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A Report for the Senedd Cymru

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The Food Hygiene Rating Scheme:

**Review of the Operation of the Appeals
System in Wales**

February 2022

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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 review the operation of the Food Hygiene Rating Scheme's (the Scheme) appeals system annually. This report is the eighth annual review of the operation of the appeals system and has been prepared to meet the requirements of the Act. It covers the period from 28 November 2020 to 27 November 2021.

1.2. Food businesses with a rating of '5' (Very Good) make up 70 per cent of all rated food businesses in Wales. The number of compliant food businesses in Wales, that's those with a rating of '3' (Generally Satisfactory), '4' (Good) or '5' (Very Good), account for 97 per cent of all rated food businesses.

1.3. The COVID-19 pandemic has during the period of this report continued to have an impact on the delivery of local authority (LA) routine inspection programmes and the operation of the Scheme. The FSA has set out a recovery plan (the Plan) for the period from 1 July 2021 to 2023/24 which re-starts the routine delivery of inspections in line with the Food Law Code of Practice (Wales) (the Code) for new food establishments and those rated high-risk and/or non-compliant establishments while providing flexibility for lower risk establishments. The COVID-19 pandemic has had an impact on the routine operation of the scheme notably:

- a reduced number of inspections resulting in ratings for businesses staying in place longer and the inspection date of ratings being older;
- an increase in the number of businesses published as 'awaiting inspection' as the number of new business registrations increased.

1.4. A reduced number of inspections delivered during the period of this report as a direct result of the COVID-19 pandemic has resulted in a reduction in the numbers of ratings issued and in turn the numbers of appeals received in relation to those ratings awarded.

1.5. The review found:

- there were 26 appeals
- 30 per cent (8) resulted in changes to ratings
- 96 percent (25) were determined within the required 21-day period

1.6. During a challenging period for LAs, attendance by 178 officers from across Wales at consistency workshops delivered in November 2021 indicates the continuing value placed on the provision of support for activities that promote the consistent application of ratings and ensures the robustness and resilience of the Scheme.

1.7. The FSA has made [four recommendations](#) relevant to the ongoing operation of the appeals system in Wales.

2. Introduction

2.1. The Food Hygiene Rating (Wales) Act 2013 (The Act) places a duty on the Food Standards Agency (FSA) to review the operation of the Food Hygiene Rating Scheme's (the Scheme) appeals system annually. Since February 2015, reports have been laid before the Senedd Cymru with a copy sent to Welsh Ministers. The reports are then published on the Senedd Cymru's website.

2.2. This report is the eighth annual review of the operation of the appeals system and has been prepared to meet the requirements of the Act. It covers the period from 28 November 2020 to 27 November 2021.

2.3. The report also provides an update on the recommendations, relating to the appeals process, included in the report of the review of the Food Hygiene Rating Scheme published in February 2021.

