

Stakeholder comments – response form

Please return this response form to **Claire Voller**:

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We welcome your input on any aspect of our initial assessment but there are a number of questions identified in the draft document on which we would particularly value your views and comments.

Question 1 – Should any other options be considered? If so, please describe these, explain how they would deliver the policy objective and outline the potential costs and benefits.

Answer 1

No other options are recommended, as Alehm and the London Food Coordinating group agree with the FSA and support Option 4. However there are a number of issues that need to be considered if the scheme becomes mandatory for both local authorities and businesses, even if there is the ability to recover costs for business requests for re-visits, and these are explained in the response to question 2.

Question 2 - Do you agree that Option 4 should be the preferred option? If you disagree, please state which option you consider should be preferred and explain your answer.

Answer 2

Option 4 is the preferred option. However the following points need to be born in mind.

- a) Point 5 of the IA states that mandatory display will be the only way to achieve display of low scoring businesses. London has been involved in the FHRS project to encourage display of 3-5 rated businesses. Findings indicate that 3 rated businesses are reluctant to display, as they feel the rating is not high enough to publicise. As these businesses are only just compliant, there is a need to encourage these

businesses to improve their ratings, and mandatory display is a way to achieve this. Also many higher rated businesses currently will not display as it is against company policy. Mandatory display will ensure that chains and multi-premises businesses that have refused to display so far will also be required to participate.

- b) We do not see the scheme as providing an alternative to formal enforcement, as described in points 6 and 37. While it will provide external encouragement to businesses to improve their ratings, and reduce the number of non-compliant businesses and therefore reduce the number of programmed inspections, local authorities have clear enforcement policies and where they encounter non-compliance in businesses, they have well-defined procedures for dealing with this non-compliance, depending on the severity and past history, and they will follow this procedure, whether or not there is an added incentive to the business to achieve compliance, once non-compliance is identified. Of growing concern to local authorities who are faced with shrinking resources and in many cases an inability to achieve all due inspections of existing compliant businesses. When previously broad compliant businesses are eventually re-inspected (often with a longer period than the 18 months or 2 years outlined in the Code of Practice) they have, in the interim period, become non-compliant. We have evidence from boroughs to show that the longer the period of non-inspection, the greater the level of failure and the increase in the level of enforcement action required by the local authority, including emergency prohibition and voluntary closure. Local authorities report that the current scheme shows little evidence that borderline food businesses sustain levels of compliance without regular contact by enforcement officers. There is also significant business churn (10-20% per year is common) with new businesses often not registering and, if not inspected quickly after opening, many are falling into non-compliance. It is wrong to assume that directing more resources to the poorest businesses will improve business compliance, as our evidence suggests it is the ability to maintain appropriate inspection frequencies of compliant businesses which helps to reduce the levels of formal enforcement activity.
- c) Local authorities have signed up to the brand standard, which at present is voluntary. Many London local authorities are currently struggling to meet the inspection levels outlined in the Brand Standard and the Food Law Code of Practice. London authorities want to maintain these inspection frequencies as part of the mandatory Brand Standard as they consider they are necessary to maintain the integrity of the scheme. However they want to highlight to the FSA that where locally agreed resources for food hygiene inspections do not enable the local authority to meet these inspection levels, the FSA must be empowered to take more action to force directors and the political leaders of local authority services to provide sufficient resources to meet the standards outlined in the Brand Standard, requiring them to achieve the minimum inspection frequencies of all in-scope food businesses.
- d) It is essential that local authorities are able to recover the cost of extra work incurred from the introduction of a mandatory scheme and the charging of requests for revisits suggested in option 4 is welcome. There will be other costs to the local authority which will not be recoverable (see Question 4 below) and which will particularly exacerbate the problems in around 50% of local authorities in London which currently are unable to meet routine inspection programme in accordance with the Brand Standard. They will need to divert further resources to carry out re-visits to rescore which could mean that less priority will be given to re-inspecting compliant food businesses when due. Recent evidence is emerging in London which shows that where compliant food businesses are not inspected within the frequencies outlined in the brand standard, compliance is not being maintained and as a result, the rate of compliance reported is inaccurate and actual compliance rates are lower than those published. It is noted that in 2014/15 many Welsh Authorities did not carry out all category D and E businesses (and in some cases category C businesses) which could affect the accuracy of the overall compliance rate. In summary, we welcome the opportunity to recover costs for re-visits to re-score but there is a need to identify and fund any other additional costs that are likely to be incurred by local authorities which cannot currently be recovered. To ensure compliance levels provide an accurate picture of the levels of food hygiene compliance, the FSA must

