

<b>Committee(s):</b> Port Health & Environmental Services	<b>Dated:</b> 22 November 2016
<b>Subject:</b> Cost Recovery: Food Hygiene Rating Scheme re-inspection requests	<b>Public</b>
<b>Report of:</b> Director of Markets & Consumer Protection	<b>For Decision</b>
<b>Report author:</b> Peter Brett, Department of Markets & Consumer Protection	

### Summary

The Food Hygiene Rating Scheme (FHRS) has been in place in the City of London Corporation since April 2012.

There is an opportunity to introduce a charging regime using powers available in the Localism Act for one part of FHRS: requests for an FHRS re-rating inspection. Charging was previously specifically excluded by the Food Standards Agency's (FSA) contract with local authorities to deliver FHRS, but they have recently reconsidered this position and now advise that it is possible to charge for this service under the powers granted to local authorities by that Act.

Three Options are suggested:-

- Option One           - No change
- Option Two           - Introduce charges with a discount or partial exemptions.
- Option Three         - Full-cost recovery.

### Recommendations

Members are therefore asked to:

- a) note this report and basis for the proposed changes to the operation of FHRS in the City of London; and
- b) approve Option Three: to introduce a flat fee charge of £210 for re-rating inspections on a full-cost recovery basis, with effect from 1<sup>st</sup> January 2017 and to be reviewed annually thereafter.

### Main Report

#### Background

1. The Food Hygiene Rating Scheme (FHRS) is a key element of improving food safety. The Scheme, which operates in England, Wales and Northern Ireland, provides transparency about hygiene standards in food businesses at the time they are inspected to check their compliance with food safety legislation.
2. The Food Standards Agency (FSA) consider FHRS to be a good example of using incentives to drive businesses to behave in ways that benefit consumers,

and FSA research demonstrates that it is working and driving up food hygiene standards.

3. Displaying an FHRS sticker enables consumers to make an informed choice about where they choose to eat or shop for food. Widespread display of FHRS ratings gives consumers an instant indication of a food business's hygiene standards in comparison to its neighbours and peers.
4. The devolved Governments in Wales and Northern Ireland have already enacted legislation making the previously voluntary FHRS display scheme in their administration mandatory for all food businesses. Wales has been operating this way since November 2013 but Northern Ireland only started last month.
5. The FSA has expressed an intention to extend mandatory display to England and they continue to build the case using evidence from Wales where there has been a positive impact on hygiene standards compared with England since mandatory display was introduced. Increasing numbers of consumers use the scheme to help them make informed choices.
6. Finally one key difference between the current English voluntary scheme and the two mandatory schemes is that both mandatory schemes enable a charge to be made for re-rating inspections.

### **Current Position**

7. Any business that has obtained a rating of less than 5 can request a follow up re-rating inspection once they have made any improvements brought to their attention following the first inspection. The purpose of the re-rating is to establish if a higher rating can be obtained and thence displayed to the public. Without this, there would be no opportunity for another rating to be given to an improved business until the next planned full inspection.
8. The frequency of planned food safety inspections varies from every six months to three years. The frequency of inspection is determined by the risks posed by the food business and uses the national Food Law Code of Practice's scoring process to calculate this risk and any follow-up required. It is important to distinguish a re-rating inspection from other official control revisits that might be conducted as part of our usual food safety work.
9. Whilst a business in England can still choose whether they wish to display a rating sticker in their premises or not under the current voluntary scheme, it is worth emphasising that all ratings are already published by the FSA on their [ratings website](#), so consumers can easily view all the ratings throughout the UK via a PC, tablet or even on a smartphone.
10. Legislation passed in England and Wales five years ago in the form of the Localism Act 2011 affected local authorities' powers to charge and the FSA have now re-visited the question of whether local authorities in England have power to charge for FHRS re-rating inspections. They now consider that local

authorities can charge because a re-rating inspection can be properly described as a “service” which they can provide on a non-commercial basis.

11. The proposed charge will only apply to re-rating inspections and not if we decide to conduct an official control revisit - e.g. to check on essential work / improvements we have required. Consequently, cost recovery from businesses would occur only where they request a re-rating inspection.
12. 40 local authorities are currently taking part in a pilot exercise on charging for re-ratings and the FSA has confirmed that it is not intended that these authorities cease recovering costs after the pilot finishes.
13. Eventually, the FSA intend there to be a wider roll-out to all English authorities (including the City of London) which they anticipate will commence in early 2017. However this report considers the options for introducing charging from 1<sup>st</sup> January 2017 in accordance with the Localism Act 2011.