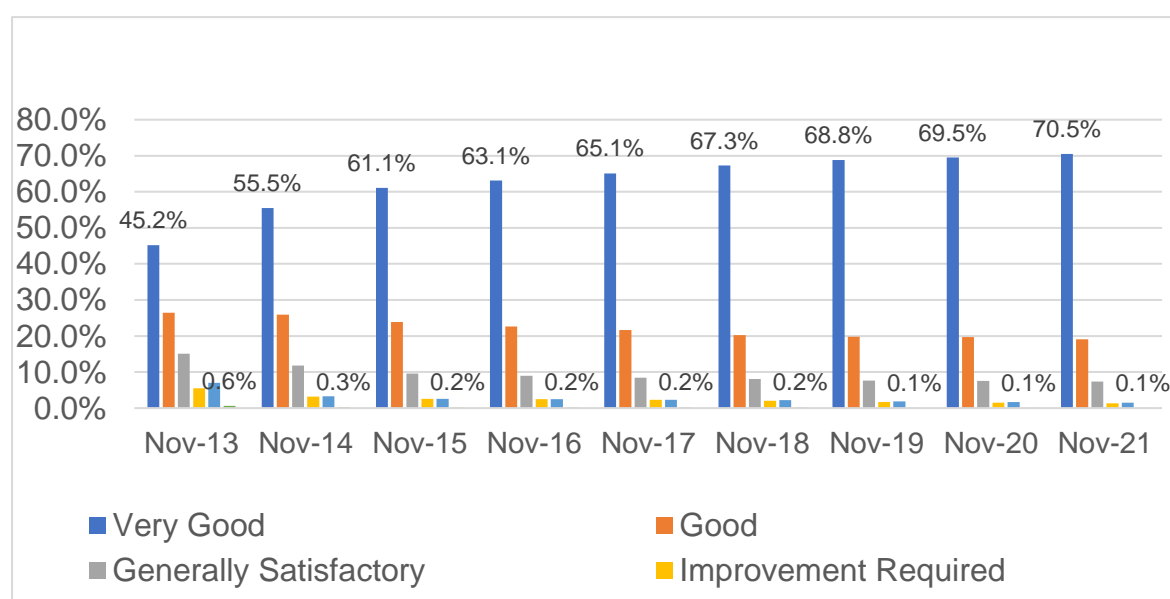
3. The Food Hygiene Rating Scheme

3.1. The purpose of the Scheme is to help consumers make an informed choice regarding where to eat out or shop for food and, through those choices, encourage food businesses to improve their hygiene standards. It does this by giving clear information about a business's hygiene standards when they are inspected in the form of a rating from '0' (Urgent Improvement Necessary) to '5' (Very Good). In Wales, the Scheme is run in partnership with local authorities (LAs) and Welsh Ministers.

3.2. More detailed [information about the Scheme](#) can be found on the FSA's website.

3.3. Following the introduction of the Scheme in 2013, compliance continues to improve. In November 2021, of the 29,297 rated businesses in Wales, 28,426 (97 per cent) received a rating of '3' (Generally Satisfactory) or above. Businesses obtaining the highest rating of '5' (Very Good) stood at 20,667 (70.5 per cent) whilst only 26 (0.1 per cent) businesses received the lowest rating of '0' (Urgent Improvement Necessary).

3.4. Figure 1 below illustrates this continued improvement in the distribution of ratings across businesses in Wales from 2013 – present day. .



4. Impact of COVID-19 on the Scheme and the LA Recovery

4.1. Throughout the COVID-19 pandemic the FSA has adjusted its expectations of LAs in recognition of the challenges they faced in delivering their statutory food functions whilst having to prioritise protecting communities from COVID-19. This has enabled LAs to target resources where there is the highest risk while deferring planned interventions, particularly for low- risk establishments. As the Scheme is underpinned by local authority planned intervention programmes, the approach has clearly had an impact on the operation of the Scheme.

4.2. In May 2021, the FSA Board agreed a [Recovery Plan](#) (the Plan) setting out FSA guidance and advice to LAs for the period from 1 July 2021 to 2023/24. This aims to ensure that during the period of recovery, local authority resources are targeted where they add greatest value in providing safeguards for public health and consumer protection in relation to food. A key objective of the plan is to enable more routine operation of the Scheme and to safeguard its credibility.

4.3. Where new COVID-19 restrictions are introduced nationally or locally during the recovery period LAs are expected to continue to follow the guidance and advice in the Plan where this is possible but should exercise professional judgement when this is not practicable or feasible. They should also take account of any direction or expectations set in relation to measures required to control the spread of COVID-19 by their own local authority, Public Health Wales or the Senedd Cymru.

