSA and local authorities. This section of the report details how the Welsh Ministers and the FSA have exercised these functions.

The Welsh Ministers

- 4.2. The Welsh Ministers' powers under the Act include the following:

The Welsh Ministers may by regulations –

2. (6) *(a) amend the definition of a food business establishment, including to expand the category of establishment that may be inspected;
(b) amend the definition of a food authority (for example, to include other bodies).*

- 4.3. Since the introduction of the Act, the Welsh Ministers have not considered it necessary to amend the definition of a 'food business establishment' or 'food authority'.

3. (5) *The Welsh Ministers may prescribe that certain categories of establishment may be exempt from rating.*

- 4.4. The 2013 Regulations detail the criteria for the exemption of food establishments from rating. Food establishments where the sale of food is not the primary activity and any food provided is pre-packed and shelf stable at ambient temperature are exempt.

- 4.5. The exemption also covers establishments which are private dwellings and are used by childminders and adult placement carers. 'Childminders' includes those that are registered under Part 2 of the Children and Families (Wales) Measure 2010 and persons who would be required to be registered 'but for the

fact that the children for whom they provide child care are under eight years of age’.

- 4.6. Since the introduction of the Scheme, amendments have been made to the Children and Families (Wales) Measure 2010. A person is now required to register as a childminder if he or she looks after one or more children under the age of 12 on domestic premises for reward. Previously, the age specified was eight. The 2013 Regulations require amendment to reflect these changes.

RECOMMENDATION 1: That the Food Hygiene Rating (Wales) Regulations 2013 are amended to reflect changes to the Children and Families (Wales) Measure 2010.

5. (8) The Welsh Ministers may by regulations, provide for an appeal under this section to be determined by a person other than the food authority.

- 4.7. The Welsh Ministers have not introduced regulations providing for appeals to be determined by a person other than the food authority. The FSA has undertaken reviews of the operation of the Food Hygiene Rating Scheme appeals system (in May 2015, February 2016, and February 2017). The reviews have found that appeals were being determined by local authorities objectively and in accordance with the Act and statutory guidance. A further review of the operation of the appeals system is contained within this report.

10. (1) The Welsh Ministers may, by regulations, make provision about the promotion of a food business establishment’s food hygiene rating by –

- (a) an operator of the establishment;*
(b) a person acting on the operator’s behalf.

- 4.8. In November 2016, the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016 were made by the Welsh Ministers to further enhance the Scheme. The 2016 Regulations introduced requirements for businesses that provide food to take away to include a bilingual statement on certain publicity materials to signpost consumers to the ratings website.

Publicity materials are defined in the Regulations as any printed material which promotes the takeaway food and includes its price together with a description of how an order may be placed other than in person. The statement also encourages consumers to ask for food hygiene ratings at the point of ordering. Under the Regulations, food businesses may also choose to display the establishment's actual rating on publicity materials.

23. *The Welsh Ministers may issue guidance –*

(a) to the FSA;

(b) to the food authority,

in relation to the exercise of their functions under this Act.

- 4.9. Acting on behalf of the Welsh Ministers, in 2014 the FSA produced statutory guidance for local authorities on the operation of the Scheme. In 2017, the FSA and Welsh Government, in consultation with local authorities, reviewed the guidance. The guidance was subsequently revised to take account of the 2016 Regulations requiring businesses that provide food to take away to include a bilingual statement on certain hard copy publicity materials. In addition, the guidance was updated to include further clarification to local authorities on the interpretation of some of the technical details of the Scheme. A section dealing with transitional arrangements during the establishment of the Scheme was also removed. The Welsh Ministers approved the revised guidance for publication in September 2017.

24. *The Welsh Ministers may, by regulations, amend any provision of this Act which specifies a period within which something must be done by substituting a different period.*

- 4.10. There are a number of prescribed periods set-out in the Act to ensure the effective implementation and operation of the Scheme. These relate to the provision of information to new businesses, notification and publication of ratings, requested re-ratings, appeals and statutory reviews. Since the introduction of the Scheme there have been no recommendations arising from previous reviews to amend the specified periods.

27. (2) *The remaining provisions of this Act come into force on a day appointed by order made by the Welsh Ministers.*

- 4.11. The Welsh Ministers exercised this power to bring the Act into force in relation to food establishments supplying food direct to consumers on 28 November 2013.
- 4.12. In November 2014, a Commencement Order was made by the Welsh Ministers to bring the Act into force in relation to establishments that supply food to other businesses. This provides increased confidence to consumers, and to food businesses who may use the information to obtain assurance on food hygiene standards when selecting their suppliers.
- 4.13. This has had a positive impact on the extent to which food hygiene rating information is used. In Wales, the National Procurement Service (NPS), uses the combined purchasing power of the public sector to deliver value for money in the procurement of goods and services, including food. The NPS has regard to food hygiene ratings in the ongoing monitoring of suppliers.

Schedule (Section 21) – Part 1

(3) *The Welsh Ministers may prescribe a different amount for the penalty or the discounted penalty.*

- 4.14. The penalty of £200, discounted to £150 for early payment within 14 days has not changed.
- 4.15. The Act initially required receipts from FPNs for food hygiene rating offences to be returned to the Welsh Ministers. However, the Public Health (Wales) Act 2017 introduced an amendment enabling local authorities to retain these receipts to support activities in relation to enforcement of the Act. This amendment came into force in October 2017, and as such, it is too early to evaluate the impact of this change.

RECOMMENDATION 2: That the FSA evaluates the impact of the amendment to the Scheme introduced by the Public Health (Wales) Act 2017 in relation to the retention of FPN receipts, at the end of the period of 1 year of commencement.

Food Standards Agency

4.16. The FSA plays a key role in supporting local authorities in the effective implementation of the Scheme. The Act places the following duties on the FSA: -

6. (3) The FSA must publish the food hygiene rating and such other information as may be prescribed on its website within 7 days of being informed under subsection (1).

4.17. The FSA has robust, automated arrangements in place for the online publication of food hygiene ratings at www.food.gov.uk/ratings. These include an IT platform, comprising a central database for storing data on food business establishments uploaded by local authorities; a portal that enables local authorities to review and validate its data and upload information not collected in the automated processes, a consumer facing website and a reporting facility which allows for management reports to be generated.

4.18. A detailed user document containing advice on technical issues and practical aspects of using the IT platform has also been published.

4.19. The design and functionality of the IT platform enables the FSA to effectively fulfil its obligation to publish ratings information on its website within the specified period.

11. (3) A food authority must forward any such comments to the FSA who may publish the comments on their website with the food hygiene rating to which the comments relate.

- 4.20. One of the safeguards for businesses under the Act is the 'right to reply', which affords them the opportunity to comment on a rating and provide an explanation of any action taken since the rating was applied. The 'right to reply' comments must be submitted in writing to the relevant local authority for review before being forwarded to the FSA for publication on the ratings website.
- 4.21. The 'right to reply' comments were published on the ratings website on eight occasions between 28 November 2014 to 27 November 2015, 10 occasions between 28 November 2015 to 27 November 2016 and 11 occasions between 28 November 2016 to 27 November 2017.
- 4.22. Most of the FSA's duties in relation to the Scheme are set-out in section 14 of the Act as follows: -

14. (1) The FSA must –

- (a) in exercising its functions under this Act, have regard to guidance issued by the Welsh Ministers;*
- (b) publish the matters to which a food authority must have regard when preparing and keeping under review an inspection programme under section 2 (where those matters have been approved by the Welsh Ministers);*
- (c) publish the rating criteria against which a food hygiene rating is scored under section 3;*
- (d) at the end of the period of 1 year beginning with the commencement of the scheme, and each subsequent period of 1 year, conduct a review of the operation of the appeals system established under section 5 during that period;*
- (e) at the end of the period of 1 year beginning with the commencement of the scheme, and each subsequent period of 3 years, otherwise review the implementation and operation of the food hygiene rating scheme established under this Act during that period;*
- (f) make recommendations to food authorities to assist them to comply with their responsibilities under the scheme;*
- (g) promote the scheme to food business establishments and consumers in Wales;*
- (h) supply food hygiene rating stickers in the prescribed form to food authorities without charge.*
- (2) No later than 3 months after the end of the period to which a review under subsection (1)(d) relates, the FSA must lay a report before the National Assembly for Wales containing –**
- (a) details of the review that was undertaken;*

(b) the recommendations for change, if any, to the appeals system it considers appropriate and its reasons for reaching that conclusion.

(3) *No later than 3 months after the end of the period to which a review under subsection (1)(e) relates, the FSA must lay a report before the National Assembly for Wales containing –*

(a) details of the review that was undertaken;

(b) the recommendations for change, if any, to the food hygiene rating scheme it considers appropriate and its reasons for reaching that conclusion.

