



A REPORT FOR THE NATIONAL ASSEMBLY FOR WALES

**The Statutory Food Hygiene Rating Scheme in
Wales**

Review of the Operation of the Appeals System

FEBRUARY 2016



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1. Executive Summary

- 1.1 The Food Hygiene Rating (Wales) Act 2013 (“the Act”) placed a duty on the Food Standards Agency (FSA) to review the implementation and operation of the Food Hygiene Rating Scheme in Wales one year after its implementation, and each subsequent three years. There is also a duty on the FSA to review the operation of the appeals system annually.
- 1.2 This report has been produced following a review of the operation of the appeals system and has been informed by information and data available for the period 28 November 2014 to 27 November 2015.
- 1.3 The review found that between 28 November 2014 and 27 November 2015:
 - 104 appeals were lodged by food businesses in Wales, of which 15 resulted in changes to food hygiene ratings following consideration by local authorities;
 - 1.8% of businesses issued with a food hygiene rating between ‘0’ and ‘4’ appealed in the period;
 - each of the appeals was determined within the statutory timescale of 21 days by appropriate local authority officers who were not involved in the original food hygiene rating assessment.
- 1.4 Independent research found that overall food business operators were unclear about aspects of the appeals system.
- 1.5 As a result of the findings of this review, three recommendations have been made in connection with the ongoing operation of the Food Hygiene Rating Scheme in Wales.

Recommendation 1

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.

Recommendation 2

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.

Recommendation 3

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.

2. Introduction

- 2.1 In November 2013 the Food Hygiene Rating (Wales) Act (“the Act”) established a statutory food hygiene rating scheme for Wales. This built on an existing non-statutory scheme being operated by local authorities.
- 2.2 Under the Act, responsibility for determining appeals lies with the local authority that issued the food hygiene rating. However, the Act makes provision for Welsh Ministers to make regulations enabling appeals to be determined by a person other than the local authority.
- 2.3 The Act places a duty on the FSA to review the implementation and operation of the Food Hygiene Rating Scheme (FHRS) one year after its implementation, and each subsequent three years. There is also a duty on the FSA to review the operation of the appeals system annually.
- 2.4 The report on the [Review of the Implementation of the Statutory Food Hygiene Rating Scheme in Wales and the Operation of the Appeals System](#) was produced in February 2015. A subsequent [update report](#) was produced in August 2015.
- 2.5 A total of 175 appeals have been lodged by food businesses in the two year period since the legislation came into force on 28 November 2013. The 175 appeals represent 2.0% of the 8,689 businesses that have received a rating of between ‘0’ and ‘4’ since the introduction of the Act.
- 2.6 This report builds on the previous review of the operation of the appeals system and covers the period 28 November 2014 to 27 November 2015.
- 2.7 To inform this review, data was provided by local authorities from across Wales. Further information was received from the British Hospitality Association (BHA) and food business operators (FBOs) through independent research.

3. Background to the Food Hygiene Rating Scheme

- 3.1 The Act came into force on 28 November 2013 and established a statutory food hygiene rating scheme in Wales. Details of how the scheme operates are contained in the Food Hygiene Rating (Wales) Regulations 2013. The FSA, in conjunction with the Welsh Government, produced [statutory guidance](#) for local authorities on the implementation of this legislation.
- 3.2 The statutory scheme built on a non-statutory scheme which was being operated by local authorities across Wales. It had been developed by the FSA in consultation with industry, consumers and local authority stakeholders. It aimed to provide information to consumers on the hygiene standards of food businesses.
- 3.3 The introduction of the statutory Food Hygiene Rating Scheme on 28 November 2013 placed a legal duty on local authorities to participate in the scheme and required food businesses supplying food to the final consumer to display their food hygiene ratings.
- 3.4 In November 2014, to coincide with the first anniversary of the statutory scheme, the scope was extended to include business to business trade establishments. Businesses supplying other businesses that had been subject to a food hygiene inspection from 28 November 2014 received a food hygiene rating reflecting the standards observed at the time of the inspection. Their ratings are now available for consumers and food businesses to view on the FSA's Food Hygiene Rating Scheme website, www.food.gov.uk/ratings.
- 3.5 The Food Hygiene Rating Scheme website provides a breakdown of the ratings. Consumers are also advised that they can request the food safety officer's report on which the food hygiene rating is based from the local authority that carried out the inspection.
- 3.6 The Food Hygiene Rating (Wales) Regulations allowed an 18 month period for food hygiene ratings issued under the non-statutory scheme to be migrated to the statutory scheme. The migration period ran until 28 May 2015. Businesses that had been issued with a rating under the non-statutory rating scheme have now been issued with a statutory rating.
- 3.7 Under the Act, local authorities are required to inspect food businesses in accordance with the statutory Food Law Code of Practice. Ratings are determined by officers after they have assessed compliance with three specific components of food hygiene legislation. The three components to which the scores relate and which determine the food hygiene rating are:
 - how hygienically the food is handled - how it is prepared, cooked, reheated, cooled and stored;

