



Asiantaeth
Safonau
Bwyd

food.gov.uk

Food
Standards
Agency

.....

A Report for the Senedd Cymru

.....

The Food Hygiene Rating Scheme:

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

February 2023

Contents

1. Executive Summary	3
2. Introduction	6
3. The Food Hygiene Rating Scheme	8
4. Impact of COVID-19 on the Scheme and the Local Authority Recovery Plan	9
5. Review of the Operation of the Appeals process in Wales	12
6. Consistency	16
7. Conclusions	19
8. Summary of Actions from the 2022 Report	21
9. Recommendations	23

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 ninth annual review of the operation of the appeals system and has been prepared to meet the requirements of the Act. This report covers the period from 28 November 2021 to 27 November 2022.
- 1.2. Food businesses with a rating of '5' (Very Good) make up 71.2 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 96.9 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. Prior to the COVID 19 pandemic, LAs were expected to undertake all official controls prescribed in legislation, however during the pandemic, LA resources were diverted from food teams to activities related to reducing the spread of COVID-19. Advice was issued to local authorities (LAs) to ensure that footfall in food businesses was kept to a minimum and to enable LAs to divert resources to urgent reactive work needed to address potentially serious food related public health risks and to other wider public health actions required locally during the response to the COVID-19 pandemic.
- 1.4. The FSA has set out a [Recovery Plan](#) (the Plan) for the period from 1 July 2021 to 31 March 2023 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, most 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.

1.5. A reduced number of inspections were delivered during the period of this report as a direct result of the COVID-19 pandemic as LAs looked to realign with the intervention frequencies and other provisions set out in the Code.

1.6. In line with the expectations in the Plan, LAs have been working to realign with the intervention frequencies and other provisions set out in the Code, despite the many challenges faced during the recovery period including resource pressures. The number of appeals received during the period of this report has increased significantly in comparison to the numbers received over the last two years, this is to be expected as the number of inspections have increased as LAs have made progress against the plan.

1.7. Whilst the review found that there has been an increase in appeals, they have not fully returned to the levels prior to the COVID-19 pandemic due to a reduction in the numbers of ratings issued and in turn the numbers of appeals received in relation to those ratings awarded. In the report for 2018¹ there were 100 appeals, 94 in the 2019² report and 98 in the report for 2020³.

1.8. The review for the period from 28 November 2021 to 27 November 2022 found that:

- there were 75 appeals
- 13 per cent (10) resulted in changes to ratings, all 10 increased
- 95 percent (71) were determined within the required 21-day period

¹ <https://senedd.wales/media/zwyfma25/gen-ld11433-e.pdf> - 28 November 2016 to 27 November 2017

² <https://senedd.wales/media/rkfb4ija/gen-ld12230-e.pdf> - 28 November 2017 to 27 November 2018

³ <https://senedd.wales/media/ua4nfwul/gen-ld13059-e.pdf> - 28 November 2018 to 27 November 2019

- all appeals were determined by LA officers who were not involved in the assessment of the original rating being appealed.

1.9. A series of virtual consistency workshops were delivered between October 2022 to January 2023. The five workshops were attended by 147 officers from across Wales, this 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.

1.10. In addition to this, the FSA launched the seventh Food Hygiene Rating Scheme (FHRS) National Consistency Exercise (NCE) in October 2022 for a six-week period. The exercise was completed by 91 per cent of LAs in Wales.

1.11. The review found that LAs are delivering the appeals process in accordance with the statutory requirements and guidance, despite the competing pressures on resources.