(4) *The FSA must send a copy of each report produced under this section to the Welsh Ministers.*

- 4.23. In fulfilling its responsibilities under the Act, the FSA's Food Law Code of Practice (Wales) (the Code), provides direction for local authorities on preparing and reviewing their food hygiene intervention programmes. The Code sets-out risk rating criteria for determining intervention frequencies, which take account of potential hazards and levels of compliance at a food establishment.
- 4.24. The statutory guidance provides more detailed advice for local authorities, including descriptors to assist them in the consistent application of food hygiene ratings. In 2017, the guidance was reviewed and the descriptors further developed to assist in ensuring the consistent application of ratings. The Code was also reviewed in 2017 and the proposed changes are currently the subject of a public consultation. These changes include updated advice and additional clarification of risk descriptors.
- 4.25. The first Review of the Implementation and Operation of the Scheme and Operation of the Appeals System was published in February 2015. The Review concluded that: -
- Food business compliance with food safety law had increased since the introduction of the statutory Scheme and there was evidence that the Scheme had been a motivating factor in raising food hygiene standards.

- Consistency in the application of the statutory scheme across Wales had been facilitated through local authorities, the FSA and Welsh Government working collaboratively.
- Consumer awareness and use of the scheme had increased.

4.26. There were nine recommendations arising from the review which are detailed at Annex 1, together with the action that has been taken to address them.

4.27. The operation of the appeals system was also reviewed by the FSA in 2016 and 2017. The reviews concluded that the rate of appeals against ratings was low, averaging 1.9% between the two years. Overall, appeals had been determined in accordance with legislative requirements, and on average 16% of appeals resulted in changes to food hygiene ratings between the two years.

4.28. There were seven recommendations arising from these reviews which are also set-out at Annex 1, together with the action taken to address them.

4.29. All reports were completed within the timescales set-out in the Act, laid before the National Assembly for Wales and copies duly provided to the Welsh Ministers.

Promotion of the Scheme

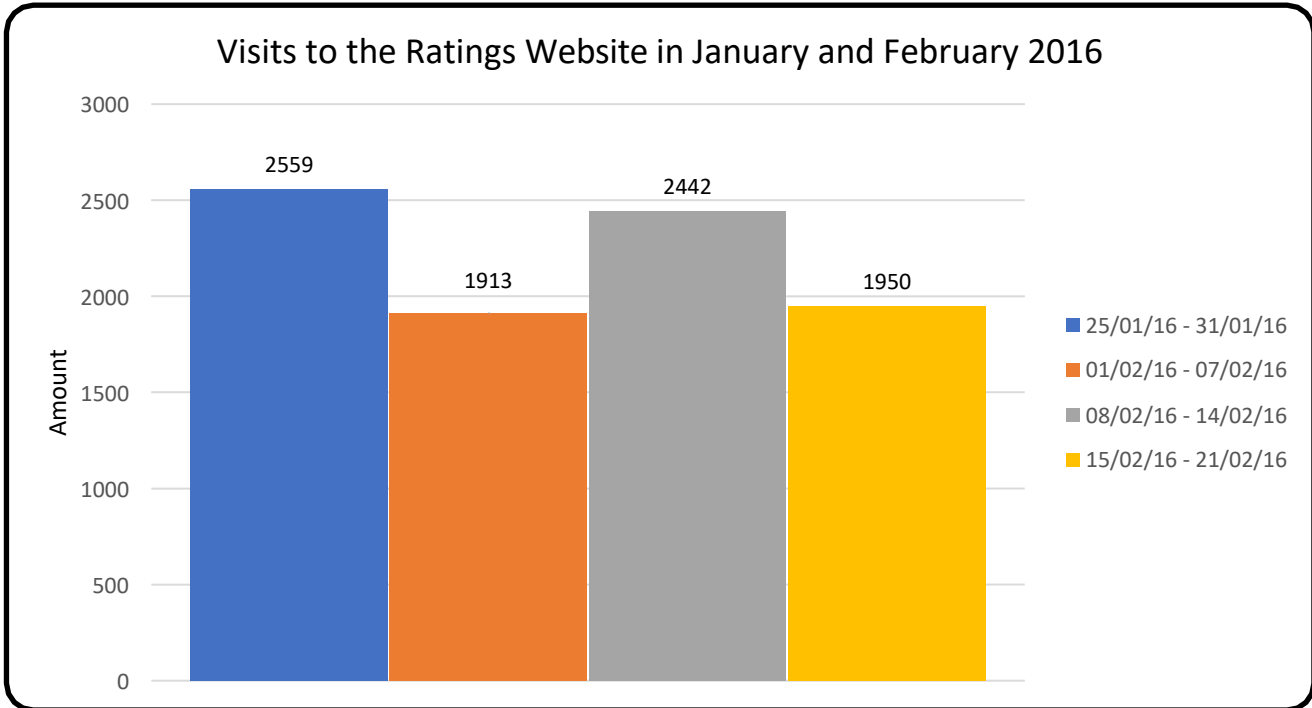
4.30. The FSA's Strategic Plan 2015-2020 *Food We Can Trust*¹³, acknowledges the success of the Scheme and the benefits it provides to consumers. The FSA has been and continues to be proactive, using a range of media and activities to regularly promote the Scheme to food businesses and consumers in Wales. National events such as the Eisteddfodau, the Royal Welsh Agricultural Show and sporting internationals, and occasions such as Christmas, Valentine's Day and Shrove Tuesday have been used as a focus for promotional activities.

¹³ Food Standards Agency's Strategic Plan 2015-20: [https://www.food.gov.uk/sites/default/files/FSA%20strategy%20document%202015-2020 April%202015 interactive%20%282%29.pdf](https://www.food.gov.uk/sites/default/files/FSA%20strategy%20document%202015-2020%20April%202015%20interactive%20%282%29.pdf)

4.31. Christmas Food Hygiene Rating Scheme campaigns in 2015 and 2017 aimed to remind consumers to use the Scheme when eating out over the festive period and targeted those booking Christmas parties. Activities included press releases, advertorials and social media posts. Toolkits were also provided for local authority use, which generated some regional press coverage.

4.32. In January and February 2015 and 2016, the FSA commissioned further activity focusing on St Dwynwen's and Valentine's days to enhance the Scheme message of 'look before you book' and encourage consumers to check the food hygiene rating before eating out. These campaigns targeted younger consumers and included online articles and television interviews. An evaluation of the reach of the 2016 campaign revealed an increase in the number of visits to the ratings website during the weeks of St Dwynwen's and Valentine's Day.

4.33. Further information on the FSA's campaigns for promoting the Scheme is available online at: <https://www.food.gov.uk/news-updates/campaigns/ratings>



- 4.34. Social media has been used to encourage consumers to ‘look before they book’, use the ratings website, ‘search for the green and black sticker’ and ‘report if you can’t see the sticker’.
- 4.35. The ‘Food hygiene is getting easier to spot in Wales¹⁴ leaflet is aimed at food businesses in Wales, and provides information on the Scheme, how it works and the business operator’s responsibilities under the Act. The leaflet is available for order by local authorities for use by their officers in promoting the Scheme. It is also published online on the FSA’s website. The leaflet has been updated twice since the Act came into force to include the extension of the Scheme to businesses that sell food to other businesses and the requirement for those that provide takeaway food to signpost consumers to ratings information on their publicity materials.

Supply of Rating Stickers

- 4.36. The FSA continues to provide food hygiene rating stickers at no cost to local authorities through a third-party publication centre. Information on the process for ordering stickers is contained within the statutory guidance for local authorities.

¹⁴ Food Hygiene is Getting Easier to Spot in Wales: <https://www.food.gov.uk/sites/default/files/multimedia/pdfs/wales-business-leaflet-fhrs.pdf>

5. Review of Local Authority Duties

5.1. Local authorities, referred to as food authorities (FA) in the Act, are responsible for securing business compliance with the legislation. The Scheme relies on local authorities carrying out food hygiene inspections on a programmed basis to generate ratings. The matters to which local authorities must have regard when preparing and reviewing their inspection programmes, are detailed in the Act as follows: -

2. (1) *A food authority must prepare, and keep under review, a programme which sets out —*

(a) whether a food business establishment in its area must be inspected, and, (b) if an inspection is required, the frequency of inspections.