- the condition of the structure of the building - the cleanliness, layout, lighting, ventilation and other facilities;
- how the business manages and records what it does to make sure food is safe.

3.8 The hygiene standards found at the time of inspection are then rated on a scale from 0 - 5. The range of possible ratings and their descriptors are as follows:

- 0 - Urgent Improvement Necessary
- 1 - Major Improvement Necessary
- 2 - Improvement Necessary
- 3 - Generally Satisfactory
- 4 - Good
- 5 - Very Good

4. Operation of the Appeals System

- 4.1 It is important for the integrity, fairness and transparency of the Food Hygiene Rating Scheme that safeguards, such as the right to reply and the ability to appeal against food hygiene ratings, are available to FBOs.
- 4.2 The FSA has provided a detailed information note on the safeguards available to food businesses. This information, [Business Safeguards Explained](#), includes the ways in which businesses may appeal and a step-by-step breakdown of the process.
- 4.3 The Act provides FBOs with the right to appeal their food hygiene rating. Appeals can be lodged with the local authority on the following grounds:
- that the rating does not properly reflect the food hygiene standards at the establishment at the time of the inspection;
 - that the rating criteria were not applied correctly when producing the food hygiene rating
- 4.4 Appeals must be lodged within 21 days of receiving notification of the food hygiene rating and must be made in writing on the prescribed form.
- 4.5 The FBO is initially encouraged to make contact with the inspecting officer in order to resolve any disputes or clarify any points informally. However, there is no requirement for the FBO to do this and they may decide to proceed directly to the formal appeal stage.
- 4.6 The Act requires the appeal to be considered by an authorised officer of the local authority that issued the appeal, who was not involved in the assessment of the food hygiene rating being appealed. The local authority must determine the appeal and notify the FBO and the FSA of its decision within 21 days from the date the appeal was received. A local authority officer may visit the establishment for the purpose of considering matters raised in an appeal.
- 4.7 Where the appeal decision is to revise the rating, the Act requires that local authorities must send the FSA a copy of the notification of the revised food hygiene rating and a written statement of reasons for the revision.
- 4.8 If the FBO is not satisfied with the outcome of the appeal, and/or they consider that a council service has not been properly delivered, they may use the local authority's complaints procedure. In the event that the FBO remains dissatisfied, the matter may be referred to the Local Government Ombudsman. Ultimately an FBO may lodge an application for leave to apply for Judicial Review.