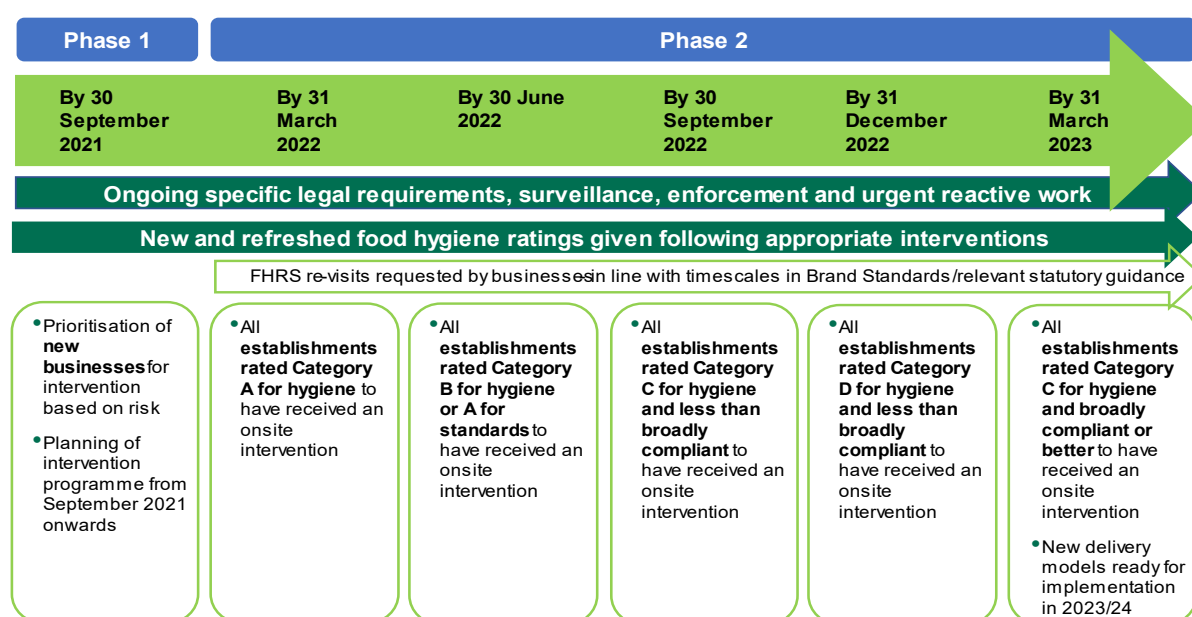
4.4. The COVID-19 pandemic has had an impact on the routine operation of the Scheme notably:

- a reduced number of inspections resulting in ratings for businesses staying in place longer with older inspection dates;
- an increase in the number of businesses published as 'awaiting inspection' as the number of new business registrations increased.

4.5. The Plan provides a framework for re-starting the delivery system in line with the Food Law Code of Practice (Wales) (the Code) for new food establishments and for high-risk and/or non-compliant establishments while providing flexibility for lower risk establishments.

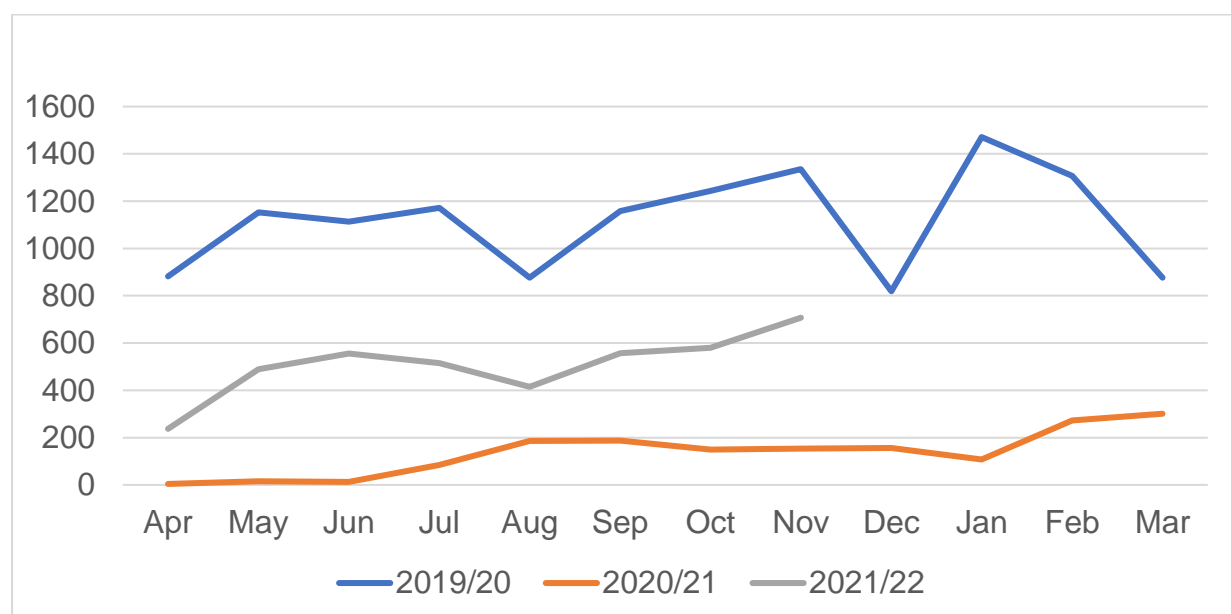
4.6. The Plan recognises that LAs were starting from different positions in terms of the impact that COVID-19 has had, the challenges they will face during the recovery period and the resources that they have available. It makes clear that LAs should, where they can, move at a faster pace in realigning with the intervention frequencies and other provisions set out in the Code.

