

To: Heads of Environmental Health Service

<p>Title: Charging for requested Food Hygiene Rating Scheme (FHRS) re-inspections/re-visits</p>	<p>Date: 13 March 2017</p>
<p>Summary: Following the trial of charging for requested FHRS re-inspections/re-visits with some local authorities in England, using existing powers in the Localism Act (2011) the FSA can now confirm a change in policy allowing use of these powers by local authorities in England¹ to introduce cost recovery for requested FHRS re-inspections / re-visits.</p>	<p>Category: Food Hygiene</p>
<p>Action required Consider introducing charging for requested FHRS re-inspections/re-visits</p>	<p>Notification type: For Information /Possible Action</p> <p>Ref: ENF/E/17/020</p>

Dear Colleague,

Please bring to the attention of all relevant officers in your Authority.

Following the trial of charging for requested FHRS re-inspections/re-visits with some local authorities in England, using existing powers in the Localism Act (2011) (see **ENF/E/16/053** dated 12th September 2016) FSA can now confirm a change in policy allowing use of these powers by local authorities in England² to introduce cost recovery for requested FHRS re-inspections / re-visits.

The legal basis underpinning this is available at [appendix 1](#).

Please note:

- The decision to use existing powers in the Localism Act (2011) to charge businesses for requested FHRS re-inspections/re-visits is for individual local authorities to take
- These powers allow for fees on a cost recovery basis only and it is for each local authority to calculate their own costs

¹ The Localism Act 2011 does not apply to Port Health Authorities

² The Localism Act 2011 does not apply to Port Health Authorities

- Local authorities should seek the advice of their own legal and finance teams on charging using these powers (for example on cost calculation, VAT, invoicing / payment etc.)
- Local authorities should ensure that appropriate governance and approval within the authority is in place

The guidance issued by HM Treasury 'managing public money' is a useful reference:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf.

Section 6 of this guidance – box A6 1A – gives information on what to consider when calculating fees.

The FHRS [Brand Standard](#) has been amended to reflect this change to policy. The key points are:

- The 'standstill' period will no longer apply when a fee is charged and the requested re-inspection/re-visit must be carried out within three months of receipt of the request or, where payment is required in advance, the payment of the fee
- there will be no limit on the number of requested re-inspections/re-visit a business can make, and the fee may be charged for each re-inspection/re-visit carried out; and
- The LA considerations when deciding whether or not to agree to a request are unchanged

The standard letter informing businesses achieving a rating of 0 – 4 has been amended to reflect the change. A copy for use when charging is introduced accompanies this letter.

These changes align the voluntary scheme in England with the statutory schemes in Northern Ireland and Wales, where the Food Hygiene Rating Act (Northern Ireland) 2016 and the Food Hygiene Rating (Wales) Act 2013 both include the provision to charge for requested re-inspections /re-visits .

If you have any queries or comments, please contact the FHRS team at hygieneratings@foodstandards.gsi.gov.uk

Regards

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Appendix 1 - the legal basis

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 FHRS re-inspection/re-visits requested by businesses..

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 below. You will wish to make your legal team aware of this advice and discuss with them your intention to introduce charging for this service at your authority.

It is for each local authority to decide to use these powers and to calculate the costs (see para 10).

Summary of 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
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