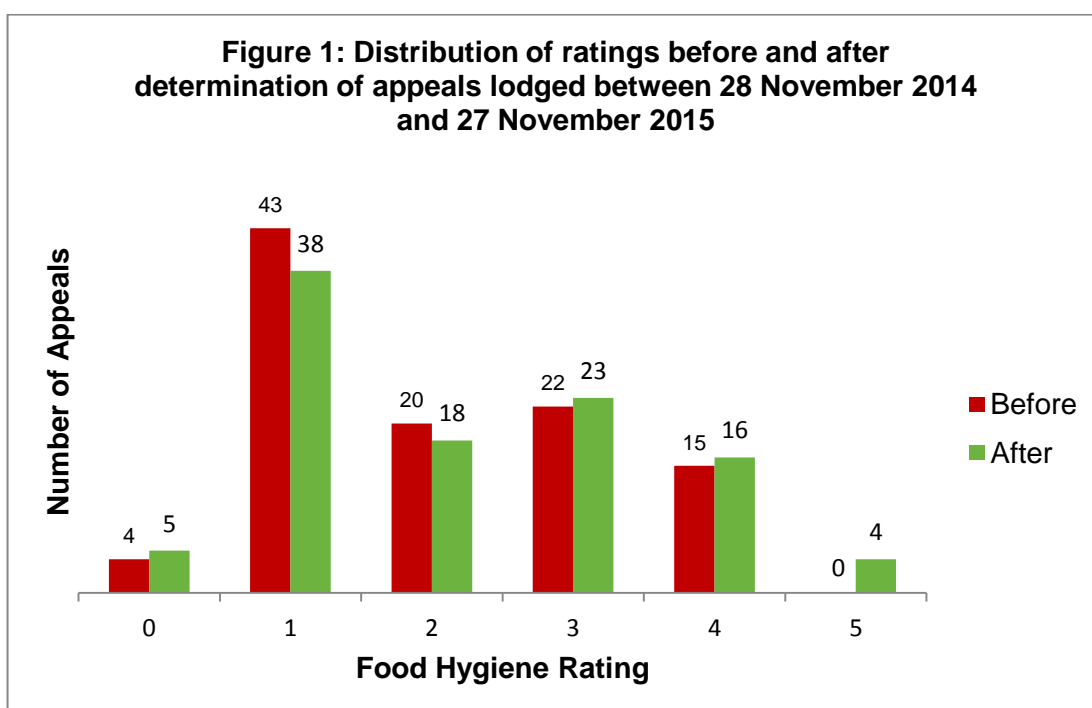
4.9 The FSA has not been informed of any corporate complaints received by local authorities regarding the operation of the food hygiene rating appeals system during the period 28 November 2014 to 27 November 2015. Some local authorities did, however, report receiving telephone calls associated with food hygiene ratings e.g. from businesses unhappy with their ratings or with the officers who conducted the inspections.

5. Appeals November 2014 - November 2015

5.1 Between 28 November 2014 and 27 November 2015, 104 appeals against food hygiene ratings issued by local authorities in Wales were lodged.

5.2 All appeals were determined within the required 21 day period by an officer not involved in the assessment of the food hygiene rating that was appealed.

5.3 In respect of the 104 appeals lodged, 89 (85.6%) of ratings remained the same and 15 (14.4%) resulted in revised ratings. Of the 15 that were revised, 12 (11.5% of the total appeals) resulted in a higher rating and three (2.9% of the total appeals) resulted in a lower rating. Figure 1 shows the distribution of ratings before and after the determination of these appeals.



5.4 The majority (67) of appeals were lodged by food businesses which had been issued with a rating below '3'. This number was comprised of:

- 4 (3.8%) with a rating of '0'
- 43 (41.3%) with a rating of '1'
- 20 (19.2%) with a rating of '2'

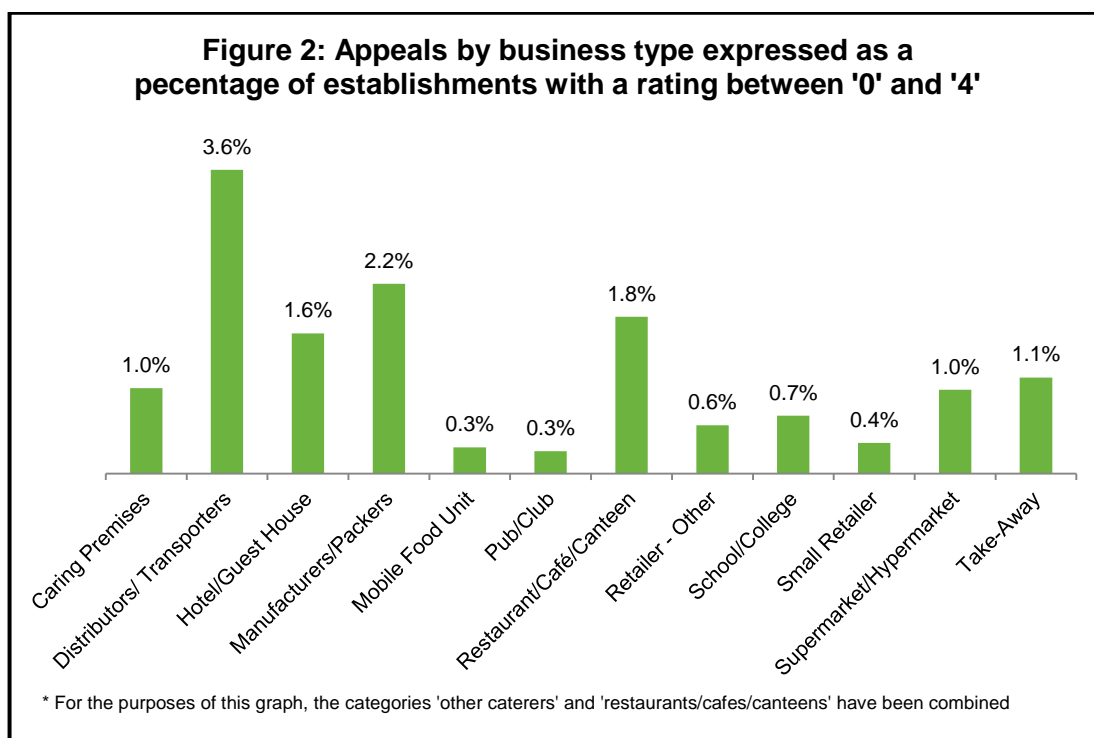
5.5 In respect of the remaining 37 appeals lodged:

- 22 appeals (21.2%) were lodged by businesses with a rating of '3'
- 15 (14.5%) were lodged by businesses with a rating of '4'

5.6 The greatest proportion of appeals were lodged by FBOs in the 'distributors/transporters' category. However, it should be noted that this only

represents two businesses out of a total of 56. FBOs from businesses in the 'restaurant/café/canteen' lodged the greatest number of appeals (50), while 'take-away' businesses accounted for the second greatest number (17). The operators of businesses classed as 'farmers and growers' and 'importers and exporters' did not make any appeals.

5.7 Figure 2 shows the number of appeals by business type expressed as a percentage of those establishments with ratings of '0' to '4'.



5.8 Businesses located in 20 of the 22 local authority areas in Wales appealed their food hygiene ratings in the period between 28 November 2014 and 27 November 2015.

5.9 The 104 appeals represent 1.8% of the 5,927 food hygiene ratings issued in Wales during the period (excluding '5' rated establishments). This figure does not take into account businesses issued with a food hygiene rating of '5', as these businesses would not be expected to appeal their rating, and none were reported to have been lodged.

6. Business Feedback and Research Findings

- 6.1 The FSA commissioned independent research to find out the views and experiences of FBOs in Wales who had appealed their food hygiene ratings. Some FBOs who had not lodged appeals were also asked to provide their views on the appeals system. This research formed part of a wider project on the display of food hygiene ratings in Wales.
- 6.2 Food businesses were contacted by telephone and were invited to describe their experiences of using the appeals system, their reasons for appealing, their views and level of satisfaction with the process.
- 6.3 Initial findings from the research indicate that most FBOs who lodged an appeal did so because they did not agree with the food hygiene rating they had been given. They felt that it did not reflect the hygiene standards of their business at the time of the inspection and that the rating would adversely influence customers' decisions to purchase food from their establishments.
- 6.4 Most respondents contacted their local authority for information on how to appeal their food hygiene ratings. Respondents also reported using search engines or asking friends for information on how to appeal. Some respondents reported that information provided on appeals varied across local authorities.
- 6.5 Views on the form used for lodging an appeal were mixed; with some feeling it was uncomplicated while others felt the limited space on the form impacted on the assessment of their appeal.
- 6.6 Respondents also commented on the officers who had conducted the most recent inspections of their food establishments. In some cases they felt that officers were not experienced, not being fair or "looking for reasons to give businesses a low rating".
- 6.7 Overall, initial findings indicate that information provided to FBOs by local authorities on the safeguards available to them under the scheme needs to be more consistent. Further, the need for better signposting to this information was identified. Many respondents stated that they received an informal visit from a local authority officer but were unsure whether this formed part of the appeals process. Others assumed that the re-rating inspection was part of the appeals process. Re-rating inspections are carried out at the request of an FBO where action has been taken to rectify the non-compliances identified at the time of inspection. There is a charge levied by local authorities for re-rating inspections which is payable in advance.
- 6.8 The BHA contacted the FSA with observations and comments from three of their members who operated food businesses in Wales. It is not clear whether

all three members had experience of using the appeals system. However they were not confident in the appeals process in place as they felt that an appeal lodged with the same local authority which issued the rating could not be independent.