4.7. Figure 2 below illustrates the priorities and milestones set out in the plan from September 2021 through to March 2023 .



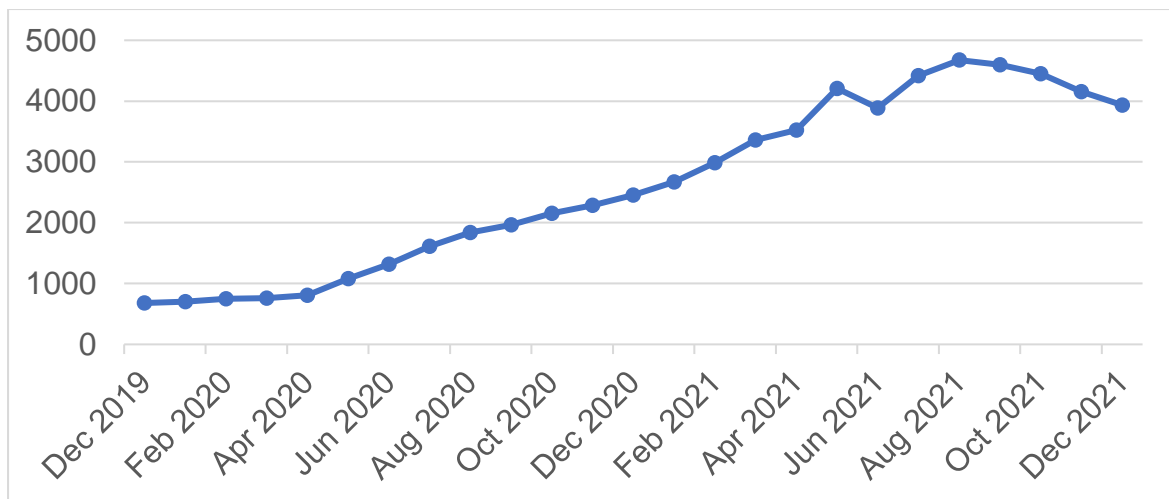
4.8. The FSA proposes to conduct a series of surveys at each milestone in the Plan to help provide assurance that LAs in Wales are able to deliver official food controls going forward and provide support as necessary.

4.9. Figure 3 below illustrates the number of establishments rated in Wales on a monthly basis over the last three years.



4.10. These figures, whilst showing an increase in the numbers of businesses being rated to November 2021, reflect the impact COVID-19 placed on food team resources. This affected not only their ability to deliver interventions at food businesses but also to carry out the administrative functions that support the publication of ratings on the FHRS website. The ongoing business restrictions in Wales has also meant many businesses in the hospitality sector have not been open to enable officers to carry out routine food hygiene inspections.

4.11. Figure 4 below provides an illustration of the number of businesses published as 'awaiting inspection' on a quarterly basis from December 2019 through to December 2021.



4.12. The number of businesses published as 'awaiting inspection' has started to reduce as inspections are increasing.

5. Review of the Operation of the Appeals process in Wales

5.1. The Act provides a number of safeguards for food businesses to ensure the Scheme is fair. They include the right for a Food Business Operator (FBO) to appeal against a rating, a 'right to reply', and the opportunity to request a re-rating inspection.

