

Name of meeting: Cabinet
Date: 22 August 2017
Title of report: Charging for Food Hygiene Rating Score Re-visits

Purpose of report

To outline and seek managerial and Cabinet approval for the introduction of charges for Food Hygiene Rating Score (FHRS) re-visits after national roll-out by the Food Standards Agency (FSA).

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by Strategic Director & name	Naz Parkar - 10.08.17
Is it also signed off by the Service Director - Finance, IT and Transactional Services?	Debbie Hogg - 09.08.17
Is it also signed off by the Service Director - Legal Governance and Commissioning?	Julie Muscroft - 11.08.17
Cabinet member portfolio	Cllr N Mather and Cllr P McBride - Economy

Electoral wards affected: All

Ward councillors consulted: No

Public or private: Public

1. Summary

The Kirklees Food Safety Team undertakes inspections of food businesses throughout Kirklees to ensure that the food produced is safe for human consumption. As part of the process, Kirklees takes part in The National Food Hygiene Rating Scheme which requires the inspecting officer to issue a Food Hygiene Rating Score (FHRS) at the end of the inspection.

Kirklees Food Safety Team uploads individual business FHRS onto the national website soon after each inspection. Display of the FHRS by the business isn't mandatory. However, at compliant premises, the FHRS is often displayed and customers are encouraged to check the FHRS before they visit a business – therefore, increasing customer awareness and ultimately increasing business compliance; the rationale being that businesses will want better scores which, in turn, will increase their customer numbers.

The FHRS varies depending on the level of compliance the business has achieved. The range is described/shown below:



Currently, where a business receives a score between 1 & 4, it can, after a period of 3 months, request a re-visit, which takes the form of a full inspection to better its FHRS. There is no charge for a re-visit. Recognising the strain placed on local authority resources, the Food Standards Agency (FSA) undertook a trial during which certain local authorities were allowed to charge businesses requesting a re-visit. The trial was considered a success and the FSA has now issued guidance for local authorities nationally to be able to charge for FHRS re-visits.

2. Information required to take a decision

Charges are based on the premise of cost recovery and the legal framework for cost recovery is outlined in the Localism Act (2011). The legal basis for this is available in **Appendix 1**.

The FSA guidance requires local authorities to calculate their own costs based on local variables and to introduce a fixed amount, which is to be charged each time a business requests a FHRS re-visit. Following the charging mechanism, we propose to charge £150.00 for each re-visit request application that is accepted. A breakdown of the costs is available in **Appendix 2**.

For reference, in the years ending March 2016 & 2017, Kirklees Food Safety undertook 49 and 37 FHRS re-visits respectively.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

The production, processing and consumption of safe food is recognised as a crucial element in the health and wellbeing of all society. Kirklees Food Safety will continue to undertake risk based and programmed interventions to ensure compliance with food safety requirements. This applies equally to failing businesses; i.e. those that achieve a rating between 0 and 2. Officers will visit to ensure they comply and take the relevant enforcement action to secure compliance.

3.2 Economic Resilience (ER)

The proposal will place the financial burden for FHRS re-visits on businesses which failed to comply at the time of the initial inspection or on those that wish to better their rating. This proposal will have no detrimental impact on compliant businesses.

There is, however, a positive aspect of a 'Good' (FHRS 4) and/or 'Very Good' (FHRS 5) food hygiene rating for businesses. Growing awareness amongst the public of the rating scheme and compliant businesses has resulted in an increase in customers to such premises. Therefore, with the aim of mandatory display still high on the agenda for the FSA, it is fair to conclude that an area with a greater number of higher rated businesses is likely to attract more people/customers, and therefore, result in a greater contribution to economic growth as well as successful businesses.

3.3 Improving Outcomes for Children

See 3.1 above.

3.4 Reducing demand of services

Evidence from the trial period seems to suggest that the demand for FHRS re-visits has varied nationally, driven primarily by the costs which have also varied considerably (between £60 and £240). Currently, a business can request a re-visit knowing there is no cost to it in doing so. Moving forward, with the introduction of cost recovery, there may be a reduction in FHRS re-visit requests. Evidence from authorities that took part in the trial period has shown significant variations but one aspect has been clear - those charging at the higher end have received the fewest requests.

The number of requests could increase if display of FHRS stickers becomes mandatory. All indications from the FSA suggest that this will be the case. However, the process does require legislative changes that need to be agreed by parliament.

3.5 **Legal/Financial or Human Resources**

The legal basis for introducing the charge is outlined in **Appendix 1** with the main powers outlined in the Localism Act 2011.

In terms of financial implications, the proposal allows for cost recovery for work that would currently be done free of charge. There is a financial implication for businesses; however, the introduction of charges for FHRS re-visits would encourage compliance in the longer term as the incentive would be to comply in the initial instance rather than relying on a second FHRS visit which incurs a cost.

Currently, FHRS re-visits are done in addition to the existing, programmed inspections. It is perceived that a cost recovery model would, in the short term, lead to a reduction in requests, at least until mandatory display of FHRS stickers is introduced.

4. **Consultees and their opinions**

None.

5. **Next steps**

Subject to agreement, roll-out charges moving forward - August/September 2017.

6. **Officer recommendations and reasons**

It is recommend this proposal is supported as it will allow for costs incurred as a result of having to re-visit failing/lower rated business to be recovered and will, in the longer term, encourage better compliance with food safety requirements.

7. **Cabinet portfolio holder's recommendations**

The portfolio holders for Economy - Cllr Naheed Mather and Cllr Peter McBride were briefed on the 31 July 2017 on the content of this report and were in agreement with the approval of the 'next steps', to roll out charges moving forward - August /September 2017 and would ask that Cabinet do the same.

8. **Contact officer**

Nasir Dad

nasir.dad@kirklees.gov.uk

Environmental Health Group Leader - Food Safety & Infectious Disease

01484 221000

9. **Background Papers and History of Decisions**

Not applicable.

10. **Service Director responsible**

Joanne Bartholomew - Service Director, Commercial, Regulatory and Operational
joanne.bartholomew@kirklees.gov.uk
01484 221000

Appendix 1

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.

Appendix 2

Process	Indicate estimates used for your authority	TIME in minutes for your local authority	Indicate responsible for each process in your local authority	OFFICER for each process in your local authority	Cost estimated for your local authority
Initial Enquiry and supply of forms/advice		15	EHO		£5.69
Receipt of fee and checking of applications.		20	TM		£15.46
Enter onto LA database		5	EHO		£2.85
Pre-inspection file checks		20	EHO		£11.37
Travel to and from business (average)		60	EHO		£34.16
Rescore visit (full inspection)		90	EHO		£51.24
Completion of inspection report		30	EHO		£17.08
Printing/completion of stickers and inspection letter		15	EHO		£2.85
Input onto LA database		5	BSO		£1.60
Total Time		260			£142.30

Average round trip to site and back = 20 miles, which at 45p/mile = **£9**

Officer time	£142.30
Mileage	£9
Total	£151.30

Proposed charge for each FHRS re-visit request: £150.00