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

2. Introduction

- 2.1. In November 2013, a statutory Food Hygiene Rating Scheme (FHRS) for Wales was introduced under the Food Hygiene Rating (Wales) Act 2013 (The Act). This built on a non-statutory Scheme that was launched in Wales in October 2010.
- 2.2. The purpose of the Scheme is to allow consumers to make informed decisions about the places they eat out or shop for food and, through these decisions, encourage businesses to improve their hygiene standards. It does this by providing consumers with information (in the form of a food hygiene rating) about hygiene standards found in a food business when they are inspected to check compliance with food hygiene legislation. The food hygiene rating given reflects the inspection findings and how well the business is complying with food law.
- 2.3. The Act places a legal duty on LAs to participate in the Scheme and requires food businesses supplying food to the final consumer to display their food hygiene ratings. The Scheme requires establishments that supply takeaway food direct to consumers to publish a bilingual statement on certain hardcopy publicity materials directing customers to the food hygiene ratings website and also places an obligation on food business operators (FBOs) to provide verbal information on the businesses' food hygiene rating if requested. LAs are required to inspect food businesses in their area and produce food hygiene ratings, using [criteria published by the FSA](#). The food business is then provided with a sticker (or stickers) showing their food hygiene rating which they are required to display in a conspicuous place where it can be easily read by consumers before they enter the establishment.
- 2.4. The Act also provides FBOs with safeguards to ensure the Scheme is fair to businesses. These include the right to appeal their food hygiene rating if it is considered unjust; the right to reply which is published alongside the food hygiene rating on the [FSA website](#); and the ability to request a re-rating inspection if improvements have been made to the hygiene standards. Under the Act, responsibility for determining appeals lies with the LA 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 LA.

2.5. The Act places a duty on the FSA to review the implementation and operation of the Scheme 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. 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.

2.6. This report is the ninth 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 2021 to 27 November 2022 and includes information provided by each of the 22 LAs in Wales.

2.7. This report also provides recommendations for 2023/24 and an update on the [four recommendations](#) included in the 2022 appeals report.

