



# Delegated decision report

Committee

**DECISION UNDER DELEGATED POWERS**

**DECISION CANNOT BE TAKEN BEFORE 11 SEPT 2017**

Title

**IMPLEMENTATION OF A NEW CHARGE FOR RE-RATING VISITS UNDER THE FOOD HYGIENE RATING SCHEME**

Report to

**THE CABINET MEMBER FOR COMMUNITY SAFETY AND PUBLIC PROTECTION**

## EXECUTIVE SUMMARY

1. The Food Standards Agency (FSA) has recently reviewed the brand standard for the Food Hygiene Rating Scheme (FHRS) and has confirmed that following a trial of charging it has introduced a change of policy allowing the use of powers in the Localism Act 2011 to enable Local Authorities to introduce cost recovery for requested FHRS re-inspections/re-visits.
2. This report proposes a set charge of £205 for a food business operator requested re-rating revisit under the FHRS. This is based on a full cost recovery rate based on average officer time in undertaking revisits.
3. In 2016/17 officers received 54 requests for re-rating visits which equates to approximately 300 officer hours.

## BACKGROUND

4. The Food Hygiene Rating Scheme (FHRS), which operates in England, Wales and Northern Ireland, uses ratings to indicate the compliance of a business with food safety legislation. The overarching aim is to improve food safety and reduce the incidence of foodborne illness.
5. Under the scheme businesses are given a rating between 0 (urgent improvement necessary) and 5 (very good).
6. The results are made public by way of a sticker that the business can display, or by accessing the FHRS website through their main webpages or via an app on a tablet or smartphone. This enables consumers to make an informed choice about where they choose to eat or shop for food.
7. With the review of the brand standard the FSA has amended its policy on charging, in addition the changes to the scheme are as follows:

- There will be no limit on the number of requests that can be made by individual businesses;
  - The stand still period (currently a three month period which has to elapse between the request from the food business and the re-rating visit) 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.
8. The purpose of the re rating is to establish if a higher rating can be obtained. Without a re-rating visit the business would need to wait until the next planned full inspection of the business. The frequency of full inspections varies from every six months to three years depending on the risk rating of the business.
  9. The rating scheme is becoming more widely recognised by both consumers and businesses, therefore a good score is of high value to local businesses.
  10. There appears to be an increase in the number of businesses requesting a re-rating visit. In 2014/15 the service received 17 requests for re-rating visits, 29 in 2015/16 and 54 in 2016/17.
  11. A re-rating visit is more likely to be requested by premises rated as a three or four and who would not normally have a full inspection within 12 months. This equates to approximately 436 premises which could apply for a re-rating.
  12. A re-rating visit can only be undertaken by an authorised officer who meets the required competencies as set out in the Food Law Code of Practice.

### STRATEGIC CONTEXT

13. With reference to the 2015-2017 Corporate plan, the new charge supports a number of priorities, particularly:
  - Supporting the local economy, making the island a better place and keeping it safe.
  - Ensuring that all the resources available to the island are used in the most effective way in achieving the island priorities.
14. The scheme plays an important part of self-regulation, economic growth, competition and improvement of standards in Island based businesses.

### CONSULTATION

15. There is no statutory requirement to consult on this matter and therefore a consultation has not been undertaken.

### FINANCIAL / BUDGET IMPLICATIONS

16. On average each re-rating takes approximately 5.5 hours to receive, process, inspect and re-issue. In 2016/17 this equated to 300 hours of officer time, at a cost of approximately £11,000.

17. The proposal seeks to apply a charge for the re-rating visit based on full cost recovery of officer time. All income from this activity will be used to employ casual staff or for current staff to work additional hours in order to deliver the statutory inspection programme. The actual budget implication is therefore nil.
18. The proposed cost of £205 is based on full cost recovery of officer time. This is based on the average time taken to process, undertake and follow up a re-rating request:

<b>FHRS - Calculation of inspection rates</b>				
	<b>Officer hours</b>	<b>Basic costs</b>	<b>Direct cost recovery</b>	<b>Full cost recovery rate</b>
Processing of application	0.3	5.78	6.23	<b>7.66</b>
Processing of application	0.75	26.30	27.43	<b>31.01</b>
Inspection/follow up work	4.5	153.41	160.20	<b>165.78</b>
<b>Total</b>	<b>5.55</b>	<b>185.48</b>	<b>193.86</b>	<b>204.45</b>

19. Advice has been sought from the VAT team, and this charge is outside the scope of VAT regulations. This means that there is no VAT to be charged on the fee, and hence it should be treated as non-business income for VAT purposes.