(2) *A food authority must inspect food business establishments in its area in accordance with the programme.*

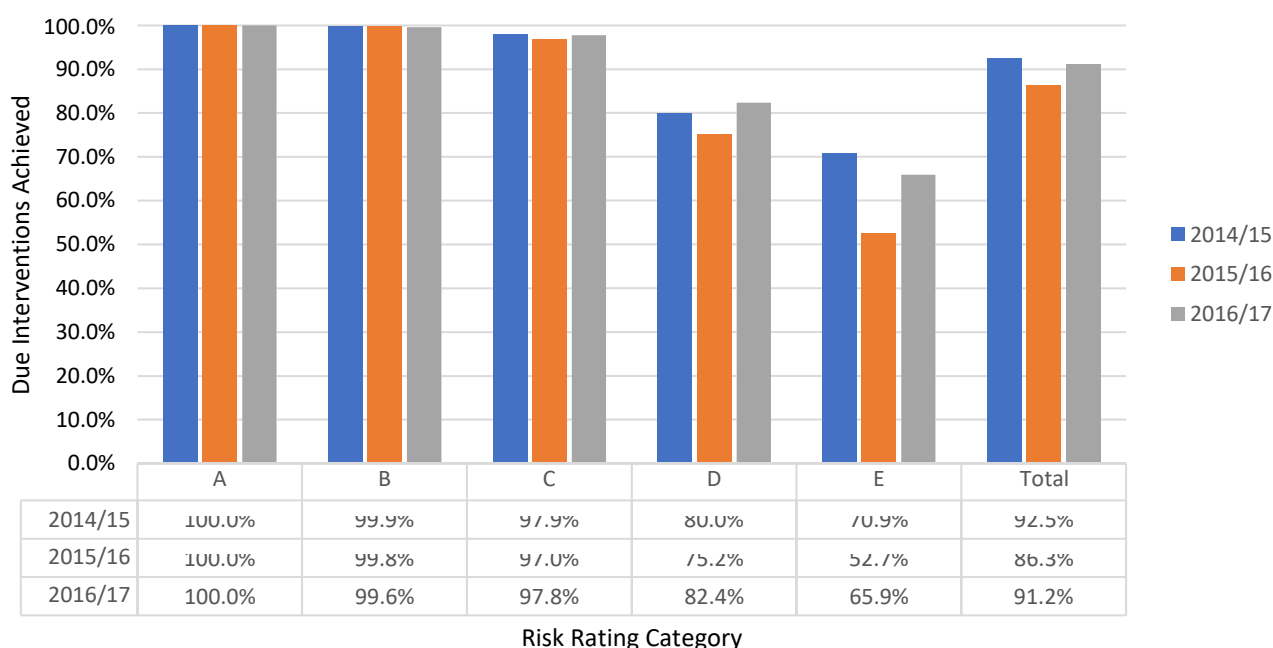
(3) *When preparing and reviewing the programme a food authority must have regard to matters specified by the FSA and approved by the Welsh Ministers.*

5.2. In exercising its function of monitoring local authority performance, the FSA collects annual data on enforcement activity at food businesses, using the Local Authority Enforcement Monitoring System (LAEMS). This data includes details of the number of programmed food hygiene inspections and other types of interventions¹⁵ undertaken at food businesses.

5.3. An analysis of LAEMS data for the periods 2014-2017 has confirmed that local authorities in Wales reported completing most of their programmed food hygiene interventions. Where local authorities reported shortfalls, the data demonstrates that a risk-based approach had been adopted to undertaking interventions in accordance with the Code.

¹⁵ Interventions are defined as, “activities that are designed to monitor, support and increase food law compliance within a food establishment. They include, but are not restricted to, official controls”.

Percentage of Due Food Hygiene Interventions Achieved in Wales 2014 - 2017



5.4. Whilst the latest LAEMS data has revealed overall improvements in the delivery of planned interventions across Wales, five local authorities reported more than 200 lower-risk food establishments in their areas were overdue an intervention. In November 2017, the FSA wrote to the five identified local authorities to remind them of their statutory responsibility for the timely delivery of food hygiene interventions. Notwithstanding the flexibilities in the Code, the letter also served to emphasise the importance of inspections for ensuring the ongoing success of the Scheme.

RECOMMENDATION 3: That local authorities ensure food hygiene interventions are carried out at the minimum frequency set-out in the Food Law Code of Practice (Wales).

5.5. Following inspections, the Act requires that local authorities notify food businesses of their ratings and provide other specified information within a stated period. The method, timescale and information to accompany the notification are set-out as follows: -

3. (1) *Where a food business establishment has been inspected in accordance with section 2, a food authority must assess the food hygiene standards of the establishment and produce a rating (a “food hygiene rating”) for that establishment scored against criteria set out by the FSA (the “rating criteria”).*

(3) *Within 14 days of an inspection, a food authority must send to the operator of the establishment -*

- (a) written notification of its food hygiene rating;*
- (b) a written statement of the reasons for the rating;*
- (c) a food hygiene rating sticker in a form prescribed;*
- (d) such other information as may be prescribed.*

15. (1) *A food authority must send prescribed information to operators of new food business establishments in its area.*

(2) *This information must be sent to an operator within 14 days of whichever of the following events is applicable -*

- (a) the operator’s establishment being registered by the food authority under Article 6 of EC Regulation 852/2004 (or equivalent alternative obligation for registering such establishments), or*
- (b) the operator’s establishment applying to the food authority for approval under Article 4 of EC Regulation 853/2004 (or equivalent alternative obligation for approval of such establishments).*

5.6. The Wales Food Hygiene Rating Scheme Steering Group, comprising of the FSA, the Welsh Government and local authority representatives, was set-up to coordinate the effective implementation of the Scheme. The group has provided strategic direction and a forum for discussing future developments.

5.7. The Wales Food Safety Expert Panel has worked to develop template policies, procedures and letters with the aim of facilitating a consistent approach across Wales. These documents ensure there is a framework in place to assist local authorities in complying with notification requirements.

RECOMMENDATION 4: That the FSA continues to facilitate and support the work of the Wales Food Hygiene Rating Scheme Steering Group to ensure the ongoing success and development of the Scheme.

- 5.8. The FSA has commenced a focused audit programme to verify the extent to which local authorities are meeting the requirements of food hygiene rating legislation and statutory guidance. A report of the findings will be published in May 2018. The report will highlight areas of good practice and any recommendations for improvement identified. Should the need arise, individual letters will also be sent to those local authorities where there are concerns requesting action is taken.

RECOMMENDATION 5: That the FSA publishes a report on the findings of its audit of local authority delivery of the Food Hygiene Rating Scheme by May 2018.

- 5.9. There are prescribed timescales within the Act for local authorities to inform the FSA of ratings that have been issued to food businesses: -

6. (1) *A food authority must inform the FSA of the food hygiene rating of a food business establishment within the relevant period.*

(2) *When informing the FSA a food authority must also provide the FSA with any further information that may be prescribed.*

(4) *In this section, “relevant period” means -*

(a) if there is no appeal against the food hygiene rating, 49 days from the receipt by an operator of a food business establishment of notification of the food hygiene rating;

(b) if an appeal is made, 28 days from the determination of the appeal.

- 5.10. The FSA has robust systems in place to monitor the timeliness of ratings data provided by local authorities. In general, the FSA has been able to confirm that local authorities have provided ratings data in accordance with the legislation. There have been a few isolated occasions where the provision of ratings information has been delayed. When identified, the FSA has taken steps to follow up with the relevant local authority to ensure action is taken to secure compliance. Where delays have been identified these have been attributed to implementation of new database software and staffing.

RECOMMENDATION 6: That local authorities ensure ratings information is provided to the FSA in accordance with the requirements of the Act.

Currency of Food Hygiene Ratings

- 5.11. Current (up to date) ratings are important for ensuring that consumer confidence, credibility and trust in the Scheme is maintained. Research published by the FSA in 2014¹⁶ found that consumers were sceptical about ratings that were more than one year old, as it was perceived these might not reflect changes made within food businesses.
- 5.12. In November 2017, the FSA undertook a review of online ratings data with the aim of establishing the currency of ratings. An analysis of the data showed that food establishments which were 'not broadly compliant' (rated 2 or below) had in general been inspected more recently, i.e. within the last 12 months, than establishments that were 'broadly compliant' (rated 3 or above). This indicates that the least compliant businesses have been prioritised for inspection by local authorities.
- 5.13. Whilst there was some variation in the currency of ratings applied to food businesses, 46.76% had been rated within the last 12 months¹⁷, and more than three quarters, 78.06% had been rated within the last 24 months. In respect of food businesses that were 'broadly compliant' 73.55% of these had also been rated within the last 24 months. The ratings applied to 2.71% of food establishments had been issued 54 or more months ago, although the majority had been rated 4 or 5.
- 5.14. At the time of the review, there were 53 food establishments across Wales with a food hygiene rating of 0 (urgent improvement necessary).
Notwithstanding other interventions and enforcement activities which may

¹⁶ FHRS and FHIS: Evaluation Findings 2011-2014: <https://www.food.gov.uk/sites/default/files/fhrs-fhis-eval2011-14.pdf>

¹⁷ The minimum frequency of interventions is determined by the intervention risk rating scheme in the Food Law Code of Practice (Wales). Intervention frequencies can range from six monthly to once every three years.

have taken place in the interim, these establishments had been rated within the previous 18 months; 34 of which were within the previous six months, 16 within the previous 12 months and 3 within the previous 18 months.