5.2. Recognising the continuing role that LAs have in the wider public health response required to control the COVID-19 pandemic and to reduce the burden placed on LAs, the FSA took the decision to restrict the request for data, that would normally inform the review of the operation of the appeals process and this report, to that which is required statutorily. This annual review will therefore only include information in relation to the right for an FBO to appeal against a rating. Information on right to reply or re-rating requests will not be included.

5.3. Appeals can be made, free of charge, to the LA which issued the rating on the following grounds:

- that the rating does not properly reflect the food hygiene standards at the establishment at the time of inspection, and/or
- that the rating criteria were not applied correctly when producing the food hygiene rating.

5.4. Appeals must be made in writing using the prescribed form within 21 days of receiving notification of the food hygiene rating.

5.5. Under the Act, the LA that issued the food hygiene rating is responsible for determining appeals and must notify its decision to the FBO and the FSA within 21 days. The appeal should be considered by an authorised officer who was not involved in the assessment of the rating that is being appealed.

5.6. Food hygiene rating appeals information for the period 28 November 2020 to 27 November 2021 found that:

- 29 appeals were made by FBOs in Wales across 12 of the 22 LAs, three of these were rejected as they did not meet the appeal criteria, resulting in 26 appeals
- 25 were determined within the required 21-day period, with the remaining one being determined within five days beyond the statutory timeframe.

5.7. Further to the determination of the 26 appeals, 18 of the ratings remained the same and 8 (across six LAs) resulted in a change to the rating. Following determination of their appeals, of the 2 businesses with a rating of '1' (Major Improvement Necessary), one increased to a rating of '2' (Improvement Necessary), and one to a rating of '4' (Good). The one business rated '2' (Improvement Necessary) increased to a rating of '3' (Generally Satisfactory), of the four businesses rated '3' (Generally Satisfactory), three increased to '4' (Good) and one decreased to a '2' (Improvement Necessary) and one business rated '4' (Good) increased to '5' (Very Good).

5.8. A reduced number of inspections delivered during the period of this report as a direct result of the COVID-19 pandemic has resulted in a reduction in the numbers of ratings issued and in turn the numbers of appeals received in relation to those ratings awarded.

6. Consistency

6.1. The consistent application of the Scheme by officers within and across LAs in Wales is vital to ensure fairness and provide a level playing field for food businesses and to provide meaningful information to the consumer.

6.2. The all-Wales FHRS Steering Group is a liaison group set up to work collaboratively to aid the consistent implementation, enforcement and future development of the Scheme to ensure it remains credible, current and equitable. A review of the group's terms of reference in June 2021 has seen it move to virtual meetings, twice yearly with membership, which includes FSA and Welsh Government officials, expanded to include a representative from each of the 22 LAs in Wales. The group met twice during the period from 28 November 2020 – 27 November 2021.

6.3. During the COVID-19 pandemic many local authority officers were diverted to carry out non-food related functions such as test, trace and protect and supporting schools, supermarkets and care homes. As officers return to food inspections, the FSA has offered opportunities for them to refresh their skills during the period of this report. This has included funding training events and facilitating a sixth National Consistency Exercise (NCE) launched in November 2021 across LAs in Wales, England and Northern Ireland.

6.4. The FSA offered virtual training workshops to LA officers responsible for rating food businesses in Wales during November 2021. Five workshops delivered four hours of FHRS consistency-based training to 178 officers from across all 22 LAs in Wales. Feedback from these events was positive, confirming the benefits of virtual training opportunities during the COVID-19 pandemic. It was however felt by many attendees that scenario based exercises may be better delivered using more interactive digital means.

Recommendation 1: That the FSA explore the opportunity for the inclusion of more interactive digital methods in the delivery of consistency activities.

Recommendation 2: That the FSA continues to provide support to ensure all local authority officers who rate businesses under the Scheme continue to engage in activities that promote consistency.

6.5. In November 2021 the FSA launched the sixth FHRS NCE. The web based exercise ran for a twelve week period to 11 February 2022. At the time of writing this report the exercise was still open. The FSA will collate the results and provide these to LAs together with the expected scores, rating and rationale. The FSA will also prepare a summary report which will be published in 2022. The scenario was also included in the workshops the FSA in Wales provided throughout November 2021.