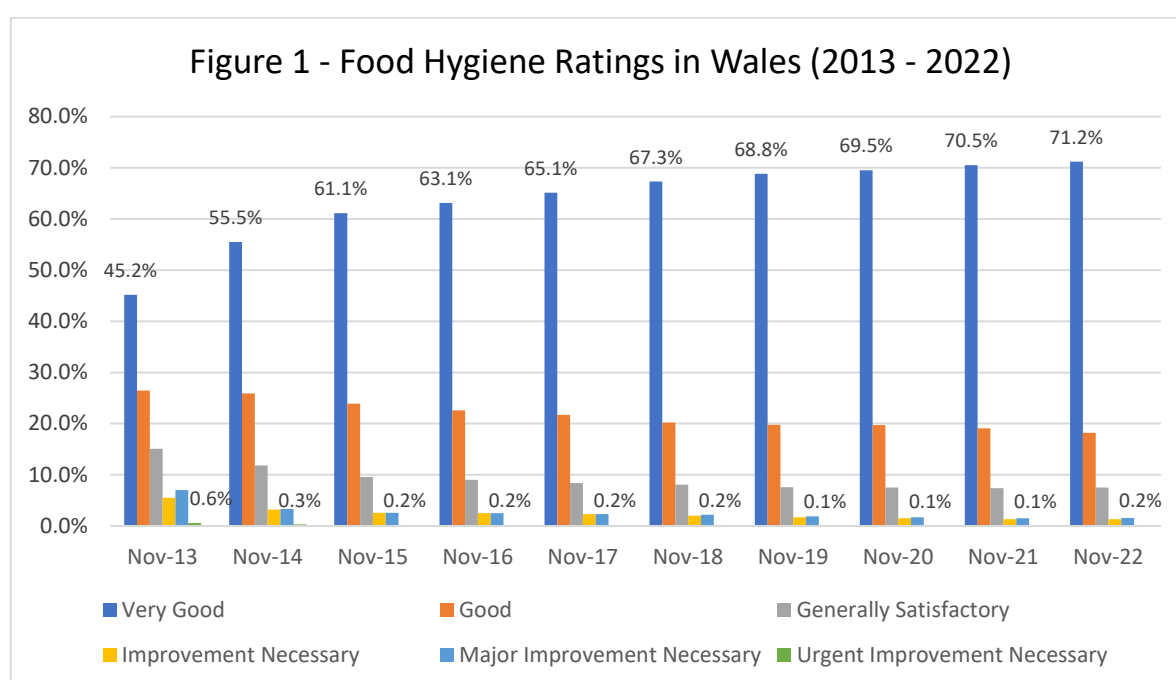
3. The Food Hygiene Rating Scheme

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 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 statutory Scheme in November 2013, compliance continues to improve. As of November 2022, of the 30,475 rated businesses in Wales, 29,535 (96.9 per cent) received a rating of ‘3’ (Generally Satisfactory) or above. Food businesses obtaining the highest rating of ‘5’ (Very Good) stood at 21,688 (71.2 per cent) whilst only 55 (0.2 per cent) businesses received the lowest rating of ‘0’ (Urgent Improvement Necessary).

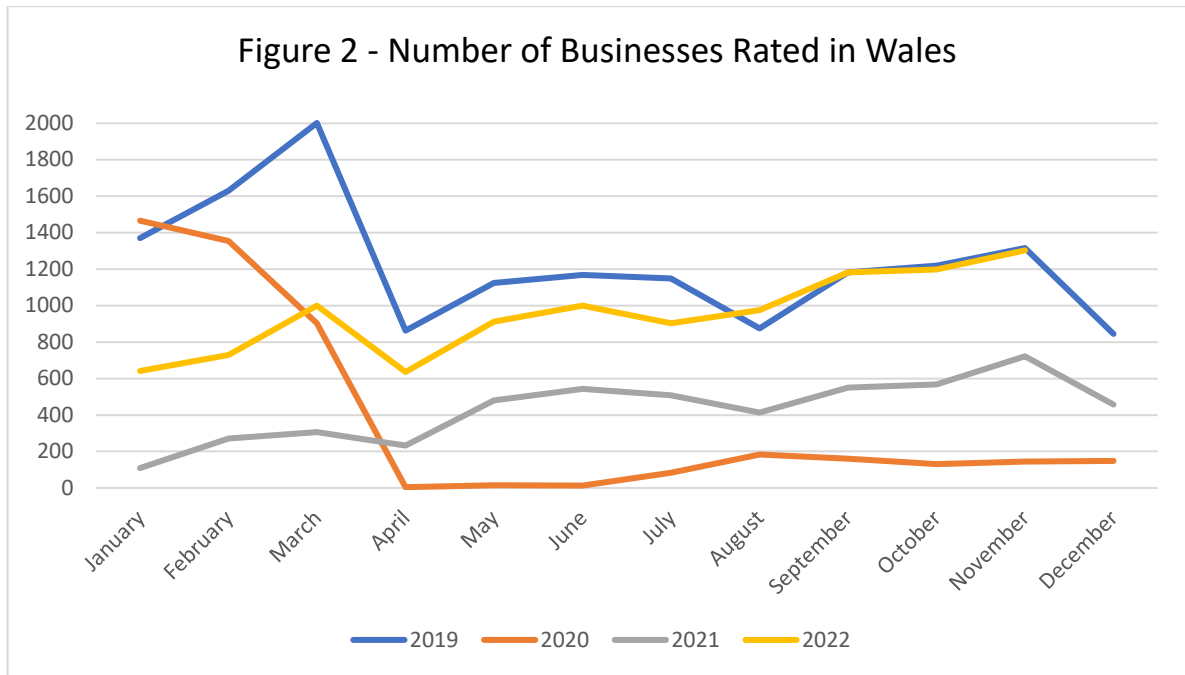
3.4. Figure 1 below illustrates this continued improvement in the distribution of ratings across food businesses in Wales from November 2013 to November 2022.



