

Food Hygiene Rating Scheme – cost recovery for requested re-inspections in England

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1 Cost recovery for requested re-inspections

1.1 Overview

As an early adopter of the approach to recover costs for requested re-inspections to re-assess food hygiene ratings, you are requested to trial this approach during the period 15th August – 7th November 2016.

This guidance contains information on the steps you will need to follow to trial cost recovery.

At the end of the twelve weeks, the Food Standards Agency will require you to provide feedback on your experience of introducing cost recovery. **It is not intended that you should cease recovering costs after the twelve week period.** The experiences and feedback from early adopters will be used to inform the wider roll-out of costs recovery in late 2016/early 2017

We are aware that for some local authorities it may take considerably longer than 12 weeks to trial this. Whatever point you get to your learnings will be useful for us, and of course you can continue to progress this approach after the trial phase.

2 The legal basis

2.1 Legal advice

Legal advice received by the Food Standards Agency (FSA) indicates that powers available to local authorities in England under the [Localism Act 2011](#) allows for the recovery of costs for re-inspection requested by businesses to re-assess the food hygiene rating. **Please note:** the advice refers to re-inspections made at the request of the food business operator to re-assess the food hygiene rating and does not cover interventions carried out as part of statutory duties i.e. the planned interventions that you are required to undertake in accordance with the food law code of practice.

A summary of the legal advice received by the Agency can be found at Appendix 1. You will wish to make your legal team aware of this advice and check with them your intention to trial cost recovery at your authority.

3 Calculating the costs

3.1 Overview

[Section 3 of the Act](#) states that ‘the general power is subject to a duty to secure that, taking one financial year with another, the income from charges allowed in subsection (2) does not exceed the cost of provision’.

This indicates that each local authority will need to set their own costs based on the costs of providing the service. This does **not** mean that you will need to calculate costs for each individual request. To ensure fairness to businesses you will wish to calculate and apply a consistent cost that will cover, but not exceed, the cost of delivery.

3.2 Calculating the costs

The table below sets out the costs which were considered by local authorities in Wales when calculating the costs for requested re-visits. The charge applied for requested re-inspections in Wales is currently £160.00. This information is included as a guide to illustrate the processes you will wish to consider in your calculations.

To calculate costs you will need to consider the processes involved, who does them and the time expended, for your local authority when carrying out requested re-visits.

Process	Estimated time (mins) used in Wales -	Officer responsible from calculations used in Wales) - see notes on 'guidance' worksheet.
Initial enquiry and supply of forms/advice	15	Business Support Officer
Receipt of fee and checking of applications.	10	Business Support Officer
Enter onto LA database	5	Business Support Officer
Pre-inspection file checks	20	Environmental Health Practitioner
Travel to and from business (average)	45	Environmental Health Practitioner
Rescore visit (full inspection)	150	Environmental Health Practitioner
Completion of inspection report	60	Environmental Health Practitioner
Printing/completion of stickers and inspection letter	5	Environmental Health Practitioner
Input onto LA database	5	Business Support Officer
TOTAL	315	

An excel spreadsheet for - 'FHRS cost recovery for requested revisits - LA feedback questionnaire' – has been provided for you to complete the costs for your local authority.

Please ensure that you retain the basis/calculation of costs for your local authority. This may be queried in the future e.g. by a food business operator or their legal representatives. Additionally you should ensure that the revenue received for cost recovery can be identified should you receive any queries or challenges relating to the costs recovered versus the cost of provision of the service, per [Section 3 of the Act](#) i.e. 'taking one financial year with another, the income from charges allowed in subsection (2) does not exceed the cost of provision'.

4 Changes to the processes in the Brand Standard

4.1 Overview

The introduction of cost recovery will require early adopters to deviate from some of the current processes set out in the Brand Standard.

4.2 Changes to the current procedures

1. **The stand-still period** (see page 51 of the [Brand Standard](#)) will no longer apply. Requested re-inspections must be carried out within three months of receipt of the request and payment.
2. **Limits on the number of requests** a business can make will no longer apply. Currently a business can make one request per inspection.
3. Information on the [FHRS safeguards](#) is referenced in the [template letter](#) which you will have used to inform businesses of their rating. This previously contained the following statement relating to charging for requested re-visits:

Will the re-visit cost me anything?

Not at the moment but it is possible that this may change in the future.

The previous inclusion of this statement in the information about safeguards does not prevent charging businesses inspected prior to the start of the pilot to recover the costs of carrying out the requested re-visit.