- 5.15. The review found that overall, ratings of food businesses across Wales were relatively current. However, the ratings for a minority of food businesses had been issued more than three years prior. This may be of concern to consumers who expect ratings to reflect current hygiene standards.

RECOMMENDATION 7: That the FSA, in collaboration with the Welsh Government and local authorities, consider options for providing consumers with further assurance in respect of lower-risk food businesses, which may have been subject to an intervention (other than inspection) since the rating was issued.

Consistency

5.16. The consistent application of the Scheme by officers within local authorities and across local authorities in Wales is vital to ensure fairness and provide a level playing field for food businesses and for consumer information. The FSA has worked to promote consistency, facilitating national consistency activities and funding training events.

5.17. National consistency activities were provided by the FSA in 2015, 2016 and 2017. These took the form of online scenarios that local authorities were requested to consider and subsequently determine the appropriate food hygiene ratings based on the circumstances presented. Participation by local authorities has been high at 95%, 91% and 100% respectively. The outcome of the activities demonstrated that overall, local authorities in Wales were consistent in their application of ratings. The FSA recognises the limitations of online scenarios as officers are required to form an opinion with selective information and are unable to seek further clarification on the issues presented. The outcome of each of the national consistency activities is provided below: -

- In 2015 the intended rating for the business featuring in the scenario was 5. A total of 43% of the local authorities that took part in Wales applied a rating of 5; 47% applied a rating of 4 and 10% applied a rating of 3.
- In 2016 the scenario provided assurance with improved consistency in the application of ratings with 80% of local authorities applying a rating of 5 and 20% applying a rating of 4. An intended rating was not provided for this scenario.
- In 2017 the intended rating for the scenario was 3. The majority of local authorities in Wales (77%) applied a rating of 3 or 4. Although the remaining 23% were divided across ratings of 1, 2 and 5. There were a number of issues presented in this scenario with the potential for differing interpretations on the extent to which the business had achieved compliance.

- 5.18. The FSA has funded consistency training for local authorities led by a Senior Environmental Health Officer at Powys County Council. There have been 11 courses delivered in Wales, attended by 406 officers during the last three years. Building further on this work, one of the consistency exercises which focused on a retail butcher and had divided opinion, was disseminated to all food safety teams in Wales for consideration.
- 5.19. In response to queries raised during consistency training events, the Wales Food Safety Expert Panel developed a steer document for use across all local authorities offering advice on the application of rating scores in specific situations. The steer document had been subject to review when issues were identified following consistency training exercises.
- 5.20. In June and December 2017, local authorities participated in data cleansing exercises to rectify any identified anomalies in the accuracy of the information displayed on the ratings website. Consequently, the quality of the data has been improved, protecting the credibility of the Scheme.
- 5.21. The Wales Food Hygiene Rating Scheme Steering Group has continued to meet regularly. Seven meetings have taken place over the last three years with the purpose of promoting consistent implementation. Further, quarterly meetings of the Wales Food Safety Expert Panel have continued to take place. The Scheme is a standing item on the agenda of these meetings. The agreement of a standard fee for re-rating inspections demonstrates the effectiveness of the panel in ensuring a consistent approach across Wales.

RECOMMENDATION 8: That the FSA continues to provide support to ensure that all local authority officers who rate food businesses under the Scheme continue to engage in activities that promote consistency.

6. Review of the Operation of the Appeals System

6.1. The Scheme provides a number of safeguards for food businesses, which include the right for a business operator to appeal against a rating, a 'right to reply' and the ability to request a re-rating inspection.

6.2. The responsibilities of local authorities in respect of appeals are set-out in the Act as below: -

5. (5) A food authority may conduct a further inspection of the establishment for the purpose of considering matters raised in an appeal.

(6) A food authority must determine the appeal and notify the operator of the establishment and the FSA of its decision within 21 days from the date the appeal was received.

(7) The appeal must be conducted by an authorised officer who was not involved in the assessment of the food hygiene rating that is being appealed.

(11) Where a food authority decides to revise a food hygiene rating, when notifying the FSA of its decision it must send to the FSA a copy of the notification and statement referred to in subsection (10).

6.3. The review of the operation of the appeals systems during the period 28 November 2016 to 27 November 2017 found that: -

- A total of 100 appeals were raised across 19 of the 22 local authorities in Wales;
- 96 appeals were determined within the required 21-day period, with the remainder all being concluded within 25 days; and,
- All appeals were determined by an authorised officer not involved in the assessment of the food hygiene rating appealed.

6.4. The 100 appeals raised represent 1.84% of the 5,424 food establishments rated 0 (urgent improvement necessary) to 4 (good) during the period. This figure does not include food businesses issued with a rating of '5', as these would not be expected to appeal.

6.5. Following determination of the 100 appeals raised, 84 ratings remained the same and 16 were revised. In respect of the 16 revised ratings, 15 were increased and one resulted in a lower rating.

6.6. The majority (61) of appeals were raised by food businesses issued with a rating below 3 (generally satisfactory). This comprised of: -

- 5 with a rating of '0' (urgent improvement necessary)
- 38 with a rating of '1' (major improvement necessary)
- 18 with a rating of '2' (improvement necessary)

6.7. In respect of the remaining 39 appeals raised:

- 18 were from food businesses with a rating of '3' (generally satisfactory)
- 21 were from food businesses with a rating of '4' (good)

RECOMMENDATION 9: That local authorities ensure all appeals are determined and the business operator and FSA notified of the outcome within 21 days of the appeal being received. Where delays have occurred, the FSA should ascertain the reasons for these delays and remind local authorities of their statutory obligations.

6.8. Local authorities reported receiving a total of eight formal complaints relating to the Scheme during the period 28 November 2016 to 27 November 2017. However, it is not clear whether these complaints related to the operation of the appeals process.

Right to Reply

6.9. The 'right to reply' provision is contained within section 11 of the Act as follows: -

11. (1) A food authority must give the operator of a food business establishment the opportunity to comment on the establishment's food hygiene rating.

(3) A food authority must forward any such comments to the FSA who may publish the comments on their website with the food hygiene rating to which the comments relate.

6.10. During the period 28 November 2016 to 27 November 2017, 16 'right to reply' comments were received from business operators of which 11 were published, compared to 15 received in the previous year. This represents 0.12% of the 13,888 food establishments rated '0' to '5' to November 2017.

Requests for Re-Rating Inspections

6.11. Food businesses may request an inspection for the purpose of re-rating under the Scheme. This safeguard provides them with the opportunity to improve their ratings in advance of their next programmed inspection, where they have undertaken the necessary improvements. The provision to request a re-rating is set-out in the Act as below: -

12. (3) A food authority must comply with such a request if the conditions in subsection (4) and, if applicable, the condition in subsection (5) are met.

(4) The conditions in this subsection are -

- (a) any appeal against the current food hygiene rating has been determined;*
- (b) the operator has notified the food authority of improvements made to hygiene standards at the establishment;*
- (c) the food authority considers it reasonable to further inspect and assess the establishment in view of the improvements said to have been made;*
- (d) the current food hygiene rating sticker is displayed at the establishment in accordance with the requirements of section 7;*

(e) the operator has agreed to ensure that a food authority will be given access to carry out an inspection of the establishment for the purpose of the re-rating.

(5) The condition in this subsection is that the operator of the establishment has paid the reasonable costs of the re-rating, as determined by the food authority in accordance with section 13.

(6) Subsection (5) does not apply if the food authority has not sought payment of those costs in advance of the inspection.

(7) If the conditions in subsection (4) and, if applicable, the condition in subsection (5) have been met, a food authority must complete the inspection no later than three months after the request was received.

(8) If a food authority decides that there should be no change to the current food hygiene rating, it must notify the operator of the food business establishment within 14 days of the date the inspection was completed.

(9) If a food authority decides to change the food hygiene rating, within 14 days of the date the inspection was completed it must send to the operator of the establishment -

(a) written notification of its new food hygiene rating;

(b) a written statement of the reasons for the rating;

(c) a new food hygiene rating sticker;

(d) such other information as may be prescribed.

6.12. Local authorities have calculated and agreed the reasonable cost of a re-rating inspection, which is currently £160. This fee is applied consistently by local authorities across Wales.

6.13. Between 28 November 2016 to 27 November 2017, local authorities received 815 requests for re-rating inspections compared with 812 between 28 November 2015 to 27 November 2016. This represents 15.03% of the 5,424 establishments rated '0' to '4' to November 2017.