4. Impact of COVID-19 on the Scheme and the Local Authority Recovery Plan

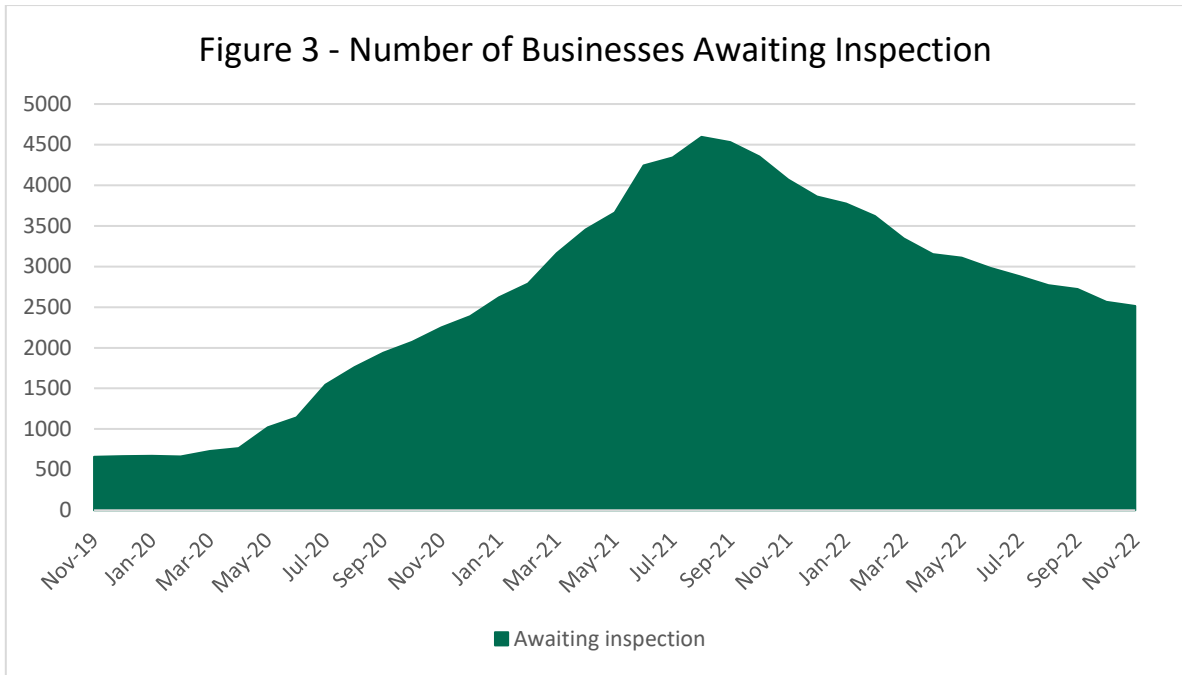
- 4.1. Throughout the COVID-19 pandemic the FSA has adjusted its expectations of LAs in recognition of the challenges they faced in delivering their statutory food functions whilst having to prioritise protecting communities from COVID-19. This has enabled LAs to target resources where there is the highest risk and/or non-compliant establishments while deferring planned interventions, particularly for lower-risk establishments. As the Scheme is underpinned by LA 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 the Plan setting out FSA guidance and advice to LAs for the period from 1 July 2021 to 31 March 2023. This aims to ensure that during the period of recovery, LA 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. More detailed information on the Plan and its impact on the Scheme can be found in the [Food Hygiene Rating Scheme – A Report for the Senedd Cymru – Review of the Implementation and Operation of the Statutory Food Hygiene Rating Scheme and the Operation of the Appeals System in Wales – February 2021](#) and the [Report for the Senedd Cymru – The Food Hygiene Rating Scheme: Review of the Operation of the Appeals System in Wales – February 2022](#).
- 4.4. 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.

4.5. As the Scheme is underpinned by LA inspection work, impacts to inspections during the pandemic have impacted on the Scheme. Figure 2 below illustrates the number of establishments rated in Wales on a monthly basis over the last four years.



