Local Authority guidance on the operation of the Food Hygiene Information Scheme

Post-project recommendation from The Steering Group for the Food Hygiene Information Scheme pilot

January 2009
1 Introduction

A Scores on the Doors scheme is a means of providing information to consumers about the standards of hygiene in food businesses at point of sale and on the web. The demand for such a scheme was first recognised in Scotland by Consumer Focus Scotland¹ in its paper 'Food Law Enforcement – A Study of the Views of Environmental Health and Food Safety Officers in Scotland' (February 2004) as an important mechanism for informing consumer choice.

The Food Hygiene Information Scheme (FHIS) was established in 2006 as a pilot Scores on the Doors project in Scotland in partnership with five volunteer Local Authorities. The project was overseen by a Steering Group that incorporated consumer, industry and enforcement representation. The pilot project ran from November 2006 to November 2008. This report represents the recommendations of the Steering Group on the operation of the FHIS based on experience gained during the pilot.

In December 2008 the Food Standards Agency Board recommended continuation of the FHIS as the appropriate format for a national 'Scores on the Doors' scheme in Scotland. This recommendation acknowledged the prevailing views of stakeholders in Scotland received during the public consultation process.

FHIS was specifically designed to take account of the likely response of business to voluntary display of results. The design of the scheme acknowledges that a food businesses operator (FBO) is unlikely to voluntarily display anything that devalues the business. In practice therefore, it is anticipated that only businesses with a ‘Pass’ will display certificates and that consumers will draw their own conclusions about the absence of displayed information. This in turn should provide businesses with maximum incentive to display ‘Pass’ certificates. Information about the classification of every business within the scheme will however, be made available on a web-based information system, whether the business chooses to display the information or not.

¹ Formerly the Scottish Consumer Council
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2 Executive Summary

The FHIS is intended to be simple for consumers to understand and for Local Authorities to apply. The 'Pass' standard is set to represent a single level of compliance that is satisfactory in terms of consumer expectations and also as an enforcement outcome. Establishments are assessed during programmed inspection and the scheme does not therefore require separate inspection scheduling. It is designed to simply reflect the Local Authority's most up to date information and to fit existing procedures under the Food Law Code of Practice.

The two outcomes of compliance assessment under the scheme are 'Pass' or 'Improvement Required' (failure to achieve a Pass). The designation 'Pass' should provide reassurance that the establishment has been inspected for food hygiene by the local authority and meets legal requirements. The 'Pass' standard essentially represents a situation where the Local Authority does not consider it necessary to revisit the establishment for enforcement purposes until the next programmed intervention. In particular, a 'Pass' is incompatible with the existence of even minor recurring contraventions notified at successive visits. Any establishment falling below the required standard for a 'Pass' is classified as 'Improvement Required'.

Establishments that have registered under hygiene legislation but have not yet been inspected are entitled to an 'Awaiting Inspection' certificate.

The scheme applies to all catering and retail operations but allows for exemptions in prescribed circumstances where both the Local Authority and the food business operator agree.

The scheme includes the following measures to ensure that it is fair to businesses:
   a) Procedures for appeal against an officer's judgement.
   b) Procedures for requesting reassessment where compliance has been achieved.

Mechanisms for appeal should not need to go beyond existing procedures required under the Framework Agreement on Local Authority Food Law Enforcement. Experience during the pilot project found that the procedures for reassessment did not result in a significant burden to Local Authorities.

This guidance provides details on key definitions and requirements of the scheme as well as suggested practice based on experience gained during the pilot project.

The FHIS is entirely compatible with the EAT safe award scheme and Local Authorities are encouraged to continue their promotion of the award as a voluntary scheme that allows food businesses to demonstrate excellence in hygiene beyond the scope of legal compliance.
3 Description of the Food Hygiene Information Scheme

3.1 Overview

The scheme is intended to allow consumers to clearly differentiate businesses that have been inspected and found to meet statutory requirements from those that have failed to meet those requirements. Classification of an establishment as a 'Pass' signifies compliance with legal requirements and any standard below this is classified as 'Improvement Required'. This information should reflect the Local Authority’s records of the most recent assessment of compliance.

Although the initial assessment will require an inspection that would be sufficient for risk rating of the business, a classification of 'Improvement Required' must be updated where a subsequent revisit or revisits have demonstrated compliance. Where an establishment is classified as a 'Pass' but receives an inspection for any reason outside the normal schedule (such as a food complaint) it should be reclassified as 'Improvement Required' where significant non-compliance is found. This has the added benefit of demonstrating the true level of compliance within each business within the area where the scheme is operated.