However, if you have used a different letter to notify businesses of their rating and this contained a separate statement about requested re-visits, other than referencing the information about the [FHRS safeguards](#), you will need to review this and decide whether or not it would be appropriate to charge businesses rated prior to the start of the pilot.

4. The [safeguards information](#) has been amended to reflect that some local authorities will be charging for re-visits from August 2016

5 Checklist for introducing costs recovery

5.1 Overview

The introduction of charging to recover the costs of undertaking requested re-visits will require a number of actions on your part. The table at 5.2 sets out the suggested actions you will wish to undertake. The necessary authorisation/clearance will depend on the requirements in place at your local authority. The actions suggested should be used as a guide and not used in place of the required procedures and governance at your local authority.

5.2 What you will need to do to implement cost recovery

	Action
A	Calculate the costs (see 3.2 for guidance on what to include based on the cost calculations by local authorities in Wales).
B	Liaise with your legal team to inform them about the introduction of cost recovery under the Localism Act 2011 and gain their agreement
C	Secure the necessary agreement/authorisation from the relevant parties within your local authority e.g. head of service, portfolio holder, elected members. You may wish to include agreeing a date from which recovery of costs will commence.
D	Liaise with your finance team to put in place the necessary procedures to receive and account for payments. NB: you will also wish to ensure that the food team are notified of receipt of the fee as you will wish to 'start the clock' on the three months within which the re-visit must be completed upon receipt of the application and the fee
E	Amend the standard letter issued to food businesses receiving a rating of 0, 1, 2, 3 or 4 (see appendix 2) to include mention of the costs to be charged for requested re-inspections and the requirements and options for payment. You will also wish to ensure that it would be proper and fair to charge businesses previously inspected (see para 4.2 bullet point 3)
F	Ensure that the basis for costs are retained for future reference and can be retrieved/reviewed as necessary e.g. if these are queried or challenged
G	Return the excel file to hygieneratings@foodstandards.gsi.gov.uk with the workbook 'cost calculation' completed
H	Trial cost recovery. Please ensure that the standard letters informing businesses of their ratings contain information on the costs (see E above) are issued from the date of introduction and that businesses inspected prior to the introduction of cost recovery are informed of the charge to be paid when they submit a request for a re-inspection.
I	Contact the Food Standards Agency via hygieneratings@foodstandards.gsi.gov.uk or by telephone to 0207 276 8730 if you experience any issues when introducing cost recovery or have any queries so that these can be considered and addressed as they arise. Please do not wait until you submit your completed questionnaire to raise any issues.
J	At the end of the period for which early adoption will be monitored (7 th

	November 2016), complete the questionnaire – the worksheet ‘Feedback questionnaire’ in the excel file ‘FHRS cost recovery for requested revisits - LA feedback questionnaire’
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Appendix 1 – Legal advice

Introduction

1. In September 2010, the FSA [published its views on certain legal issues](#) associated with the Food Hygiene Rating Scheme (FHRS).
2. The publication included a section describing the Agency's views as to whether local authorities had power to charge food business operators who requested re-inspection by the local authority for the purposes of reassessing a food hygiene rating.
3. The Agency's view, at that time, was that local authorities did not have power to charge for re-inspections under either domestic food hygiene law (the UK having chosen not to introduce charges for official controls under Regulation (EC) No. 882/2004), or under section 93 of the Local Government Act 2003 (the local authority power to charge for 'discretionary' services).
4. However, since the publication of the Agency's views, new legislation in England and Wales affecting local authorities' powers (including powers to charge) has been passed in the form of the Localism Act 2011. Accordingly, the Agency has re-visited the question of whether local authorities in England have power to charge for re-inspections in light of new powers available to them under the 2011 Act. The Agency's conclusions in respect of this question are set out, below, and should be read as a supplement to its publication of September 2010.

Will local authorities be able to use the Localism Act 2011 to charge for re-inspections/re-visits requested by food business operators?

5. The Localism Act 2011 contains a range of measures which devolve more powers to local authorities in England and Wales. One of these measures – a new general power of competence for local authorities - is relevant to the operation of the FHRS.
6. The new power, conferred by section 1 of the Act, means that local authorities may now do anything an individual generally could do and, in certain circumstances, may charge for what is done.
7. The Agency's view is that the adoption and implementation of the FHRS by local authorities falls within the general power. The Agency considers that providing a re-inspection upon request by a food business operator, in circumstances where there is no statutory requirement to provide that re-inspection, falls within the general power, too.