provide ongoing pressure on local authority decision makers to adequately resource food hygiene services to meet the Brand Standard.

- e) In section 31 you identify that schemes in other countries have identified a reduction in food borne disease after implementing food hygiene rating schemes. This is very welcome evidence, as it has been extremely difficult to prove any relation between good hygiene standards and incidence of disease. This evidence may help to encourage local authorities to adequately resource the scheme, if this leads to savings elsewhere, but only if it will have a direct effect on the local authority's own local resources.

Option 1

Continuing with this option would probably result in further reductions in local authority resources and many local authorities having to withdraw from the FHRS scheme as they fail to meet the standards outlined in the Brand Standard

Option 2

We would expect option 2 to further nudge businesses to achieve improved standards, but we would face the same problems outlined in option 1 above and the level of improvement would be limited. Results from recent FHRS projects to encourage display of 3-5 rated businesses identified many 3 rated businesses thought the score too low to display and there is widespread reluctance from multi-premises businesses and chains to display unless display becomes mandatory.

Option 3

This option is too costly for local authorities. Many boroughs are already struggling to carry out requests for revisits and are having to divert resources from other official controls to undertake this work. The number of request for revisits in boroughs is growing and increasingly these are affecting the levels of service delivery. If the numbers increase significantly, as projected, London boroughs can expect, on average to have to provide between 0.25 and 0.5 FTE each year to deal with these requests. This will have the greatest impact on local authorities who do not currently have adequate resources to complete all their due inspections.

Option 4

We support option 4 but there is a risk that only larger, better resourced businesses are likely to make use of the re-inspection option. The FSA must take action to encourage local authorities to meet the Brand Standard to maintain the integrity of the scheme.

Question 3 - Can you identify any other groups that will be affected? If so, please list these and explain what the potential impact would be.

Answer 3

Smaller businesses who will not have the resources behind them and less able to make use of the appeals, right of replies and revisit options

Question 4 - Do you agree that the assumptions we have made are reasonable? If not, please explain your answer. Do you have evidence that we can use to assess the costs more accurately?

Answer 4 (also see answer 7 and 8)

Points 45-46: Appeals can already be time consuming. The 3 hours identified is probably adequate to deal with businesses which accept the judgement of an appeal without question. In reality several boroughs have reported that many businesses who appeal will challenge every decision. There have been relatively few appeals received by local authorities overall, but local authorities receive many unofficial appeals, which do not meet the formal appeal criteria (eg the most common reason for appeal is that the business has now made improvements, so the allocated score no longer reflects the conditions seen at the time of the inspection). It is quicker for the local authority to deal with this informally by explaining to the business that the appeal is the wrong approach and they need to use one of the other options. This is therefore not recorded as an appeal but takes up time and resource. The numbers of appeals can be expected to increase significantly will all but option 1.

Formal appeals are time consuming and are carried out by food managers (a substantially shrinking resource) the cost per officer is significantly higher than £23.00 per hour. £35 to £42 per hour is a more accurate reflection of the direct employment costs of food managers in London but boroughs have commented that the council on costs need to also be taken into account and the range for this would be between £46.00 and £85.00 per hour. Some teams are currently finding ways to make appeals less time consuming, which may not fully meet the brand standard requirements. It is of concern that the numbers of appeals will increase with mandatory display with no extra funding for local authorities and local authorities may continue to work around the brand standard to minimise the impact of the demand on existing resources.