4.6. These figures, whilst showing an increase in the numbers of businesses being rated to November 2022, reflect the impact COVID-19 placed on LA resources throughout 2020 and 2021. Many businesses were closed for significant periods, this affected not only LAs ability to deliver interventions at food businesses but also to carry out the administrative functions that support the publication of ratings on the FHSR website. The numbers of ratings being issued is gradually increasing as LAs implement the Plan.

4.7. During the pandemic there was a sharp increase in the number of businesses published as ‘awaiting inspection’ with new businesses awaiting their first inspection. This number has been falling as the Plan is implemented and interventions being carried out by LAs. Figure 3 below provides an illustration of the number of businesses published as ‘awaiting inspection’ from November 2019 through to November 2022.



4.8. Figure 3 shows that prior to the COVID-19 pandemic there were 662 businesses awaiting inspection in February 2020, this reached a height of 4,596 in August 2021. As of November 2022, there are currently 2,513 businesses awaiting inspection.

4.9. In accordance with the Plan, LAs have been inspecting new food establishments and prioritising those rated high-risk and/or non-compliant. The businesses that are currently awaiting inspection may be considered low risk based on their activities or may be exempt⁴ from being rated under the Act. The number of businesses published as ‘awaiting inspection’ has now started to reduce again as inspections by LAs are increasing.

⁴ <https://www.legislation.gov.uk/wsi/2013/2903/regulation/5/made>

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 FBO to appeal against a rating, a 'right to reply', and the opportunity to request a re-rating inspection.

5.2. Appeals can be made, free of charge by a FBO, to the LA which issued the original 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.

5.3. Appeals must be made in writing using the [prescribed form](#) within 21 days of receiving notification of the food hygiene rating.

5.4. Under the Act, the LA that issued the food hygiene rating is responsible for determining appeals and they must notify its decision to the FBO and the FSA within 21 days. The appeal should be considered by an authorised officer⁵ as specified in the Code, who was not involved in the assessment of the original rating that is being appealed.

5.5. Food hygiene rating appeals information for the period 28 November 2021 to 27 November 2022 found that:

- 75 appeals were made by FBOs in Wales across 19 of the 22 LAs

⁵ <https://smartercommunications.food.gov.uk/connect/lm3TO100pg> - Means a person (whether or not an officer of the enforcement authority) who is authorised by the Food Authority in writing, either generally or specifically, to act in relation to matters arising under the Food Hygiene (Wales) Regulations 2006.

- 71 were determined within the required 21-day period, with the remaining four being determined beyond the statutory timeframe
- 50 appeals were made by FBOs with a rating of '0' (Urgent Improvement Necessary), '1' (Major Improvement Necessary) or '2' (Improvement Necessary).

5.6. Further to the determination of the 75 appeals, 65 of the ratings remained the same and 10 across six different LAs resulted in a change to the rating.

5.7. Following determination of their appeals, of the 4 businesses with a rating of '1' (Major Improvement Necessary), one increased to a rating of '2' (Improvement Necessary), one to a rating of '3' (Generally Satisfactory) and two to a rating of '4' (Good). The one business rated '2' (Improvement Necessary) increased to a rating of '3' (Generally Satisfactory), of the two businesses rated '3' (Generally Satisfactory), one increased to '4' (Good) and the other increased to '5' (Very Good). The three businesses rated '4' (Good) all increased to '5' (Very Good). The 10 improved ratings are displayed in the table below.

Improvement of Ratings Before and After Appeal										
Original Rating	1	1	1	1	2	3	3	4	4	4
New Rating	2	3	4	4	3	4	5	5	5	5

5.8. Of the 75 appeals received from businesses, 21 were categorised by LAs as Restaurant/Café/Canteen, 13 as Take Away, 8 as Restaurants and Caterers – Other, 8 as Pub/Club, 8 as Retailer – Other, 6 as Caring Premises, 4 as Supermarket/Hypermarket, 2 each from Small Retailer and Mobile Food Units and 1 each from Hotel/Guest House, School/College and Manufacturers/Packers.