The scheme is designed to fit in with the Food Law Code of Practice (CoP) and the 'Trigger Values' guidelines for re-inspection produced by the Scottish Food Enforcement Liaison Committee (SFELC). Experience during the pilot project found that the scheme did not add significant burden in terms of revisits.

3.1.1 Limitations of schemes based on historical information

Designation as a 'Pass' equates only to compliance at the time of inspection and information related to FHIS should ensure that consumers are aware of this limitation. Although the information is historical from the date of publication, consumers will be aware that it represents the best available information held by the local authority. Care should also be taken not to extrapolate or equate compliance or non-compliance under the scheme to consumer risk. Consumers are entitled to expect that businesses that are open are safe and it is vital that consumer confidence in this assumption is not eroded.

There is a general expectation amongst enforcers, consumers and industry that businesses should comply with food hygiene legislation and consequently that the great majority of businesses should be classified as 'Pass'. The FHIS is designed to identify (perhaps by exception) those businesses that have not met a satisfactory standard of compliance and to provide consumers with the choice not to reward that behaviour with their custom.

3.1.2 Ensuring fairness to new businesses

The interests of new businesses that have not yet been inspected are protected by the availability of an ‘Awaiting Inspection’ certificate. This should ensure that such establishments are not considered by consumers in the same way as those that have chosen not to display an ‘Improvement Required’ certificate. It is expected that this mechanism will encourage registration of food businesses.
3.2 Scope and exemptions

The FHIS is designed to provide hygiene information in all circumstances where consumers make a choice about the food they purchase or consume. Operations that could be considered to be outside the scope of the scheme are therefore restricted to wholesale and other inter-business supply. However, there are some operations that are registered as food businesses but which would not be seen by consumers as food businesses. Visitor centres selling tins of biscuits amongst a range of other goods may be an example. In these circumstances the establishment may be exempted provided that the following additional conditions are met:

- a. The operation should be low risk (category E)
- b. There should be no hygiene contraventions that would otherwise mean that the business would be classified as 'Improvement Required'
- c. That both the FBO and the Local Authority agree that the operation should be exempt

The need for the agreement of the business is an important safeguard. If the FBO considers that lack of a certificate could be prejudicial s/he must be afforded the right to a certificate if the business is situated within the operating boundaries of a scheme. However, exemption is not a right and a Local Authority may refuse to exempt a business if the Authority considers that the business would be perceived as a food business by consumers.

In the fullness of time, it is anticipated that the geographical scope of the scheme will extend to the boundaries of each participating Authority. However, experience has shown that it may be in the interests of a successful scheme if it is progressively rolled out on an area-by-area basis. In predominantly rural authorities it may be advantageous to start with larger towns before rolling out to villages and more isolated establishments. If the scheme is rolled-out in this way, it is vital that businesses and consumers are clear about the geographical boundaries of the scheme and the overall plan for its extension. It will also be necessary for the Authority's information system to distinguish between establishments within the boundaries of the scheme and those outside. Further detail on suggested practice for launching and rolling out a new scheme is provided in Section 3.12.

3.3 Definition of establishment

Classification as ‘Pass’ or ‘Improvement Required’ is applied to a specific business in conjunction with a specific establishment. If ownership of the establishment changes, any previous classification applied at the establishment no longer applies, even if staff transferred and the trading name of the establishment remains the same. Until inspected under the new ownership, the establishment is treated as new and should be reclassified as ‘Awaiting Inspection’. Where a food business operator closes an establishment and reopens at another site, the classification of the original establishment does not apply to the new site at the new address. If a FBO changes the name of an establishment, the Local Authority may reissue a certificate with an existing classification to the business to reflect the new trading name. Separately registered operations at a single site (e.g. a supermarket) should be assessed separately. The definitive test as to whether a given assessment applies to an establishment lies in whether the previous enforcement history is relevant to the current FBO at the establishment.
3.3.1 Street Traders
Street traders may be included in the scheme with the 'address' relating to a description of the vehicle (e.g. Local Authority street trader's licence identifier or vehicle registration number) or the address of the permanent pitch if appropriate. Since most authorities operate street traders licence schemes, it is unlikely that street traders will ever be able to trade whilst categorised as 'Awaiting Inspection'.