8. It is necessary, therefore, to consider whether the circumstances in which the Act allows local authorities to charge for things done under the general power are satisfied. Broadly speaking, the circumstances are that:

- a service is provided on a non-commercial basis by the local authority to a person who has agreed to the service being provided;
- that service is or could be done using the new general power;
- the local authority is not under any statutory duty to provide the service; and
- the local authority does not have any other power to charge for the service.

9. The Agency considers that each of these circumstances apply to re-inspections because:

- a re-inspection can be properly described as a service which a local authority provides on a non-commercial basis to a food business operator with that food business operator's agreement;
- the FHRS is a non-statutory scheme in England, meaning that the local authority is under no statutory duty to perform a re-inspection; and
- for the reasons set out in the Agency's [publication of September 2010](#), the local authority does not have any other power to charge a food business operator for a re-inspection.

10. The question of whether to charge for re-inspections is, of course, entirely a matter for the local authority. The Localism Act 2011 sets out further obligations for local authorities in respect of the imposition of charges, and local authorities will need to satisfy themselves that all relevant obligations are met so that any charge they make in connection with an FHRS re-inspection is lawful.

**Food Standards Agency
Regulatory Delivery Division
July 2016**

Appendix 2 – Standard Notification Letter

Letter for businesses being given a rating of ‘0’ to ‘4’

[Business name]
[Business address]

[Date]

Dear [Food business operator],

Food hygiene inspection report and your food hygiene rating

FOOD HYGIENE RATING

We inspected your business premises on [inspection date] to check compliance with the requirements of food hygiene law and I am writing now to outline to you our findings and to tell you what your food hygiene rating is.

Inspection report

I have enclosed a copy of your inspection report. This outlines my findings and highlights the priority actions and improvements that are needed to ensure that you are complying with the Food Hygiene (England) Regulations and associated legislation. These are listed under three areas:

- Compliance with food hygiene and safety procedures
- Compliance with structural requirements
- Confidence in management/control procedures.


If you are unclear about anything in the report, please get in touch with me – my contact details are given at the end of this letter.

Your food hygiene rating

This authority operates the national Food Hygiene Rating Scheme. This is designed to help consumers choose where to eat out or shop for food by giving them information about the hygiene standards in food outlets at the time they are inspected to check compliance with legal requirements. Details of how ratings are calculated are enclosed.

On the basis of the standards found at the inspection your rating has been calculated as follows:

Compliance with food hygiene and safety procedures	[Annex 5 score]
Compliance with structural requirements	[Annex 5 score]
Confidence in management/control procedures	[Annex 5 score]
Total score	[Total]

Highest (this means poorest) individual score	[score]
Food hygiene rating	



[Use relevant image]

A sticker showing your rating is enclosed. You can tell your customers how good your hygiene standards are by putting the sticker up in the window or on the door. If you do not have a suitable glass surface, you could fix the sticker onto a transparent surface before fixing that onto a wall or other surface. Please destroy the sticker showing your previous rating as only one rating – the most recent rating - should be displayed. To continue to display a previous rating may constitute an offence under the Consumer Protection from Unfair Trading Regulations 2008.

Your rating will also be published on the Food Standards Agency’s website at www.food.gov.uk/ratings between two and four weeks from receiving this letter.

Safeguards

If you think that the rating is wrong or unfair – in other words it does not reflect the hygiene standards at the time of your inspection – you have 14 days in which you can **appeal** against this. You should appeal in writing to the Lead Officer for Food [\[include contact details\]](#) but I would recommend that you get in touch with me first so that I can help you to understand how your rating was worked out.

If you have improved hygiene standards since your inspection, or if there were unusual circumstances at the time of the inspection that might have affected your food hygiene rating, you have a **‘right to reply’** so that you can explain this to potential customers that look up your rating online.

If you make the improvements to hygiene standards that are highlighted in your inspection report, you can **request a re-visit** with a view to giving you a new and higher food hygiene rating. **There will be a charge of [INSERT CHARGE FOR COST RECOVERY] for each re-visit carried out at your request. The re-visit will be carried out within three months of receipt of your application and payment. [INSERT DETAIL OF AVAILABLE METHODS OF PAYMENT]**

More information about these safeguards **and the form to be completed to request a re-visit can be found on** the FSA’s website at:

<http://www.food.gov.uk/multimedia/pdfs/enforcement/fhrssafeguards.pdf>

Where may I get further information?

If you have any questions or concerns about your inspection report or about your food hygiene rating, please contact me by telephoning [\[number\]](#) or by email at [\[email address\]](#).

Yours sincerely,

[Officer's name]
[Officer's job title]