7. Enforcement

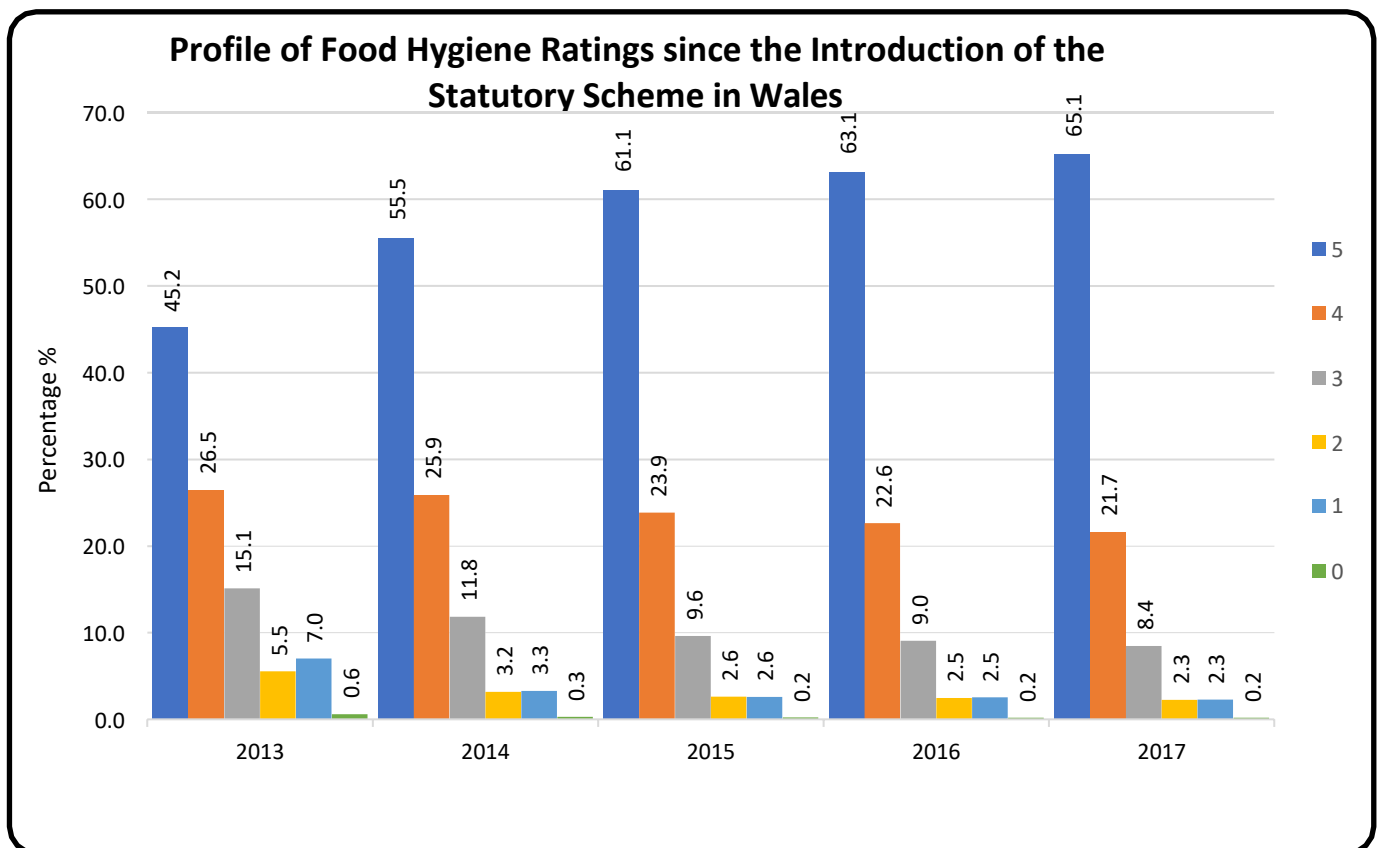
- 7.1. Local authorities have a number of options available to them to ensure the requirements of the Scheme are implemented by food businesses. Issues of non-compliance should initially be resolved informally through constructive dialogue between the local authority and the food business concerned, in accordance with the Code.
- 7.2. Where non-compliance is not resolved easily or quickly using an informal approach, local authorities have the discretion to issue a FPN. A FPN offers a food business the opportunity to discharge any liability to conviction for an offence by payment of a fixed penalty fee. FPNs may be issued for failure to properly display a valid rating sticker, failing to provide the correct rating information verbally on request, failure to provide the prescribed statement on publicity materials and for displaying invalid rating information on publicity materials.
- 7.3. Where a FPN is issued a fee of £200 is payable, discounted to £150 if payment is made within 14 days. Local authorities may instigate prosecution proceedings if the penalty fee is not paid. Local authorities have advised that 81 FPNs were issued in 2015-2016 and 59 FPNs were issued in 2016-2017.
- 7.4. Where there has been a deliberate or persistent failure to comply with the legislation, local authorities may instigate prosecution proceedings. There have been 13 prosecutions brought by local authorities in 2015-2016 and five in 2016-2017 for offences under the Act. Local authorities have reported fines ranging from £400 to £2,900.

8. Impact of the Scheme

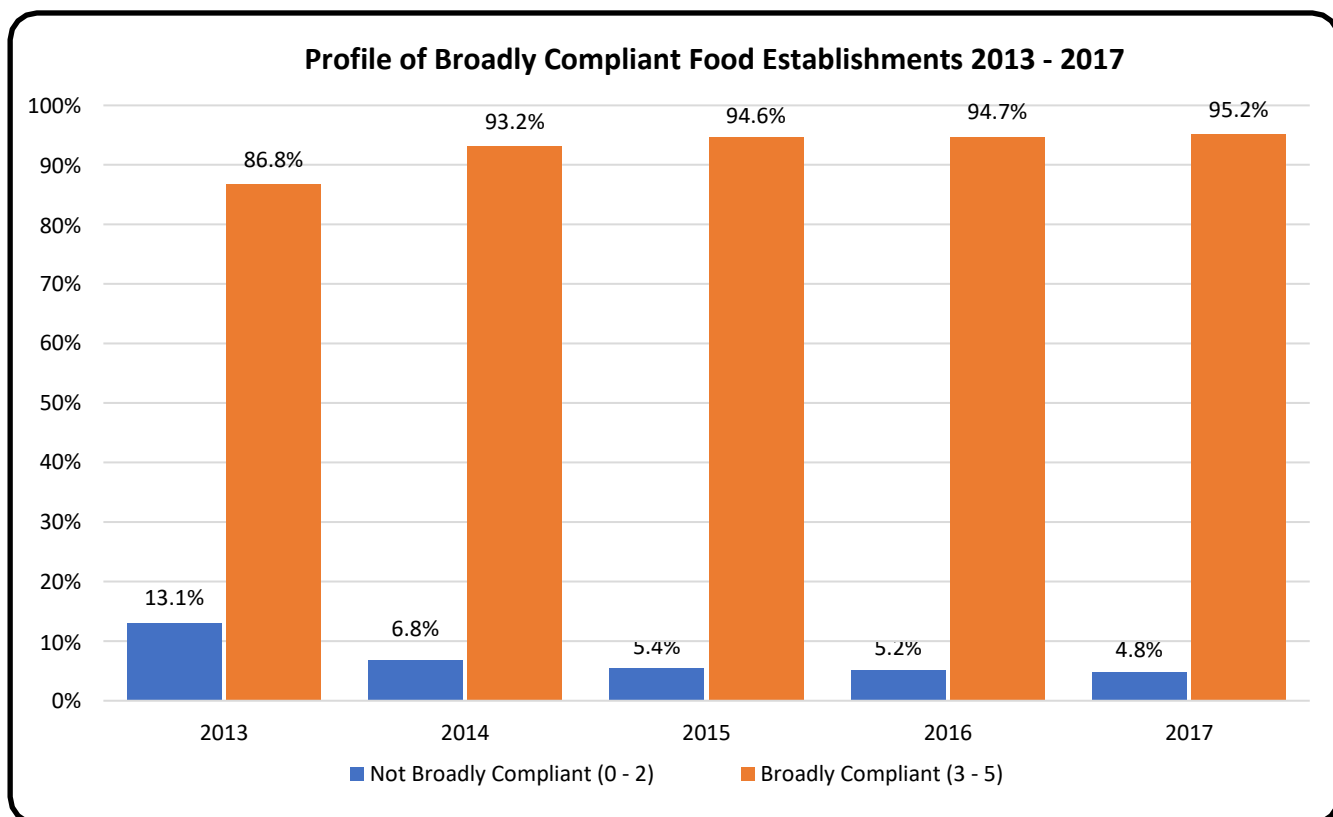
Food Business Compliance

8.1. Since the introduction of the Scheme, the profile of food hygiene ratings across Wales has changed, with an increase in the proportion of businesses achieving a rating of 3 (generally satisfactory), 4 (good) and 5 (very good). This confirms that the Scheme has had a positive impact on business compliance.

8.2. In 2013, the proportion of food businesses with a rating of 5 was 45.2% compared with 65.1% in 2017. Over the same period, the proportion of businesses rated 0 (urgent improvement necessary) had reduced from 0.6% to 0.2%. Further, the proportion of 1 (major improvement necessary) and 2 (improvement necessary) rated businesses had also reduced year on year from 7% to 2.3% and from 5.5% to 2.3%, respectively.