3.3.2 Occasional Markets
Inclusion of occasional markets in the FHIS is encouraged wherever practicable. Local Authorities should determine the most suitable way to include markets based on the nature of the individual operation.

3.3.3 Multiple retail outlets
In circumstances where a single establishment supplies multiple retail outlets under the same ownership (typical of small bakery businesses), classification of the retail outlet does not include consideration of non-compliance at the central establishment.

3.4 Definition of the 'Pass' standard
The definition of a 'Pass' requires 'satisfactory compliance' with the Food Hygiene (Scotland) Regulations. Satisfactory compliance allows for the existence of minor non-compliances provided that they are not critical to food safety and also that they are not recurring. The ‘Pass’ criteria are specifically designed to reflect the practical compliance standard required of every food business. As such, there should be no reason for the Local Authority to revisit an establishment with a ‘Pass’ certificate until the next programmed intervention established under the CoP. Key decision points for assessment under the scheme are set out in Annex 3.

3.4.1 Minor non compliance
The word 'minor' must not be confused with the word 'transient'. It is foreseeable that a relatively serious non-compliance could be rectified during the course of an inspection. For example, it may be established that there is a risk of cross contamination caused by the situation in which food is being stored. Even where this is fully addressed by disposal of all food in question, the breach existed at the time of inspection was not minor. In such cases, a ‘Pass’ should only be awarded when the Local Authority is satisfied that appropriate procedures to prevent recurrence have been established and properly implemented. If there is any doubt about whether or not a matter is minor, the benefit of the doubt should be given to the consumer since the business has access to immediate remedy through addressing the issue. Where the word 'minor' is used throughout this document to qualify con-compliance it should be interpreted in accordance with this paragraph.

3.4.2 Recurring non-compliance
The term 'recurring' is intended to cover a situation where a Local Authority has notified a business about non-compliance and finds that this is still outstanding at a subsequent inspection or revisit. In accordance with the CoP, Local Authorities will advise the business of expected timescales for compliance to be achieved (whether or not the Local Authority intends to revisit). Where an establishment has a 'Pass' but with minor non-recurring issues, the establishment should not subsequently be deemed to fall below the 'Pass' standard unless the period previously notified by the Authority for compliance has elapsed. However, an item may be regarded as recurring if it has been
addressed previously but has subsequently recurred, even if the non-compliance is not identical but is of the same type. Officers should use discretion when assessing an establishment as ‘Improvement Required’ in these very limited circumstances and should apply a test of ‘reasonableness’.

Wear and tear should be considered very carefully. Where items of disrepair noted at one visit are different from those noted at a subsequent visit these should not be necessarily considered as recurring if the overall standard of repair is acceptable. However, if minor issues are only being addressed in response to Local Authority inspections and otherwise being overlooked, a ‘Pass’ would not be appropriate. In situations such as these the business would be expected to have a credible and acceptable record or programme for routine maintenance.

3.4.3 Scope of compliance included under the scheme  
'Compliance' extends to all aspects of the hygiene Regulations relating to conditions and food safety management procedures, including both European requirements and any applicable national measures.

Assessment of compliance must be confined to enforceable provisions of the legislation at the time of inspection and must not include good practice recommendations or steps to improve a due diligence defence. Food law beyond hygiene should not be taken into account in applying a classification. However, where a practice can be shown to prejudice the fitness of food it is virtually certain to constitute a breach of article 5 (Food Safety Management Procedures) as well as being a breach of specific legislation on contaminants or additives.

3.4.4 Approved premises  
If an establishment requires approval under EC Regulation 853/2004 (e.g. a retail bakery that also supplies significant quantities of meat products to other retailers) the standard should include the requirements for approval and a ‘Pass’ should not be given where approval has been refused or where the business has not applied for approval where it is required. A ‘Pass’ may be given to an establishment that has been granted conditional approval but only for the statutory period allowable for conditional approval.

3.4.5 Registration of establishments  
A ‘Pass’ should not be withheld solely on grounds that a FBO has failed to register an establishment but the Local Authority may withhold an ‘Awaiting Inspection’ certificate where a businesses has not supplied the required minimum information for registration.

3.4.6 Pending prosecutions  
It is foreseeable that situations will arise where a business comes into compliance following a report being sent to the Procurator Fiscal but before any case comes to court. The issue of a ‘Pass’ certificate is completely unaffected by these circumstances. Any prosecution would relate to compliance at a particular point in time and the ‘Pass’ classification refers to the true position at a later date.