6.9 The BHA has also made specific proposals to the FSA in relation to any future mandatory scheme in England. These proposals include the use of an independent body to determine appeals. The BHA considers that if this, or a similar appeals process, is introduced in England the same arrangements should be introduced in Wales.

6.10 The Northern Ireland Food Hygiene Rating Bill received Royal Assent on 29 January 2016. The arrangements put in place under the Food Hygiene Rating Act (Northern Ireland) 2016 to determine appeals are consistent with those in Wales.

7. Consistency

- 7.1 Local authorities have an obligation to ensure that food hygiene ratings are assessed fairly and consistently. This is important to maintain the credibility of the Food Hygiene Rating Scheme in Wales.
- 7.2 In preparation for the implementation of the statutory food hygiene rating scheme in Wales, a Food Hygiene Rating Scheme Steering Group was established with representation from local authorities across Wales. The Group meets quarterly and includes representation from Welsh Government and the FSA. Policy matters, implementation and consistency issues are discussed at these meetings.
- 7.3 An extensive programme of consistency training has been delivered to officers across Wales. This has been led, for the second year, by an experienced Environmental Health Practitioner from Powys County Council with the support of the FSA. Four courses, attended by more than 140 officers from across Wales have taken place. These courses featured a number of workshop scenarios involving different types of food businesses with varying levels of compliance with food hygiene legislation.
- 7.4 Local authority officers in Wales have also participated in on-line consistency training facilitated by the FSA. This training, aimed at local authority officers in England, Wales and Northern Ireland, was designed to identify areas of potential inconsistency so that further support may be provided.
- 7.5 Matters of consistency are also discussed by local authority officers at team meetings, regional liaison meetings, the All-Wales Food Safety Expert Panel and through direct contact with staff from the FSA's Local Authority Support team.
- 7.6 Information for FBOs about the [safeguards available](#) within the scheme, including how they may appeal against their food hygiene ratings, is being consistently included on inspection reports provided to them following inspections. The FSA has produced a leaflet, [Food Hygiene is Getting Easier to Spot in Wales](#), to assist local authorities in communicating this information to food businesses.

8. Conclusions

- 8.1 This review has found that all local authorities in Wales are operating the food hygiene rating scheme in accordance with the Act and statutory guidance.
- 8.2 Achieving the highest possible food hygiene rating is important to food businesses in Wales. This is clear from the data which demonstrate that the appeals system is not just being used by businesses achieving ratings of '2' and below, but also by those achieving ratings of '3' (Generally Satisfactory) and '4' (Good).
- 8.3 The number of businesses utilising the appeals system has increased since the first year of operation of the scheme. However, FSA research has identified the need for FBOs to be provided with clearer information about the process for determining appeals.
- 8.4 Some businesses, and the BHA, have expressed the view that an appeals system which involves the same authority rating a food establishment and determining an appeal is not independent.
- 8.5 The information provided by local authorities to inform this review has indicated that appeals are being determined objectively and in accordance with the Act and statutory guidance. Changes to food hygiene ratings following determination of appeals demonstrates that, although appeals are being considered by the same local authority that issued the rating, the decision making process is fair.

9. Recommendations

9.1 The FSA is making the following recommendations:

- 1. 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.**
- 2. 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.**
- 3. 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.**

Food Hygiene Rating (Wales) Act 2013

Summary of Appeal Provisions

Section 5 Right of appeal

(1) An operator of a food business establishment may appeal to the food authority against a food hygiene rating given to the establishment.

(2) An appeal may be made on either or both of the following grounds—

(a) that the rating does not properly reflect the food hygiene standards at the establishment at the time of the inspection;

(b) that the rating criteria were not applied correctly when producing the food hygiene rating.

(3) An appeal must be made within 21 days from the date of receipt of notification of the food hygiene rating.

(4) An appeal must be made in writing in the prescribed form.

(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.

(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.

(9) The power to make regulations includes power to—

(a) make provision about the procedure to be followed for appeals;

(b) make such amendments to this section in consequence of another person becoming responsible for the determination as the Welsh Ministers consider appropriate.

(10) If a food authority decides to revise a food hygiene rating, when notifying the establishment of its decision it must send to the operator of the establishment—

(a) written notification of its revised 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.

(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).

(12) There is no further right of appeal against a determination made under subsection (6)