8.3. In 2013, 86.8% of food businesses were 'broadly compliant' with food hygiene legislation, rising to 95.2% in 2017. Conversely, 13.1% of food businesses were 'not broadly compliant' in 2013. However, this reduced to 4.8% in 2017. The table below illustrates the change in the proportion of 'broadly compliant' food establishments between 2013 and 2017.



8.4. The FSA has provided grant funding to local authorities to carry out targeted interventions at food establishments which are 'not broadly compliant'. This funding has been made available with the aim of securing increased business compliance through improvements in food safety management arrangements. This approach recognises the considerable impact that a robust food safety management system has on food business compliance and the consequent rating.

8.5. Activities undertaken by local authorities, include coaching visits to takeaway establishments and restaurants to improve compliance with cross-

contamination controls, translation of advice and information for the benefit of businesses where their first language is not English, and the provision of training courses leading to recognised food safety qualifications. Local authority evaluation of this work has demonstrated its positive impact on business compliance in the short term.

RECOMMENDATION 10: That the FSA continues to support local authorities in securing improvements in business compliance through targeted intervention activities.

- 8.6. The FSA has commissioned several research projects to consider the rate of display of food hygiene rating stickers at food establishments. Research carried out in 2013¹⁸ found that 47% of establishments were correctly displaying the relevant sticker. This increased to 84% in 2017, demonstrating the positive impact of the mandatory scheme.
- 8.7. The 2017¹⁹ research also considered the extent to which establishments that supply takeaway food were complying with the requirement to include a bilingual statement on their publicity materials, signposting consumers to the ratings website. The research found that only 8% of applicable food businesses were complying with this requirement.
- 8.8. The low level of compliance identified in the research is cause for concern and requires further investigation. However, the FSA acknowledges the limitations in the research, particularly in relation to the sample size (40 food establishments).

¹⁸ FHRS and FHIS: Evaluation Findings 2011-2014: <https://www.food.gov.uk/sites/default/files/fhrs-fhis-eval2011-14.pdf>

¹⁹ Unpublished research.

RECOMMENDATION 11: That the FSA commissions further research to determine the level of food business compliance with the requirements of the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016.

Chief Scientific Adviser's Science Report

- 8.9. The FSA's Chief Scientific Adviser in his seventh report²⁰ considered the impact of the Scheme on food safety, with a focus on mandatory display. Statistical analysis has shown that 'broadly compliant' food establishments are likely to have a smaller proportion of unsatisfactory microbiological samples taken than 'not broadly compliant' establishments. Similarly, 5 rated establishments are likely to have a smaller proportion of unsatisfactory samples than all other establishments.
- 8.10. The report highlights the role the Scheme has had in empowering people, helping them to choose to eat at places with higher ratings. Overall, food businesses have improved their hygiene standards to attract more customers.
- 8.11. Following mandation of the Scheme in Wales, the proportion of food businesses with a rating of 5 has increased by 21 percentage points. There has also been a significant increase in the display of stickers for the range of ratings, which has allowed for greater transparency for consumers. Studies have shown that consumers are becoming more aware of the Scheme, i.e. 75% in Wales, with the most common source of information being the rating displayed at a food business.
- 8.12. The Chief Scientific Adviser concluded that these improvements provide sound evidence that mandatory display has driven improved and sustained food safety compliance by businesses.

²⁰ Chief Scientific Adviser's Science Report, Issue Seven: <https://www.food.gov.uk/sites/default/files/csareportfhrsfinal.pdf>

9. Consumer Awareness and Business Attitudes

9.1. The FSA commissions research to monitor and track changes in consumer attitudes towards food. The Food and You²¹ biennial survey is the FSA's flagship consumer research, which provides key data on the public's knowledge, attitudes and behaviours in relation to food safety and food related matters. A survey which consisted of over 400 interviews of individuals aged 16 and over was carried out between May and September 2016 across Wales. One of the themes in the survey is eating out and questions awareness and use of the Scheme. Individuals surveyed were shown images of rating stickers and asked if they recognised them.

9.2. The findings in Wales were as follows:

- Increased recognition of the Scheme with 89% of those surveyed recognising the stickers compared with 76% in 2014 and 43% in 2012.
- An association between age and recognition of the Scheme, with up to 98% of those aged 16 to 34 recognising the stickers compared with 62% of those aged 75 and over.
- Variation by employment status reflecting differences by age, with retired respondents less likely to recognise the stickers (77%) than working respondents (92%).
- Respondents in households with children aged under 16 more likely to recognise the Scheme than those in adult only households (95% compared with 87%).
- Significant difference between respondents living in Wales compared to those living in England recognising the Scheme (89% compared with 82%), with no significant difference between respondents in Wales and Northern Ireland.

²¹ The Food and You Survey Wave 4 (2016): <https://www.food.gov.uk/sites/default/files/food-and-you-w4-combined-report.pdf>

- 9.3. The FSA's Food Hygiene Rating Scheme Biannual Public Attitudes Tracker²² carried out between November and December 2016 involving face to face interviews with 2,100 respondents found that:
- 69% of respondents in Wales were aware of the Scheme, compared with 50% in England and 57% in Northern Ireland.
 - 90% of respondents in Wales recognised rating stickers, compared with 78% in England and 85% in Northern Ireland.
 - 87% of those aware of the Scheme in Wales reported having seen a sticker on display in the last 12 months, compared with 80% in England and 92% in Northern Ireland.
 - 39% of respondents in Wales said they would definitely base their decision to eat out somewhere on the rating, compared with 38% in England and 48% in Northern Ireland.
- 9.4. The FSA has also been assessing the display of ratings by food businesses since 2011. Activities have included mystery shopping and a telephone survey to explore business attitudes. This included exploring reasons for display and non-display, and awareness of safeguards associated with the Scheme.
- 9.5. Research undertaken in 2017 found that 86% of establishments in Wales were displaying ratings. There has been a 16-percentage point increase to 84% in the proportion of food businesses appropriately displaying the ratings sticker so that it is clearly visible from the outside of the establishment. This continues the upward trend observed over time. However, only 42% of establishments with multiple entrances were displaying their rating in a conspicuous position at all entrances. There has also been a notable increase in the proportion of businesses not displaying anything in Wales, up from 7% in 2016 to 12% in 2017. The reported drivers for display continue to be the mandation of the Scheme (64%) and to provide customers with assurance (37%). The proportion of businesses who reported that they display their rating because they are proud of it increased to 28% in 2017. In Wales, a comparison of

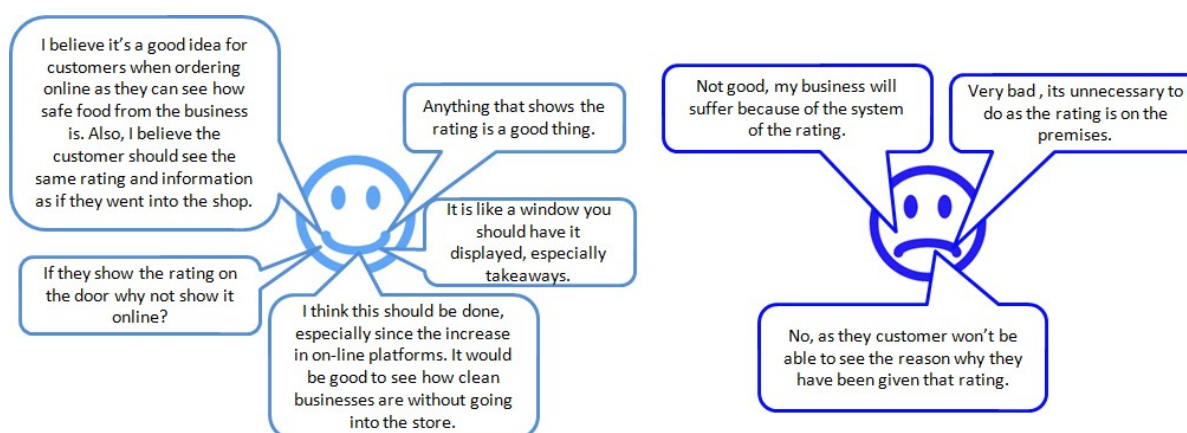
²² Food Hygiene Rating Scheme Biannual Public Attitudes Tracker, wave 5:
https://www.food.gov.uk/sites/default/files/fhrstrackerwave5report_1.pdf

ratings displayed against those on the ratings website found a 92% match, with the remaining 5% displaying a higher rating and 3% a lower rating.