### **Implications**

14. In its 2015 report to the Welsh Government, the FSA noted that since mandatory display started in 2013, 95% of businesses subject to a re-rating visit between November 2014 and May 2015 had made improvements in their food hygiene standards which resulted in a higher rating.
15. Over the financial year 2014/15, 100 local authorities in England reported undertaking 2,270 requested re-rating inspections, an average of just below 23 requests per annum. Our figures for the last four years show that typically, we received 60-70 requests per annum.
16. There will be differences from the existing FHRS scheme. Currently:-
  - a) a food business can only make one request for a re-rating visit following each planned statutory food inspection. This can be made at any time provided that any required improvements have been made; and
  - b) businesses provide details of the improvements they have made along with their re-rating request, and if it is considered that sufficient evidence has been provided, there is a three month ‘stand still’ period. An unannounced visit will then normally take place within three months from the end of the ‘stand still’ period.
17. However under the proposed charging regime:-
  - a) there is no limit on the number of requests that can be made by individual businesses; and
  - b) the ‘stand-still’ period will not be applied and the re-rating inspection must be carried out within three months of the receipt of the request and payment of the fee.

## Charging Rate

18. The FSA has collected data from local authorities which concludes that, on average a re-rating inspection would take 2.2 hours. However, the latest data from Wales indicates a different picture suggesting the time spent is approximately five hours though this includes a significant travel element and well over an hour to produce the final report.
19. We have collected and analysed data from our re-rating requests, including both the inspection and office administration elements, and the average time spent was 3.25 hours.
20. Local authority respondents to an FSA request agreed that there should be charging for re-rating inspections, and most considered there should be a flat-rate fee, although some considered the fee should be set regionally, given variations in rates of pay and overheads across the country, particularly in London.
21. It is therefore not yet known whether the fee under a mandatory FHRS scheme would be prescribed or locally determined. However, a prescribed fee would require legislation to be enacted, so any fee set until that time can be locally determined.

## Options

22. The following Options are therefore available to the City Corporation:-

### **Option One - No change**

If we do not introduce charging:-

- a) there is no potential for cost recovery; and
- b) we may still need to introduce charges at a later date if the FHRS scheme is made mandatory.

### **Option Two - Introduce charges with a discount or partial exemptions.**

The Localism Act 2011 requires that:-

*"...taking one financial year with another, the income from charges ... does not exceed the costs of provision",*

and therefore we can recover no more than our full costs, but we do have the option to charge less and there are situations where this option may be beneficial, e.g. to encourage local businesses to improve. However, the City Corporation's Financial Regulations require Committee approval in such circumstances and the mandatory schemes already adopted elsewhere have set a flat charge. A graduated charge scheme would be disproportionately more time consuming to administer, and numbers of requests are not significant. For these reasons this option is not considered feasible or practical.

### **Option Three – Full-cost recovery.**

The full cost of a re-rating inspection is currently £210 on average. This has been calculated taking into account factors including officer time, direct costs, and a proportion of overheads such as accommodation. The City Corporation's fee to achieve full cost recovery would therefore be £210.

In comparison, in Wales, businesses are charged a "reasonable" cost for re-ratings which has been determined at £160 per re-rating request. As of 21 October 2016, charges for re-rating by English local authorities taking part in the charging pilot range between £90 and £234 where published, with the average being £154; only one of those authorities is a London Borough who charge £215.

This Option would ensure we are able to use the costs recovered from requested re-rating inspections to help maintain our programmed inspections and other statutory duties.

### **Corporate, Strategic & Financial Implications**

23. Section 3 of the Localism Act 2011 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".*

which indicates that the City Corporation will need to set its charges-based upon on the costs of providing the service but that does not mean that we need to calculate costs for each individual request.

24. The majority of the re-rating work needs to be completed by the officers who are already authorised for official food control work. Currently, we have 307 premises rated as 4 and 122 rated as 3, meaning that there are nearly 430 premises which could apply for a re-rating that would not normally be revisited as part of the food hygiene inspection programme, so there could be resource implications. To mitigate this, all income derived from re-rating inspections will be used to engage temporary staff during the year to ensure that our food inspection targets continue to be met. If the number of requests remains steady, the income generated would be approximately £12,000 to £15,000 annually. However as it is anticipated that this would be fully utilised to meet the increased workload the net effect on the budget would be nil.

25. The proposed charge would be set using locally collected data on the time taken for an average re-rating request and the appropriate hourly rates for the officers completing the work including overheads. The charge would need to be reviewed annually taking into account the most recent data unless a mandatory national or regional fee is subsequently prescribed.

## **Conclusion**

26. The Food Hygiene Rating Scheme is a key element of improving food safety and standards of food hygiene in food businesses.
27. One key difference between the current English voluntary scheme and the two mandatory schemes in Wales and Northern Ireland is that both mandatory schemes enable a charge to be made for re-rating inspections.
28. Cost recovery from businesses would occur only where they make a commercial decision and choose to request a re-rating inspection. The legislation that allows for charges already exists and the preferred charge option is based on full cost recovery using an established model that meets the City Corporation's Financial Regulations.

## **Recommendations**

29. Members are therefore asked to:
  - a) note this report and basis for the proposed changes to the operation of FHRS in the City of London; and
  - b) approve Option Three, to introduce a flat fee charge of £210 for re-rating inspections on a full cost recovery basis with effect from 1<sup>st</sup> January 2017 and to be reviewed annually thereafter.

## **Background Papers**

*"Migration of City of London Corporation from the London Scores On The Doors food hygiene rating scheme to the Food Standards Agency's national Food Hygiene Rating Scheme", Port Health & Environmental Services Committee, November 2011*

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