6.6. Statutory guidance has been developed to provide more detailed advice for LAs to assist them in the consistent application of the legislation. A review of the guidance was carried out in 2019/20 but other priorities for LAs and Welsh Government during the COVID-19 pandemic led to delays in clearance. Given the lapse in time, the publication has been postponed and the FSA will undertake a further review during 2022.

7. Summary of Actions from the Recommendations

7.1. This section considers how recommendations, relating to the review and operation of the appeals system, made in the last two reports have been addressed by the FSA and provides an update to outstanding recommendations.

7.2. In [A Report for the National Assembly for Wales on the Food Hygiene Rating Scheme: Review of the Operation of the Appeals System in Wales](#) published in February 2020, the FSA made the following recommendations that remain outstanding as a direct or indirect result of the COVID-19 pandemic.

7.3. Recommendation 1: That the FSA carries out a review of the use of the Request for Early Publication function and assesses the impact on LAs in Wales.

7.4. Response - Due to the impact of the COVID-19 pandemic, the FSA has delayed the review of the early publication function to enable the impact on LAs to be fully considered.

7.5. Recommendation 3: That the FSA, in collaboration with LAs, will review and amend, as necessary, the FHRS Statutory Guidance in 2020 on behalf of Welsh Ministers.

7.6. Response - The FSA, in collaboration with LAs, completed the review of the Statutory Guidance during 2020. Publication will be postponed until a further review to reflect recent changes to other advice and guidance, for example the Food Law Code of Practice (Wales).

Recommendation 3: That the FSA ensures during 2022/23 all outstanding recommendations relating to the operation of the appeals system in Wales are completed.

7.7. In [A Report for the Senedd Cymru on the Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme and the Operation of the Appeals System in Wales published in February 2021](#)^[OBJ] the FSA made the following recommendation relating to the operation of the appeals system.

7.8. Recommendation 4: The FSA provides any additional data for the period 28 November 2019 to 27 November 2020 at the earliest opportunity.

7.9. Response – Due to the continuation of the COVID-19 pandemic in the remainder of 2020 and throughout 2021, and to reflect FSA advice for LAs to focus on prioritising activities to support the Plan, the FSA has decided to close the action relating to this recommendation and will not be asking LAs for additional data for the period 28 November 2019 to 27 November 2020. The data provided in the February 2021 report continues to be the available data.

8. Conclusions

8.1. Evidence gathered to support the annual reviews since the introduction of the Scheme in 2013 has consistently found that whilst FBOs continue to use the appeals process provided by the Scheme, these account annually on average for only 1% of all rated food businesses in Wales. Further, the conclusions of an independent [review of business safeguards](#), published in 2018, found there was no evidence to indicate the process itself is ineffective or failing to provide a safeguard for businesses or that the appeals process would require an overhaul. For those FBOs making an appeal on average around 16% result in a change to a business's rating following an LAs determination of the appeal. This would suggest the decision making process in determining appeals is objective.

Recommendation 4: That the FSA works with relevant stakeholders to explore the continuing value of annual reviews and the provision of an annual report on the operation of the appeals process.

8.2. LAs remain highly committed to delivering the Scheme and are delivering the appeals process in accordance with the statutory requirements and guidance, despite the competing pressures on resources as they respond locally to the COVID-19 pandemic.

8.3. During a challenging period for LAs, attendance levels at consistency workshops delivered in November 2021 indicates the continuing value placed on the provision of support for activities that promote the consistent application of ratings and ensures the robustness and resilience of the Scheme.

9. Recommendations

9.1. The FSA is making the following recommendations in respect of the ongoing operation of the appeals system in Wales for 2022:

Recommendation 1:

That the FSA explore the opportunity for the inclusion of more interactive digital methods in the delivery of consistency activities.

Recommendation 2:

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

Recommendation 3:

That the FSA ensures during 2022/23 all outstanding recommendations are completed.

Recommendation 4:

That the FSA works with relevant stakeholders to explore the continuing value of annual reviews and the provision of an annual report on the operation of the appeals process.