10. Future Developments

Online Display of Ratings

- 10.1. The Scheme empowers consumers by ensuring accurate information on hygiene standards is readily available to enable them to make informed decisions about where they purchase food. The continued success and credibility of the Scheme is dependent on it meeting consumer demands and expectations. Increasingly, consumers are purchasing food online and as such they may not have immediate access to information on a food business' rating.
- 10.2. The FSA's 2017 research sought feedback from food businesses in Wales on the concept of extending the requirement for ratings to be displayed on online ordering platforms. The majority of food businesses were supportive with only 6% providing a negative response.



- 10.3. The provision of ratings information on online ordering platforms may assist with improving food hygiene standards, accessibility and further raise consumer awareness and understanding of the Scheme.

RECOMMENDATION 12: That the FSA works with relevant stakeholders to explore the feasibility of introducing a requirement for the provision of ratings information on online food ordering platforms.

Website Developments

10.4. In 2017 the FSA undertook a review of its website and has subsequently embarked on a website re-design programme to ensure the needs of businesses and consumers are appropriately met. The ratings website was specifically identified as requiring improvement and modernisation. The re-designed version of the website, which will be piloted in February 2018, will enhance the functionality and accessibility of images across multiple devices, including mobile phones and tablets. Further, search and navigation functions will be optimised.

Consumer Awareness

10.5. A project, *FSA Explains*, has been launched to improve consumer understanding of food policy matters. The information will be provided online, using a suite of short videos that will be hosted on the FSA's website and shared using social media. The Scheme is one of the key policy areas featured and the video will be available in English and Welsh from April 2018.

Food Allergens

10.6. In the UK food allergens affect approximately two million people, not including those with food intolerances. It is particularly important for consumers with food allergies or intolerances to be able to make informed choices about the food they buy and places where they eat out. Eating even a small amount of the food to which they are sensitive can make them very ill and in some cases, cause potentially fatal anaphylactic reactions.

10.7. Recent changes in food labelling legislation have led to significant improvements in the provision of information on allergenic ingredients. However, the legislation does not have regard to potential risks which may arise from allergen cross-contamination during food preparation and storage. In the FSA's 2017 consumer research, respondents were asked what they

considered should be assessed during a food hygiene inspection. Matters such as allergens, labelling and composition were included in responses provided by 73% of those surveyed.

- 10.8. Local authorities in Wales are not currently required to assess food business controls in respect of allergen cross-contamination as part of a food hygiene inspection. However, the Food Law Code of Practice (England) requires local authorities there to assess the effectiveness of controls for allergen cross-contamination during a food hygiene inspection. In the interests of consumers in Wales and their current expectations, work should be carried out to explore how further assurance might be provided on the effectiveness of a business' food safety management arrangement with regards to the control allergens.

RECOMMENDATION 13: That the FSA works with relevant stakeholders to explore options for improving information for consumers in respect of food business arrangements for the control of allergens.

Childminders

- 10.9. Where food is provided by childminders as part of their business activity from domestic premises or otherwise, they are required to register with the relevant local authority and comply with food hygiene laws. However, childminders operating from establishments also used as a private dwelling are exempt from the Scheme.
- 10.10. The Welsh Government, in its programme Taking Wales Forward has provided a commitment to deliver 'Thirty hours free childcare for working parents of 3 and 4-year olds for 48 weeks per year'. In the interest of ensuring parents and guardians are provided with information upon which to choose a provider that best suits their needs, now is an appropriate time to consider whether the exemption from ratings should continue to apply.

RECOMMENDATION 14: That the FSA works with relevant stakeholders to review the current exemption for childminders and provides appropriate recommendations to the Welsh Ministers.

Regulating Our Future

10.11. In February 2016 the FSA embarked on a programme, *Regulating Our Future (ROF)*, which aims to improve the way regulatory controls for food are delivered and create a modern, risk-based, proportionate, robust and resilient system. The FSA recognises that any changes to the current regulatory regime have the potential to impact on the future delivery of the Scheme.

10.12. In December 2016 the Welsh Government produced a position statement²³ on ROF, endorsed by the Welsh Ministers setting out the requirements that should be taken into account by the FSA “*in developing regulatory reform appropriate to Wales’ needs*”. A working group has been established at the Welsh Ministers’ request to provide assurance that the needs of Wales are taken into account within the ROF programme in accordance with the position statement.

10.13. The FSA recognises that the acceptability of any proposed changes to the underpinning mechanics of the Scheme, will be dependent on the robustness of the evidence that may be taken into consideration in deriving ratings. Careful regard will be given to any potential implications for the operation of the Scheme and these will be discussed with the Welsh Government and local authorities at the earliest opportunity. Whilst no proposals for changes to the Scheme in Wales have been developed, the current position within the ROF programme is that all new businesses will be subject to full control by local authorities, until they have demonstrated full compliance with food safety requirements.

²³ Welsh Government Position Statement, December 2016: <http://gov.wales/about/cabinet/cabinetstatements/2016-new/food/?lang=en>

11. Conclusions

- 11.1. The Scheme continues to be effective in raising awareness of food hygiene standards, delivering tangible benefits for consumers by allowing greater transparency and empowering them to make informed choices about where they eat and shop for food. The Scheme has provided an incentive for food businesses to improve compliance with food safety law helping to reduce the risks to consumers from foodborne illness.
- 11.2. Developments to the Scheme since November 2014 have improved consumer access to ratings information prior to ordering food and enabled food businesses supplying other food businesses to use, and benefit from ratings information. The continued success and credibility of the Scheme is reliant on it keeping pace with technological advances and adapting to changes in the regulatory environment.
- 11.3. The FSA continues to effectively discharge its duties in relation to the Scheme, providing ratings information on its website, promoting consistency and effectively raising awareness of the Scheme to businesses and consumers.
- 11.4. Research findings provide evidence that since the introduction of the Scheme, recognition amongst consumers has continued to rise, from 43% in 2012 to 89% in 2017. Food business display rates have also increased with 84% of establishments displaying ratings so they are visible from outside in 2017, compared to 21% in 2012.
- 11.5. The efforts of the FSA and local authorities in the dissemination of information to food businesses on the safeguards available to them appears to have been effective. A proportion of food businesses have used the appeals process and the right to reply over the last three years.

- 11.6. Local authorities have worked collaboratively to ensure arrangements are in place to secure the consistent application of ratings. The FSA is grateful for their efforts in helping to ensure the robustness and resilience of the Scheme. Consistency in the application of ratings under the Scheme is key to its success and ensures transparency, fairness and a level playing field for businesses. The challenge this presents cannot be underestimated and ongoing work in this area should be supported by all relevant stakeholders.
- 11.7. The proportion of food businesses with the highest food hygiene rating in Wales is at an all-time high. This is a reason for celebration and the efforts of the food sector in Wales should be recognised.
- 11.8. A number of suggestions for the future development of the Scheme in Wales have arisen from this review which will be the subject of further exploration. Building on the success in Wales, the FSA is committed to pursuing a statutory scheme in England. The plans for that are being aligned with the FSA's Regulating Our Future programme which is reviewing the way in which food businesses are regulated. This review will contribute towards the evidence base for change in England.
- 11.9. Local authorities are highly committed to delivering the Scheme and play a significant role in ensuring it remains credible, current and equitable for all food businesses in Wales. Overall, local authorities are delivering the Scheme in accordance with legal requirements and guidance, despite experiencing some pressures on resources. The sustainability of the Scheme in the face of diminishing local authority resources needs careful consideration and the FSA will work with all relevant stakeholders to explore how the future of the Scheme can be assured.

12. Recommendations

12.1. The review has identified the following recommendations in respect of the ongoing implementation and operation of the Scheme in Wales.

RECOMMENDATION 1: That the Food Hygiene Rating (Wales) Regulations 2013 are amended to reflect changes to the Children and Families (Wales) Measure 2010.

RECOMMENDATION 2: That the FSA evaluates the impact of the amendment to the Scheme introduced by the Public Health (Wales) Act 2017 in relation to the retention of FPN receipts, at the end of the period of 1 year of commencement.

RECOMMENDATION 3: That local authorities ensure food hygiene interventions are carried out at the minimum frequency set-out in the Food Law Code of Practice (Wales).

RECOMMENDATION 4: That the FSA continues to facilitate and support the work of the Wales Food Hygiene Rating Scheme Steering Group to ensure the ongoing success and development of the Scheme.

RECOMMENDATION 5: That the FSA publishes a report on the findings of its audit of local authority delivery of the Food Hygiene Rating Scheme by May 2018.

RECOMMENDATION 6: That local authorities ensure ratings information is provided to the FSA in accordance with the requirements of the Act.

RECOMMENDATION 7: That the FSA, in collaboration with the Welsh Government and local authorities, consider options for providing consumers with further assurance in respect of lower-risk food businesses, which may have been subject to an intervention (other than inspection) since the rating was issued.

RECOMMENDATION 8: That the FSA continues to provide support to ensure that all local authority officers who rate food businesses under the Scheme continue to engage in activities that promote consistency.