5.9. The number of interventions carried out by LAs in Wales for this reporting period has increased significantly in comparison to that achieved over the last two years. As detailed in the 2021 report, 32 appeals were received with 5,305 interventions completed during the reporting period. For the 2022 report, 26

appeals were received after 4,855 interventions. This year's report for 2023 highlights that there has been 75 appeals with 10,936 interventions being completed during the reporting period.

5.10. After an inspection, the business's rating will be uploaded by the LA so that it is published on the [Food hygiene ratings website](#). Ratings of '5 – Very Good' will be published as soon as the information is uploaded. Ratings of 0 – 4 will be published 3 – 5 weeks after the date of inspection to allow for the period of appeal.

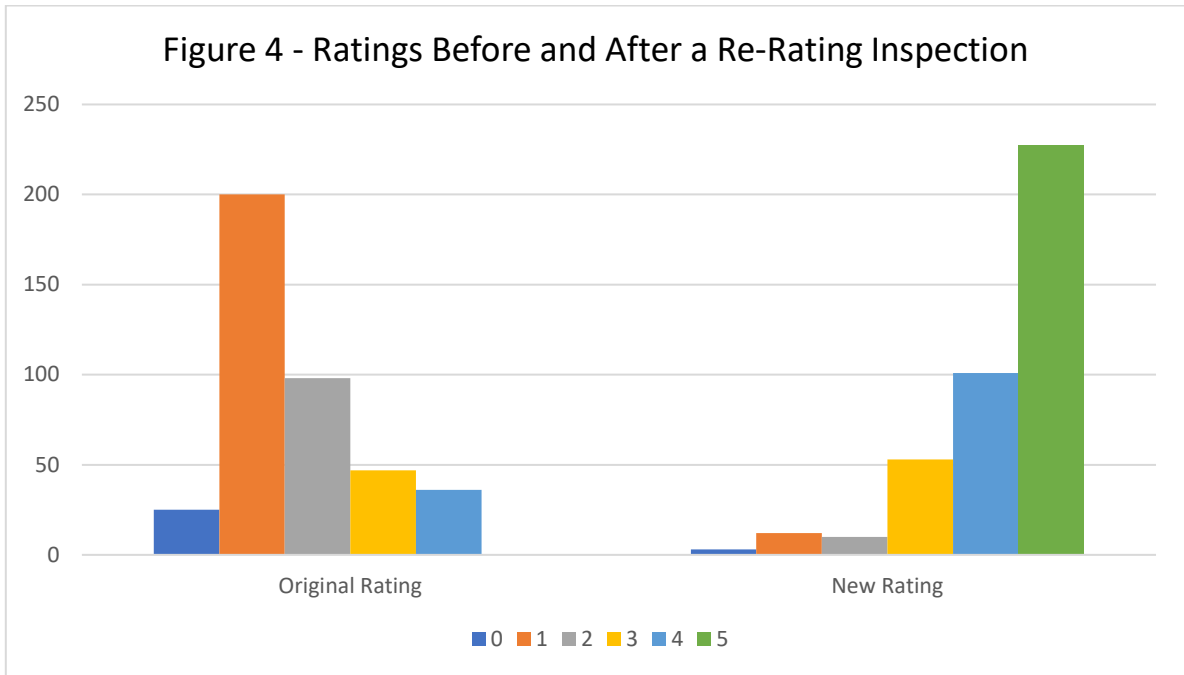
5.11. If a FBO requests for their rating to be published before the end of the appeal period has elapsed, this request can be made on the [relevant form](#) and the LA will review the request and take the appropriate action.