3.5 Display of information  
Display of certificates is voluntary but Local Authorities should promote the benefits of prominent display of ‘Pass’ certificates to businesses. The core information on every
‘Pass’ or ‘Improvement Required’ certificate set out in the table below together with the reasoning behind each item’s inclusion.

### 3.5.1 Content of certificates

<table>
<thead>
<tr>
<th>Information item</th>
<th>Reason for inclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Authority logo and Local Authority officer's</td>
<td>Authenticates the official source of the information</td>
</tr>
<tr>
<td>signature</td>
<td></td>
</tr>
<tr>
<td>The FSA logo</td>
<td>Verifies that the scheme is operated in line with FSA guidelines</td>
</tr>
<tr>
<td>Name and address of establishment</td>
<td>Confines the validity of the certificate to a specific establishment</td>
</tr>
<tr>
<td>Name of the FBO</td>
<td>Confines the validity of the certificate to a specific food business</td>
</tr>
<tr>
<td>Date of inspection</td>
<td>Confirms the date on which the relevant inspection/revisit was carried out.</td>
</tr>
<tr>
<td>Local Authority contact details for consumers</td>
<td>To allow enquires to be made or for consumers to raise concerns about</td>
</tr>
<tr>
<td></td>
<td>apparent anomalies with specific certificates.</td>
</tr>
<tr>
<td>Ownership</td>
<td>This states that the certificate remains the property of the issuing authority.</td>
</tr>
</tbody>
</table>

The information is printed on one of three certificate types; ‘Pass’, ‘Improvement Required’ or ‘Awaiting Inspection’. Templates of the three certificates are set out in Annex 1.

Details on an ‘Awaiting Inspection’ certificate differ only in respect of the date, which, in that case, relates to date of registration rather than inspection.

### 3.5.2 Content of web-based information

In addition to reproducing the information provided on the certificates, the web-based system should include exempted businesses under the classification 'Exempt' and should provide the facility to record EAT safe awards (as Pass and EAT safe).

### 3.5.3 Issue of certificates and updating of web-based information

Certificates should be issued as quickly as possible following any inspection. However the Local Authority should ensure that businesses are given sufficient time to appeal or request a review by a senior officer before web-based information is published. Where a ‘Pass’ is assessed following an inspection at an establishment with a current ‘Pass’ or ‘Awaiting Inspection’ certificate the existing certificate may be left with the FBO pending issue of the updated ‘Pass’ certificate.

All certificates issued under the scheme remain the property of the issuer and this provides a legal right for the issuing Local Authority to recover any expired certificate. There may also be a trading standards issue where a business knowingly displays certificates making a false claim – such as display of certificates that no longer apply to an establishment, apply to another business /establishment and to forged certificates. In addition to legal grounds for preventing false or misleading display, there is likely to be media interest if this occurred, which is likely to have a deterrent effect. Experience during the pilot project established that in practice businesses behaved very responsibly in relinquishing certificates. Moreover, no instances of falsified certificates were encountered during the pilot. The FSA should be advised of any difficulties in this regard in order to inform its review of the effectiveness of the scheme in a voluntary environment.
3.6 Safeguards for consumers

Consumers are protected from imminent risk by virtue of Hygiene Emergency Prohibition Notice procedures. Where an establishment is closed under these procedures, the Notice must be displayed prominently at the premises. However, more importantly, the essential protection for consumers under these procedures or under voluntary procedures is that the establishment is closed and will not be supplying food to consumers. The primary consideration of the Local Authority must therefore be about ensuring that the business is closed. Any short-term conflict between the web-based information and the situation on the ground should therefore be considered as a potential inconvenience for consumers and not as one of consumer protection.

3.7 Safeguards for businesses

The FHIS provides safeguards aimed at being fair to all businesses. These are set out in more detail below but can be summarised as follows:

a) The immediate remedy for all issues that result in an assessment of 'Improvement Required' is in the hands of the business operating a food establishment and remedial action will not exceed the requirements of food hygiene legislation.

b) The Local Authority will revisit to reassess compliance within seven days of being notified by the business that all matters have been rectified. (However, the Local Authority may have a shorter timescale set out in its enforcement policy)

c) All relevant businesses within an area where FHIS operates are entitled to a certificate.

d) Every business has the right to a review of a decision by a senior officer (in terms of the Enforcement Concordat) and to Local Authority complaints procedures (in terms of the Framework Agreement) where the FBO considers that an assessment was wrongly applied.

Experience during the pilot project established that the rights afforded by these safeguards should not lead to a significant burden on Local Authorities.