RECOMMENDATION 9: That local authorities ensure all appeals are determined and the business operator and FSA notified of the outcome within 21 days of the appeal being received. Where delays have occurred, the FSA should ascertain the reasons for these delays and remind local authorities of their statutory obligations.

RECOMMENDATION 10: That the FSA continues to support local authorities in securing improvements in business compliance through targeted intervention activities.

RECOMMENDATION 11: That the FSA commissions further research to determine the level of food business compliance with the requirements of the Food Hygiene Rating (Promotion of Food Hygiene Rating) (Wales) Regulations 2016.

RECOMMENDATION 12: That the FSA works with relevant stakeholders to explore the feasibility of introducing a requirement for the provision of ratings information on online food ordering platforms.

RECOMMENDATION 13: That the FSA works with relevant stakeholders to explore options for improving information for consumers in respect of food business arrangements for the control of allergens.

RECOMMENDATION 14: That the FSA works with relevant stakeholders to review the current exemption for childminders and provides appropriate recommendations to the Welsh Ministers.

Any enquiries relating to this report should be sent to: -

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Annex 1 - Actions in Response to Earlier Report Recommendations

Recommendation	Action	Status
Implementation and Operation of the Statutory FHRS in Wales and the Operation of the Appeals System, February 2015		
Local authorities should continue to engage in consistency training exercises with the assistance of the FSA.	Matters of consistency have been a standard item for discussion at the Wales Food Hygiene Rating Scheme Steering Group meetings. Local authority officers involved in determining ratings participated in FSA online consistency training exercises in 2015. The FSA funded a face to face consistency training programme with four courses, attended by more than 140 officers from across Wales in 2015.	Complete
This report is statistically updated with regard to migration, ratings issued, requests for re-rating inspections and appeals within three months of 28 May 2015.	An Update Report on the Implementation and Operation of the FHRS in Wales was laid before the National Assembly for Wales in August 2015. https://www.food.gov.uk/sites/default/files/FHRS%20Year%201%20Update%20Report%20.pdf	Complete
The FSA considers the requirements of the Food Law Code of Practice (Wales) with regard to the approach for managing interventions at low-risk food establishments	The Food Law Code of Practice (Wales) and statutory guidance provides advice to local authorities on preparing and reviewing inspection programmes, including at low-risk food establishments. The FSA has commenced a focused audit programme which will consider approaches to inspections of low-risk establishments by local authorities. A report of the findings will be published in May 2018.	Complete
The FSA and local authorities consider the impact of changes to inspection frequencies.	Overall, local authorities have demonstrated improvements in the delivery of planned inspections, adopting a risk based approach. The FSA routinely monitors local authority performance and has taken appropriate action to remind them of their statutory responsibilities where necessary.	Complete
Local authorities and the FSA should further promote and support food business operators to make use of the “right of reply” facility.	Information for business operators on the safeguards available within the Scheme, including ‘right of reply’ is included in inspection reports issued following inspections.	Complete

Recommendation	Action	Status
The current appeals system is maintained and further reviewed by the FSA in 12 months in accordance with the Act.	<p>The operation of the appeals system was further reviewed for the period November 2014 to November 2015 and a report published in February 2016.</p> <p>http://www.assembly.wales/laid%20documents/gen-ld10597/gen-ld10597-e.pdf</p>	Complete
Local authorities should ensure that all businesses are aware of the requirement to display the statutory sticker even when their rating remains unchanged from the non-statutory scheme.	Template letters produced for notifying business operators of their ratings include information on the requirement to remove invalid rating stickers and to display valid rating stickers.	Complete
Local authorities should ensure that all businesses are informed and aware of the need to remove previously issued non-statutory stickers.	Template letters produced for notifying business operators of their ratings include information on the requirement to remove invalid rating stickers and to display valid rating stickers.	Complete
Local authorities should consider further ways of monitoring the display of stickers, and use a proportionate enforcement approach to ensure that businesses, particularly those rated 0, 1 and 2, display their statutory stickers.	<p>There is evidence that local authorities have taken a graduated approach to enforcement, including serving Fixed Penalty Notices and bringing prosecutions for non-compliance.</p> <p>The FSA has commenced a focused audit programme which will consider approaches to enforcement taken by local authorities. A report of the findings will be published in May 2018.</p>	Complete
Review of the Operation of the Appeals System, February 2016		
That the system currently in place for businesses to appeal their food hygiene ratings in Wales is maintained and reviewed in 12 months in accordance with the Act.	<p>The operation of the appeals system was further reviewed for the period November 2015 to November 2016 and a report published in February 2017.</p> <p>http://www.assembly.wales/Laid%20Documents/AGR-LD10952/AGR-LD10952-e.pdf</p>	Complete

Recommendation	Action	Status
<p>Local authorities should ensure that all officers who rate food businesses under the Food Hygiene Rating Scheme continue to engage in activities that promote consistency, including the determination of appeals.</p>	<p>Consistency has continued to be a standard item for discussion at the Wales Food Hygiene Rating Scheme Steering Group meetings. Further, consistency is discussed by local authority officers at team meetings, regional liaison meetings, the Wales Food Safety Expert Panel and through contact with the FSA's Local Authority Support Team.</p> <p>A consistency training programme funded by the FSA was delivered to officers across Wales for a third consecutive year. The programme consisted of six workshops attended by 215 officers. The workshops featured a number of scenarios involving different types of food businesses with varying levels of compliance, and the determination of appeals. Officers also participated in an online national consistency exercise facilitated by the FSA.</p> <p>The Wales Food Safety Expert Panel has developed a steer document offering advice on the application of rating scores in specific situations. The steer document was reviewed to address issues identified following consistency training exercises.</p>	<p>Complete</p>
<p>Local authorities and the FSA should work collaboratively to more effectively signpost food business operators to relevant information on the safeguards available to them should they not be satisfied with the food hygiene ratings issued to their businesses. This should include details of the appeals process.</p>	<p>The Wales Food Safety Expert Panel amended the standard template notification letter for businesses to include clearer information on the safeguards, including appeals.</p> <p>The FSA has produced a business information leaflet "Business Safeguards Explained". Local authorities have been encouraged to use this in their communications and interactions with food businesses.</p>	<p>Complete</p>
<p>Review of the Operation of the Appeals System, February 2017</p>		
<p>That the system currently in place for businesses to appeal their food hygiene ratings in Wales is maintained and reviewed in 12 months in accordance with the Food Hygiene Rating (Wales) Act.</p>	<p>The operation of the appeals system was further reviewed for the period November 2016 to November 2017 and a report is due for publication on 28 February 2018.</p>	<p>Complete</p>

Recommendation	Action	Status
<p>Local authorities should ensure that all appeals are determined and notified to food business operators and the FSA within 21 days of the appeal being received. Where delays have occurred, the FSA should ascertain the reasons for these delays and remind local authorities of their obligations.</p>	<p>The FSA has written to those local authorities identified in the 2015-16 review to remind them of their obligation to determine appeals and to notify the business operator and the FSA of its decision within 21 days from the date the appeal was received.</p> <p>The statutory guidance clearly sets-out local authority obligations and the FSA routinely reviews appeals information to ensure any systematic issues are identified.</p>	<p>Complete</p>
<p>Local authorities should continue to ensure that all officers who rate food businesses under the Food Hygiene Rating Scheme continue to engage in activities that promote consistency, including the determination of appeals. The FSA should continue to support local authorities to deliver these activities.</p>	<p>Consistency has continued to be a standard item for discussion at the Wales Food Hygiene Rating Scheme Steering Group meetings. Further, consistency is discussed by local authority officers at team meetings, regional liaison meetings, the Wales Food Safety Expert Panel and through contact with the FSA's Local Authority Support Team.</p> <p>A third online national consistency exercise was facilitated by the FSA and all local authorities in Wales participated.</p> <p>An all Wales consistency training workshop funded by the FSA took place in 2017. Further, a consistency exercise focusing on a retail butcher, which had given rise to considerable debate, was rolled out via the Wales Food Safety Expert Panel, to all food safety teams for consideration.</p> <p>The Wales Food Safety Expert Panel have reviewed and updated the consistency steer document to ensure officers continue to be supported in adopting a consistent approach.</p>	<p>Complete</p>
<p>Local authorities and the FSA should continue to work collaboratively to raise food business operator awareness of the Food Hygiene Rating Scheme including how ratings are determined, the appeals process, and the right to reply. Communications should take into</p>	<p>Information for business operators on the 'safeguards' available within the Scheme, including the 'right to reply', is provided with reports issued following inspections.</p> <p>The FSA has produced a leaflet "Food Hygiene is Getting Easier to Spot in Wales" to assist local authorities in their communications with food businesses. https://www.food.gov.uk/sites/default/files/multimedia/pdfs/wales-business-leaflet-fhrs.pdf</p>	<p>Complete</p>

consideration food business operators whose first language is not English.		
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Key	
Completed	
Ongoing	
Outstanding	