5.12. Food businesses may also 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.

5.13. Between 28 November 2021 to 27 November 2022, LAs in Wales received 406 requests for re-rating inspections. These represent 4.6 per cent of the 8,787 food businesses rated '0' to '4'. The review found that:

- 91.4 per cent (371) of those businesses re-inspected achieved an improved rating
- 93.8 per cent (381) achieved an improved rating of '3' or above
- 55.9 per cent (227) of those re-inspected achieved the highest rating of '5'
- 1.9 per cent (8) businesses received a reduced rating after being re-inspected and 6.7 per cent (27) remained the same
- 96.1 per cent (390) of the re-inspections were completed within the required three-month period.

5.14. Figure 4 below illustrates the movement in ratings after receiving a re-rating inspection across food businesses in Wales.



6. Consistency

- 6.1. The consistent application of the Scheme by enforcement 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 consumers.
- 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.
- 6.3. The objective of the Steering Group is to discuss issues of relevance to the Scheme, monitor the implementation of recommendations made to the Senedd and identify and explore opportunities to review and improve the Scheme.
- 6.4. The FSA provides Chair and Secretariat for the Steering Group and includes Welsh Government representation and a representative from each of the twenty-two LAs in Wales. Meetings currently take place twice a year and the frequency and format are kept under continual review.

Recommendation 1: That the FSA continues to facilitate and support the work of the All-Wales FHRS Steering Group to ensure the ongoing success and development of the Scheme. The FSA reviews the frequency, membership and Terms of Reference for the group to ensure it continues to operate successfully.

- 6.5. The FSA has offered LA officers the opportunity to refresh their skills during the period of this report. This included funded training events and facilitating a seventh National Consistency Exercise (NCE) launched in October 2022 for a six-week period across 343 LAs which deliver food hygiene services across Wales, England and Northern Ireland.
- 6.6. The FSA offered five virtual training workshops to LA officers responsible for rating food businesses in Wales between October 2022 and January 2023. The workshops delivered four hours of FHRS consistency-based training to 147

officers from across 20 LAs in Wales. Initially the FSA committed to deliver four workshops, however due to demand a fifth was run in January 2023. To ensure the consistent application of the Scheme by enforcement officers within and across LAs in Wales, contractors employed by LAs in Wales also attended the workshops.

6.7. The workshops delivered a number of hypothetical scenarios that officers might witness during an inspection. A variety of types of food businesses and compliant/non-compliant situations were covered by the scenarios, allowing small groups of officers the opportunity to discuss and score the scenarios one by one using Annex 1 of the Code. The scenarios focussed on issues relating to the three elements of the inspection process that informs the food hygiene rating. These elements are: -

- the level of compliance with food hygiene and safety procedures
- structural requirements, and
- the confidence in management/control procedures.

6.8. The initial feedback from these events was positive, confirming the benefits of virtual training opportunities with officers working more flexibly. It was however felt by many attendees that it would have been beneficial to be advised of the intended scores and food hygiene rating for each scenario during the workshops. The FSA is currently evaluating the feedback received and a report on the findings of the workshops will be produced by the course facilitator.

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

6.9. In October 2022 the FSA launched the seventh FHRS NCE. The exercise ran for a six-week period to 25 November 2022. The FSA is currently collating the results to provide these to LAs together with the expected scores, rating and

rationale. The exercise was completed by 91 per cent of LAs in Wales and the FSA are preparing a summary report which will be published early in 2023.

Recommendation 3: That the FSA reviews the results of the seventh National Consistency Exercise for LAs in Wales and works with the Steering Group to identify the need for any additional support or guidance, as necessary.

6.10. 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 due to other priorities for LAs and Welsh Government during the response to the COVID-19 pandemic, this was put on hold. Given the lapse in time of the first review, the publication has been postponed and the FSA will undertake a further review of the guidance during 2023.

Recommendation 4: That the FSA, in collaboration with LAs, reviews and amends, as necessary, the Statutory Guidance in 2023 on behalf of Welsh Ministers. The updated guidance will support authorised officers in successfully implementing the Food Hygiene Rating (Wales) Act 2013 and associated Regulations.