3.7.1 Remedy

Since the 'Pass' standard is based on compliance at the time of assessment, the remedy for businesses assessed as 'Improvement Required' should always be in the hands of the FBO. Experience during the pilot project established that it was not always apparent to FBOs that the assessment was made as part of a statutory food hygiene inspection and that the standard for a ‘Pass’ was no different from the compliance standard. Linking both the FHIS and enforcement correspondence has an important role in maintaining the confidence of businesses in the scheme and in minimising the impact of the scheme on Local Authorities. The role of enforcement correspondence is dealt with in more detail later in this document in Section 3.9.

3.7.2 Revisits

The FHIS provides businesses with the opportunity for a revisit within seven days of a business notifying the Local Authority that all issues that caused the establishment to fail (i.e. not to meet the 'Pass' standard) have been fully resolved. There is no entitlement under the scheme to Local Authority visits to check on progress with
separate issues. The entitlement relates only to a situation where ‘Improvement Required’ was assessed and the FBO has notified that all non-compliance has been addressed. Inspection within seven days does not imply or intend any right to inspection by appointment at a specific date or time.

This facility should not undermine any Local Authority’s current policy towards revisits or enforcement. Revisits for enforcement purposes will often be required, regardless of the FHIS and such revisits should never be delayed on account of the scheme. However, where satisfactory compliance is found during a revisit carried out as part of normal enforcement practice, a reclassification to ‘Pass’ should result. In most cases, requests by businesses for reassessment will not represent an additional visit, simply the earlier rescheduling of a visit that would have been carried out by the Authority in any case. Experience during the pilot project found that the right to a revisit did not add a significant burden of additional inspection.

Where there has been significant non-compliance, a revisit would be required under the CoP and the SFELC Trigger Values report can be used to provide additional guidance on the interpretation of significant non-compliance. In most cases therefore, a request for re-inspection should not require an additional visit but may require a revisit to be scheduled earlier than the Local Authority would otherwise have planned. Any visits beyond those that would be due under the CoP, are likely to arise where failure has been due to a recurring minor non-compliance.

In some circumstances a Local Authority may carry out more than one follow-up visit as part of normal enforcement practice. The Local Authority may use the cumulative evidence from a number of such revisits as the basis for reassessment from ‘Improvement Required’ to a ‘Pass’.

Where a FBO notifies a Local Authority that matters have been addressed it is entirely in order for the Local Authority to discuss this by telephone to establish what remedial action has been taken so as to ensure that any revisit will confirm that all matters of non-compliance have been addressed. Officers may use discretion over minor non-compliance that is not classed as recurring provided that any such non-compliance would not, on its own, have constituted grounds for assessing as ‘Improvement Required’ and it exists within the time given by the Local Authority for expected compliance. Use of discretion is likely to be unusual and should not be regarded by FBOs as a right. Where discretion is applied in such circumstances this should be confirmed in writing by the Local Authority in order to ensure transparency and avoid misunderstanding on the part of the FBO as to the continuing obligation to complete specified minor works.

Where the remedy for non-compliance includes assessment of new written procedures, it would be in order for the Local Authority to ask for a copy of the procedures in question prior to a revisit. The purpose of the revisit should be to audit compliance with the procedures, provided that the Local Authority accepts the adequacy of the procedures.

FHIS should not generate inspections to refresh the dates of ‘Pass’ certificates and requests from businesses for a Local Authority to do so should not be accommodated as a service associated with the scheme.
3.7.3 Right to a certificate
FHIS provides the right to a certificate for every business selling food to the public for all its establishments situated within an area where the scheme operates. This is intended to ensure that no FBO should feel prejudiced by lack of customer-facing confirmation of its compliance assessment. This includes the right to an ‘Awaiting Inspection’ certificate which ensures that the establishment is not mistaken for one with an ‘Improvement Required’ classification that has not chosen to display a certificate. Local Authorities should bear in mind that evaluation of the pilot project found that ‘Awaiting Inspection’ was not perceived as favourably by consumers as a ‘Pass’ (although more so than ‘Improvement Required’). It is therefore important for both businesses and consumers that initial inspections are carried out in a timely manner.

The right to a certificate also ensures that no business should be compelled to be exempt if the FBO considers that trade would be lost through lack of a certificate.