The cost of a food enforcement officer in London is nearly £30/hr and the cost of contractors is often £35/hour. This is significantly greater than the average figure quoted. We would also question whether 2.2 hours is adequate to cover the full cost of a re-visit to re-score as most boroughs carry out a full re-inspection. The time allowed should be sufficient to cover the full time and cost of this procedure. It should include setting up the formal arrangements once a request is received, review of evidence submitted and general discussion with the FBO, all paperwork and record keeping, the visit itself and any consistency checks by managers. The expected time for this would be 4 to 5 hours.

Question 5 - Do you have any information or evidence that would help us monetise this cost? If so, please provide details.

Answer 5

There have been no known cases of local authorities being required to pay compensation to a business following judicial review.

It is essential that the local authorities have adequate controls to maintain consistency, and the FSA does need to provide advice and support on how this is achieved, to minimise the risk of local authorities being challenged and to help the local authority to reduce the risk of compensation claims. The potential costs of consistency training and reviews need to be taken into account in the impact assessment.

Question 6 - We consider 30 minutes to be an overestimate of the time it would take a business to understand the differences between the current voluntary scheme and a statutory scheme but would welcome your views. Please explain your answer.

Answer 6

Although local authorities may decide to send letters to inform businesses of the change to the scheme, in reality, this updating will be done during inspections, where inspectors will discuss and be questioned on the changes with the FBO on site. This will not require much resource input from the individual business, but it will be a significant resource requirement for the local authority, as this is likely to be required at virtually all independent businesses, at approximately 15 minutes on average per business.

Question 7 - Do you agree that the assumptions we have made are reasonable? If not, please explain your answer. Do you have evidence that we can use to assess the costs more accurately?

Answer 7

Please see the response to question 4, which are magnified for option 3. In particular the inability to recover the cost of requests for re-visit to rescore is of great concern. The costs for local authorities will be significant and there are concerns that these will not be recoverable and may impact on the ability to maintain official controls. The LFCG will be pulling together local evidence on the cost of revisits and appeals in London which we will submit to the FSA on completion.

Note 71, indicates that local authority officers will assess the accuracy of ratings during routine inspections and therefore cost to local authorities will be minimal. However there will also be complaints from customers and other businesses which will need to be investigated and some additional checks at businesses by enforcement officers will be required. There is evidence to suggest that there is not 100% accurate display of ratings. Recent work undertaken in London for the FHRS projects to encourage sticker display found a small but significant percentage of businesses displaying the wrong rating. This additional investigatory work will incur costs, to cover both investigation work, as well as enforcement, if the FSA wish local authorities to deal with this growing problem.

Question 8 - Do you have any other comments on the cost/benefit analysis in this Impact Assessment?

Answer 8

Please see responses to earlier questions.

The potential costs for local authorities have been underestimated and with resources already very tight, will impact on the ability to meet current routine inspection programmes.

Areas inadequately costed.

- a) Informal appeals which are in reality either requests for revisit or right of reply
- b) Time and costs estimated for appeals and revisits to rescore and hourly cost of a London enforcement officers and food managers.
- c) Time required to explain schemes to FBOs on site, especially SMEs
- d) Cost of consistency management
- e) If a flat rate is set for re-inspection across all boroughs (as in Wales), this will unfairly prejudice London authorities
- f) Dealing with complaints about display of wrong score and any local routine checks to assess accuracy of displayed stickers

Question 9 - Do you agree with the assessments that we have made in this section? Please provide evidence to explain your answer.

Answer 9

No comment

Do you have any other comments on the draft initial impact assessment?

In Wales failure to display the sticker can result in enforcement action through the use of Fixed Penalty Notices. The penalty is £200, with a reduction to £150 for early payment. The legislation also allows for prosecution in the Magistrates Court, but with the expected route of enforcement through the use of the Fixed Penalty Notice. The IA does not quantify the extent of any burden to business or local authorities.

It is understood that in Wales, the money received from FPN's is not paid to the local authority so any enforcement action required will have a significant impact on local authority resources.