7. Conclusions

7.1. Evidence gathered to support the annual reviews since the introduction of the statutory Scheme in 2013 has consistently found that FBOs continue to use the appeals process and other safeguards provided by the Scheme. The 75 appeals received by LAs during this reporting period account for less than 1 per cent of the 8,787 businesses rated as '0' (Urgent Improvement Necessary) to '4' (Good) as of November 2022. For those FBOs making an appeal, 87 per cent have resulted in no change to a business's rating following an LAs determination of the appeal. All appeals have been determined by an officer that was not involved in awarding the original rating, this would suggest the decision-making process in determining appeals is objective.

7.2. The FSA has reported annually on the appeals process since the requirement was introduced in November 2013. Evidence gathered to support the annual reviews has consistently found that whilst FBOs continue to use the appeals process provided by the Scheme, these account annually on average for only 1 per cent of all rated food businesses in Wales. This ninth annual review has also identified that for those FBOs making an appeal, on average around 17 per cent result in a change to a business's rating following a LAs determination of the appeal.

Recommendation 5: That the FSA continues to work and engage with relevant stakeholders to review the regularity of annual reviews and the provision of an annual report on the operation of the appeals process in Wales.

7.3. The review found that LAs are delivering the appeals process in accordance with the statutory requirements and guidance, despite the competing pressures on LA resources.

7.4. During a challenging period for LAs, attendance levels at consistency workshops delivered between October 2022 and January 2023 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. In addition to this, alongside other work demands and competing priorities, 91 per cent of LAs in Wales also participated in the seventh NCE during October and November 2022.

8. Summary of Actions from the 2022 Report

8.1. This section considers how recommendations, relating to the review and operation of the appeals system in the 2022 have been addressed by the FSA and provides an update to any outstanding recommendations.

8.2. 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 2022, the following recommendations were made: -

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

Action: The FSA have run five virtual consistency workshops across Wales with attendance by 147 officers in 2022/23. The FSA will continue to organise and support LAs in the development and organisation of consistency events during 2023/24. The FSA will also scope what digital technology may be available in delivering more interactive consistency exercises for future events.

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

Action: The FSA have run national consistency exercises across Wales, England and Northern Ireland in 2022. The consistency exercise has been carried out by 20 LAs in Wales. The FSA will continue to provide support to LA officers who rate businesses under the Scheme.

Recommendation 3: That the FSA ensures during 2022/23 all outstanding recommendations are completed.

Action: The FSA will review any outstanding recommendations and progress these as necessary.

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.

Action: The FSA will continue to work with relevant stakeholders in 2023/24 to explore this recommendation further.

Recommendation 6: That the FSA ensures during 2022/23 all outstanding recommendations are completed.

9. Recommendations

9.1. The FSA is making the following recommendations in respect of the ongoing operation of the appeals system in Wales for 2023:

Recommendation 1:

That the FSA continues to facilitate and support the work of the All-Wales FHRS Steering Group to ensure the ongoing success and development of the Scheme. The FSA reviews the frequency, membership and Terms of Reference for the group to ensure it continues to operate successfully.

Recommendation 2:

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

Recommendation 3:

That the FSA reviews the results of the seventh National Consistency Exercise for LAs in Wales and works with the Steering Group to identify the need for any additional support or guidance, as necessary.

Recommendation 4:

That the FSA, in collaboration with LAs, reviews and amends, as necessary, the Statutory Guidance in 2023 on behalf of Welsh Ministers. The updated guidance will support authorised officers in successfully implementing the Food Hygiene Rating (Wales) Act 2013 and associated Regulations.

Recommendation 5:

That the FSA continues to work and engage with relevant stakeholders to review the regularity of annual reviews and the provision of an annual report on the operation of the appeals process in Wales.

Recommendation 6:

That the FSA ensures during 2023/24 all outstanding recommendations are progressed accordingly.