The right to a certificate does not require the Local Authority to print ‘Improvement Required’ certificates in advance where it considers there is no prospect that they would be displayed. ‘Pass’ certificates should be provided and FBOs should be encouraged to display them. ‘Awaiting Inspection’ certificates should be offered when notifications are received but the process could be integrated with a Local Authority's existing procedures, such as those for registration forms. As a minimum service a Local Authority should be prepared to issue any business with an Improvement Required’ certificate on request.

3.7.4 Right of appeal against an inspector's judgement
The right of appeal and review of decisions is a crucial safeguard but should be accommodated fully within existing mechanisms covered by the Enforcement Concordat and the Framework Agreement.

3.8 Relationship with inspection and enforcement practice
FHIS was designed to provide consumer information about the most recent hygiene compliance assessment of food businesses by a Local Authority and in so doing to inform consumer choice. This statement embraces two important and intentional limitations:

a) The information is about compliance and no connection is implied between non-compliance and consumer risk. Enforcement powers should be used to prohibit processes that present an imminent risk to public health.

b) All information provided by the scheme is, by definition, historical. Consumers are assured that establishments assessed as ‘Pass’ or ‘Improvement Required’ have been inspected and risk-rated for the next intervention. The date of inspection/assessment is included on the certificate and on any web-based information. The scheme is designed to ensure that there is no more recent information held by the Local Authority that conflicts with the currently published information.

The classification of a ‘Pass’ must at all times be consistent with there being no need for the Local Authority to carry out any further revisits prior to the next programmed intervention and cannot be consistent with there being any outstanding enforcement notice.
FHIS should not be used as a means of alternative enforcement. It may encourage more proactive attention to compliance on the part of some businesses or motivate a FBO to rectify non-compliance more rapidly than may otherwise be the case. However, the scheme must not undermine the fundamental duty of food businesses to comply with food law or the duty of Local Authorities to ensure that consumers are protected through the appropriate use of enforcement powers.

3.8.1 Food Law Code of Practice (Scotland) – Interventions Approach

FHIS is fully compatible with the revised Food Law Code of Practice (Scotland) and does not inhibit Local Authorities intending to use the flexibilities the revised Code introduces. Food businesses assessed as ‘Improvement Required’ will predominantly fail to meet the ‘broadly compliant’ criteria and therefore be subject to inspection or partial inspection as their planned intervention. The next programmed intervention will therefore provide an opportunity for re-assessment in terms of FHIS.

Local Authorities that decide to adopt the flexible interventions approach should find that food businesses that have the appropriate risk rating in terms of Annex 5 of the Code will also meet the ‘Pass’ standard of FHIS. Official Control interventions require to be sufficient to allow the Local Authority to determine compliance with food law. Where the Official Control confirms compliance the risk category would not be revised but remain the same as prior to the planned intervention. Similarly, the FHIS assessment would remain as ‘Pass’ and a new certificate issued with an updated assessment date assuming there are no recurring minor non-compliances. Where there are recurring non-compliances the Local Authority may need to amend the FHIS assessment to ‘Improvement Required’. [See Section 3.4.2 for guidance on recurring issues]

When a non-official control is undertaken the revised Code requires the risk rating of the food business to remain unchanged and this would be the expectation with the FHIS assessment.

If the conditions have deteriorated or substantial change has occurred (e.g. new FBO) the revised Code requires the planned intervention to change to an inspection or partial inspection and the food business re-rated. This will also allow for a new FHIS assessment to be made.

Local Authorities should advise the Agency of any situations that arise where they feel operating FHIS compromises their obligations in terms of the revised Code.

3.9 Relationship with inspection reports, correspondence and records

The FHIS does not involve publication of inspection reports but it is essential that the current designation of each establishment under FHIS is not contradicted by the relevant Authority’s related correspondence. In this section no distinction is made between printed reports sent after inspections and hand written reports left at the time of inspection. The FHIS should not affect a Local Authority’s current practice in this regard.

Although the FHIS is entirely separate from the publication of hygiene reports the vast majority of reports and Local Authority records are discoverable under the Freedom of Information (Scotland) Act 2002. The scheme does not affect the statutory right of consumers to request information but as a compatible consumer service. It is highly
unlikely that consumers would request to see additional information if they have confidence in the scheme. In particular, the credibility of the scheme will only be maintained in the eyes of consumers if they can be confident that the classification of an establishment as a 'Pass' is fully supported by all correspondence and records held by a Local Authority.

