



## 2016 CHAPTER 3

### *Appeal, re-rating etc.*

#### **Appeal**

**3.—**(1) The operator of a food business establishment may appeal against the establishment's food hygiene rating.

(2) The appeal must be made in writing to the district council which produced the rating; but no officer of the council who was involved in the production of the rating, or in the inspection on which the rating is based, may be involved in the determination of the appeal.

(3) The appeal may be made only on the ground that the rating does not reflect the food hygiene standards at the establishment at the time of the inspection on which the rating is based.

(4) The appeal must be made before the end of 21 days beginning with the day on which the operator receives the notification under section 2.

(5) The district council to which the appeal is made must, before the end of 21 days beginning with the day on which it receives the appeal—

- (a) determine the appeal, and
- (b) notify the operator of its determination.

(6) The notification must be in writing and must be accompanied by—

- (a) where the district council has changed the establishment's food hygiene rating on the appeal, a sticker showing the new rating,
- (b) a written statement of the reasons for the determination on the appeal,
- (c) an explanation of the right to request a re-rating under section 4,
- (d) an explanation of the right of reply under section 5,

- (e) an explanation of the effect of section 6 and of the duties under sections 7 and 8, and
  - (f) such other information as the Department may specify in regulations.
- (7) The district council to which the appeal is made must also, before the end of the period under subsection (5)—
- (a) inform the Food Standards Agency of its determination on the appeal (or, if the appeal is abandoned, that it has been abandoned), and
  - (b) if the district council has changed the establishment's food hygiene rating on the appeal but considers that it would not be appropriate to publish the new rating, inform the Food Standards Agency accordingly.
- (8) The Food Standards Agency, having been informed under subsection (7) (a) of the determination on the appeal, must, if the rating has been changed on the appeal, publish the new rating online, unless it has been informed under subsection (7)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so within 7 days of having been informed of the determination on the appeal.
- (9) A district council may, on an appeal under this section, inspect the food business establishment concerned in so far as the council considers it necessary to do so for the purpose of determining the appeal (and in so far as the operator of the establishment permits it to do so).
- (10) In the case of an establishment whose food hygiene rating is changed on an appeal under this section, references in this Act to the establishment's food hygiene rating are to the new rating.
- (11) A sticker provided under subsection (6)(a) must be in a form prescribed under section 2(7).
- (12) The Department may by order amend this section so as to provide for an appeal under this section to be determined by a person other than the district council which produced the rating in question.

### **Request for re-rating**

- 4.—(1) This section applies where a district council receives a request from the operator of a food business establishment in its district for the council to review the establishment's food hygiene rating.
- (2) Within three months of receiving the request, the district council must—
- (a) inspect the establishment and review the establishment's food hygiene rating on the basis of that inspection, or
  - (b) if it does not propose to act under paragraph (a), provide the operator of the establishment with a written explanation of why it does not propose to do so.

(3) Within 14 days of carrying out an inspection under subsection (2), the council must notify the operator of the establishment of its determination on reviewing the establishment's food hygiene rating.

(4) The notification must be in writing and must be accompanied by—

- (a) where the district council has changed the establishment's food hygiene rating on the review, a sticker showing the new rating,
- (b) a written statement of the reasons for the determination on the review,
- (c) information about compliance with Regulations (EC) 852/2004 and 853/2004,
- (d) an explanation of the right of appeal under section 3,
- (e) an explanation of the right to make a further request under this section,
- (f) an explanation of the right of reply under section 5,
- (g) an explanation of the effect of section 6 and of the duties under sections 7 and 8, and
- (h) such other information as the Department may specify in regulations.

(5) Within 34 days of carrying out an inspection under subsection (2), a district council—

- (a) must inform the Food Standards Agency of its determination on the review, and
- (b) if the district council has changed the establishment's food hygiene rating on the review but considers that it would not be appropriate to publish the new rating, must inform the Food Standards Agency accordingly.

(6) The Food Standards Agency, having been informed under subsection (5) (a) of the determination on the review, must, if the rating has been changed on the review, publish the new rating online, unless it has been informed under subsection (5)(b) that publication would not be appropriate; and, if it is required to publish the new rating, it must do so no later than 7 days after the end of the appeal period in relation to the new rating.

(7) A request under this section must—

- (a) be in writing,
- (b) include an explanation of the steps taken by the operator to improve compliance with Regulations (EC) 852/2004 and 853/2004 since the inspection on which the food hygiene rating was based was carried out, and
- (c) be accompanied by a fee of such amount as the Department may by order specify.

(8) A request under this section may not be made—

- (a) before the end of the period within which an appeal against the food hygiene rating in question may be made under section 3;

(b) if an appeal against the rating is made under that section, before the appeal is determined or abandoned.

(9) The matters which a district council may take into account in deciding whether to act under subsection (2)(a) include the extent to which the operator of the establishment is complying with the provisions of this Act.

(10) In the case of an establishment whose food hygiene rating is changed on a review under this section, references in this Act to the establishment's food hygiene rating are to the new rating (and section 3 accordingly applies, with such modifications as are necessary, in relation to a food hygiene rating changed under this section).

(11) A sticker provided under subsection (4)(a) must be in a form prescribed under section 2(7).

(12) The Department may by order amend this section so as to limit, in the case of each food hygiene rating for an establishment, the number of occasions on which the right to request a review of the rating may be exercised.

### **Right of reply**

**5.—**(1) A district council must give the operator of a food business establishment in its district the opportunity to make written representations on the establishment's food hygiene rating (regardless of whether or when the operator appeals against or otherwise challenges the rating).

(2) Where the district council receives representations under subsection (1), it may—

- (a) send them to the Food Standards Agency in the form in which it received them,
- (b) edit them and send them to the Food Standards Agency in that edited form, or
- (c) refuse to send them to the Food Standards Agency in any form.

(3) The Food Standards Agency, within 7 days of receiving representations under subsection (2)(a) or (b), must publish the representations online in the form in which it receives them alongside the food hygiene rating to which they relate.

(4) But where, at the time when the Food Standards Agency receives the representations, it has yet to publish under section 2(5) the rating to which the representations relate, the duty under subsection (3) instead applies as a duty to publish the representations within 7 days of publishing the rating under section 2(5).

(5) The duty under subsection (3) does not apply in a case where, as a result of section 2(4)(b), 3(7)(b) or 4(5)(b), the food hygiene rating to which the representations relate is not published.

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*Status: This is the original version (as it was originally enacted).*

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(6) Where the district council acts under subsection (2)(b) or (c), it must provide the operator of the food business establishment in question with a written explanation of its reasons for doing so.