#### LEGAL IMPLICATIONS

20. The power to charge this activity is governed by section 3 of the Localism Act 2011. The limitation on the power to charge is that the charges must not, taking one financial year with another, exceed the costs of provision of the scheme, i.e. the charging of a fee must not generate a profit.
21. The act sets out the limitations on the council's ability to charge, which are:
- 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 the service is or could be done using the general power;
  - that the local authority is not under a statutory duty to provide the service; and
  - the local authority does not have any other power to charge for the service.
22. The FSA has advised that each of these circumstances apply to re-ratings because:
- A re- inspection can be properly described as a service which a local authority provides 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
  - The local authority does not have any other power to charge a food business operator for a re-inspection.

#### EQUALITY AND DIVERSITY

23. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between

people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

24. Under the Equality Act 2010 we are required to have due regard to our equality duties when making decisions, reviewing services, undertaking projects, developing and reviewing policies.
25. There are no equality or diversity issues with the proposal of this charge.

#### SECTION 17 CRIME AND DISORDER ACT 1998

26. Section 17 of the Crime And Disorder Act 1998 (as amended by Police and Justice Act 2006) provides that: ‘...it shall be the duty of each authority ... to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent, crime, disorder, anti-social behaviour adversely affecting the environment, and substance misuse in its area’.
27. The purpose of the charge is to recover the cost of officer time in undertaking a non-statutory visit at the request of the food premises. This will enable the service to dedicate more time to investigate noncompliance issues (some of which would be criminal offences) and other statutory functions which promote the reduction of crime within the food industry.

#### OPTIONS

28. Option one – No change
29. Option two - Introduce charges for a re-rating visit under the FHRS with a discount or exemption.
30. Option three – To introduce a charge on a full cost recovery basis of £205 for a re-rating visit under the FHRS, applicable from 1 October 2017 and reviewed on an annual basis thereafter as part of the council’s review of fees and charges.

#### RISK MANAGEMENT

31. Option one. The statistics appear to show that there is an increasing demand for re-rating visits on the service which is a significant impact on officer time. The statutory inspection regime may potentially be affected by an increase in requests which would be a potential non-compliance risk with our duties under the Food Law Approved Code of Practice. The Food Standards Agency has raised concerns about available resources and capacity of the Isle of Wight Environmental Health team.
32. Charges may still need to be introduced at a later date if the FHRS is made mandatory.
33. Option two. While the authority does have the ability to undertake full cost recovery we have the option to either recover basic costs or direct costs, this would be £186 or £194 respectively. The council’s corporate approach is to ensure charges apply full cost recovery.

34. A discounted rate could be considered but would need additional resources to administer and with fairly small numbers this is considered disproportionate.
35. Option three. Full cost recovery based on an average time for a re-rating visit of 5.55 hours is £205. There is an existing budget pressure on the service associated with delivery of its statutory inspection programme and introducing charging will reduce that budget pressure.

### EVALUATION

36. Analysis of our re-rating work has concluded that on average the time spent on undertaking a re-rating visit is 5.55 hours. This includes administration, travel and inspection time.
37. No set fee is imposed by the FSA, and therefore the fee should be determined based on local cost; there may be variance between local authorities due to regional differences of pay and overhead costs.

### RECOMMENDATION

38. Option three - To introduce a charge on a full cost recovery basis of £205 for a re-rating visit under the FHRS, applicable from 1 October 2017 and reviewed on an annual basis thereafter as part of the council's review of fees and charges.

### BACKGROUND PAPERS

39. Food standards Agency letter to Heads of Environmental Health Service <https://www.food.gov.uk/sites/default/files/enf-e-17-020.pdf>

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WENDY PERERA  
*Head of Place*

COUNCILLOR GARY PEACE  
*Cabinet Member for  
Community Safety and Public Protection*

Decision

Signed

Date

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