Where non-recurring non-compliance has been deemed to be minor, it would be good practice to point out in the letter that a 'Pass' had been assessed on this occasion on the basis that the non-compliance set out in the letter is minor and that it is expected that this will be rectified within the timescales set out against any such item(s). This would remove any apparent conflict between the assessment as a 'Pass' and the existence of requirements in the letter but would also ensure that the FBO should not be surprised, at a subsequent inspection, when an 'Improvement Required' classification was given if any previous minor non-compliance remained outstanding. Where a ‘Pass’ is given in these circumstances there is no requirement for the Local Authority to revisit to check compliance with the minor items.

It is critical to the credibility of the scheme in the eyes of FBOs that correspondence following an 'Improvement Required' classification is consistent with that decision. In terms of the CoP, any such report should state the nature of all non-compliance, the measures that are required to secure compliance in the opinion of the inspecting officer, and timescales within which the Local Authority expects matters to be rectified. This should be sufficient to ensure that the business has a complete account of action required to move from ‘Improvement Required’ to a ‘Pass’. It would be good practice to ensure that the significance to the FHIS scheme was stated in all hygiene correspondence. In this way it would be more apparent to FBOs that the ‘Pass’ was based on satisfactory compliance at the time of inspection and that an 'Improvement Required' classification can be remedied through compliance with legal requirements.

Where an establishment with a 'Pass' classification has been visited outside the programmed inspection cycle and reassessed as 'Improvement Required', the FBO must receive written confirmation of the non-compliance in accordance with established enforcement practice. The guidance in this section applies equally to reports arising in these circumstances.

3.10 Relationship with the EAT safe Award scheme

The EAT safe award is entirely separate from, but compatible with, the FHIS. The Local Authority guidance for operation of EAT safe is therefore unaffected and Local Authorities are strongly encouraged to continue to promote the EAT safe award as recognition of standards above compliance and a means for the business to differentiate itself should it wish. Some FBOs will see a ‘Pass’ as representing a lower value than they would want to be associated with and the EAT safe award provides the ideal opportunity for such businesses to contribute to consumer choice and confidence through display of an EAT safe award instead of a ‘Pass’ certificate. However, in keeping with the right of all businesses to a certificate in terms of FHIS, the EAT safe award does not prevent a FBO from being issued with and displaying a ‘Pass’ certificate should they wish.

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2 Food Law Code of Practice (Scotland), September 2006, paragraph 3.1.6
3.11 Information systems requirements

The Food Standards Agency is committed to providing a UK-wide platform for display of 'Scores on the Doors' information and this includes support for a two-tier scheme in Scotland. IT requirements for the pilot scheme were kept to a minimum, consistent with the project representing a pilot. However, the experience of Local Authorities during the pilot was extremely valuable in establishing that the required information for FHIS could be accommodated on a variety of local authority inspection databases without the need for upgrades to the design of the systems. This was accomplished through use of existing fields provided to Local Authorities by their software suppliers in order to allow the storage of local information.

The development of a UK-wide integrated platform has not yet commenced but completion of this work should not prevent Local Authorities from proceeding with the scheme in the meantime. Work by the Agency to develop a single platform will commence with a functional specification and this will require specification of the data required to populate the UK-website. It may be useful for Local Authorities considering adoption of a scheme to know that IT development costs for individual authorities funded by FSAS during the pilot was minimal and that each Local Authority elected to work independently to provide a facility on its own website. A common data specification was agreed during the pilot project and was implemented from different database systems in each pilot Authority. Local Authorities in Scotland are advised to contact FSAS about the support to be provided for migration to the UK platform.

3.12 Launching the scheme

The FHIS pilot provided valuable experience on procedures for a successful launch. This section of the guidance is not intended to be prescriptive provided that the approach adopted ensures that where certificates have been issued in a defined area, all businesses within the scope of the scheme have access to a certificate. This ensures that consumers may make up their own minds about the absence of displayed information and that businesses are not prejudiced by any false assumptions.

The pre-launch procedures make use of the Code of Practice scoring as a filter mechanism to separate those businesses that the Local Authority would clearly consider as compliant from those that may be in doubt or that are clearly non-compliant. The experience of the pilot included both initial launch in defined areas and subsequent roll-out within Local Authorities. It must be borne in mind that the initial launch of the pilot involved challenging project deadlines that do not apply beyond the pilot. The initial launch in the pilot areas involved only 5 months of preparation and in general, it is likely to be far more efficient to allow considerably longer for preparation prior to launching a scheme.

The sequence of actions in the launch of the pilot areas was as follows:

1. Identify the initial area(s) where the scheme will apply.
2. Identify the businesses in each area that fall within the scope of the scheme.
3. Review the compliance records of establishments in the area, initially using the CoP risk rating and subsequently by following the decision chart set out in Annex 2.
4. Follow up with businesses as indicated on the decision chart, with the aim resolving any dispute by businesses over ‘Improvement Required’ status.
5. Mail all applicable FBOs in the designated area(s) to advise them about the scheme and to specifically advise of the classification that the Local Authority has assessed for their establishment, the date of the launch and how to proceed if the FBO wishes to dispute or discuss the classification. The letter should encourage those with ‘Improvement Required’ classification to notify the Local Authority if all outstanding non-compliance has been rectified. Where the FBO has not rectified the non-compliance, s/he should be advised that the establishment can be reassessed before the launch if s/he advises the Local Authority in sufficient time before the launch. Maximum advantage should be taken of the opportunity to promote the scheme to businesses and to provide businesses with consumer information about the scheme that FBOs may wish to pass to customers.
6. Begin consumer awareness campaign. At this stage the certificates have not yet been issued to businesses.
7. Deal with food business enquiries and any requests for reassessment.
8. Issue all certificates, in a single mailing or delivery if possible as close as possible to the launch date but with sufficient time to allow them to arrive before the launch.
9. Launch with planned media involvement.

The focus of the FHIS should be on display of information at each establishment and the web-based information should therefore go live no earlier than the launch. The advantage of the pilot methodology is that potential difficulties or disputes can be ironed out before the launch date.

Starting in a pilot area within each Local Authority has potential advantages in the trialling of procedures, phasing of training and control of demand for advice by affected businesses. Experience showed that the exercise provided a very valuable focus to improve the validation of critical record keeping and decision-making processes. The approach also allows the review of records in subsequent areas to take place on a timescale that makes maximum use of the opportunity to review records as part of the routine inspection plan.
Annex 1  Templates for certificates issued under the FHIS
(Based on certificates issued by Perth and Kinross Council)

This establishment was inspected by Perth & Kinross Council in accordance with current food hygiene legislation and passed the inspection on

DATE ISSUED

SIGNED ON BEHALF OF THE ISSUING AUTHORITY

For more information regarding the Food Hygiene Information Scheme please contact Perth & Kinross Council on 01738 476476, or alternatively visit our website at www.perthshire.com

This certificate remains the property of the issuing authority, which reserves the right to remove it at any time.
Food hygiene information scheme

IMPROVEMENT REQUIRED

This establishment was inspected by Perth & Kinross Council in accordance with current food hygiene legislation and was found to require improvement on

DATE ISSUED

SIGNED ON BEHALF OF THE ISSUING AUTHORITY

For more information regarding the Food Hygiene Information Scheme please contact Perth & Kinross Council on 01738 476476, or alternatively visit our website at www.perthshire.com

This certificate remains the property of the issuing authority, which reserves the right to remove it at any time.
This establishment is a new business and will be inspected shortly by Perth & Kinross Council in accordance with current food hygiene legislation.

For more information regarding the Food Hygiene Information Scheme please contact Perth & Kinross Council on 01738 476476, or alternatively visit our website at www.perthshire.com

This certificate remains the property of the issuing authority, which reserves the right to remove it at any time.
If any record cannot provide a reliable CoP score or Yes or No answer to any decision point question at any point in this algorithm.

Audit question 1: Is there credible documented evidence that, since the last primary inspection which yielded any relevant CoP score >10, there have been one or more revisits which alone or between them demonstrate that all matters that contributed to the primary inspection fail have now been resolved?
Annex 3  Food Hygiene Information Scheme decision / procedure chart

*Authorities are encouraged to carry out a primary inspection and risk rate new establishments at the earliest possible date.

Nothing in this chart should undermine enforcement requirements of the Food Law Code of Practice. The chart should not be interpreted as preventing or discouraging authorities from carrying out a primary inspection whenever a visit is carried out at an un-rated establishment or whenever circumstances found during a secondary inspection suggest that broadening the scope to a primary inspection would be the most effective and / or efficient option.

START

CoP risk rating is E

Yes

Planned / Primary Inspection

No

Secondary inspection, revisit, complaint visit etc.

Revisit or inspect premises (as appropriate)

If any record cannot provide a reliable CoP score or Yes or No answer to any decision point question at any point in this algorithm

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Primary inspection should be scheduled as soon as possible to establish and notify the full extent of non-compliance.