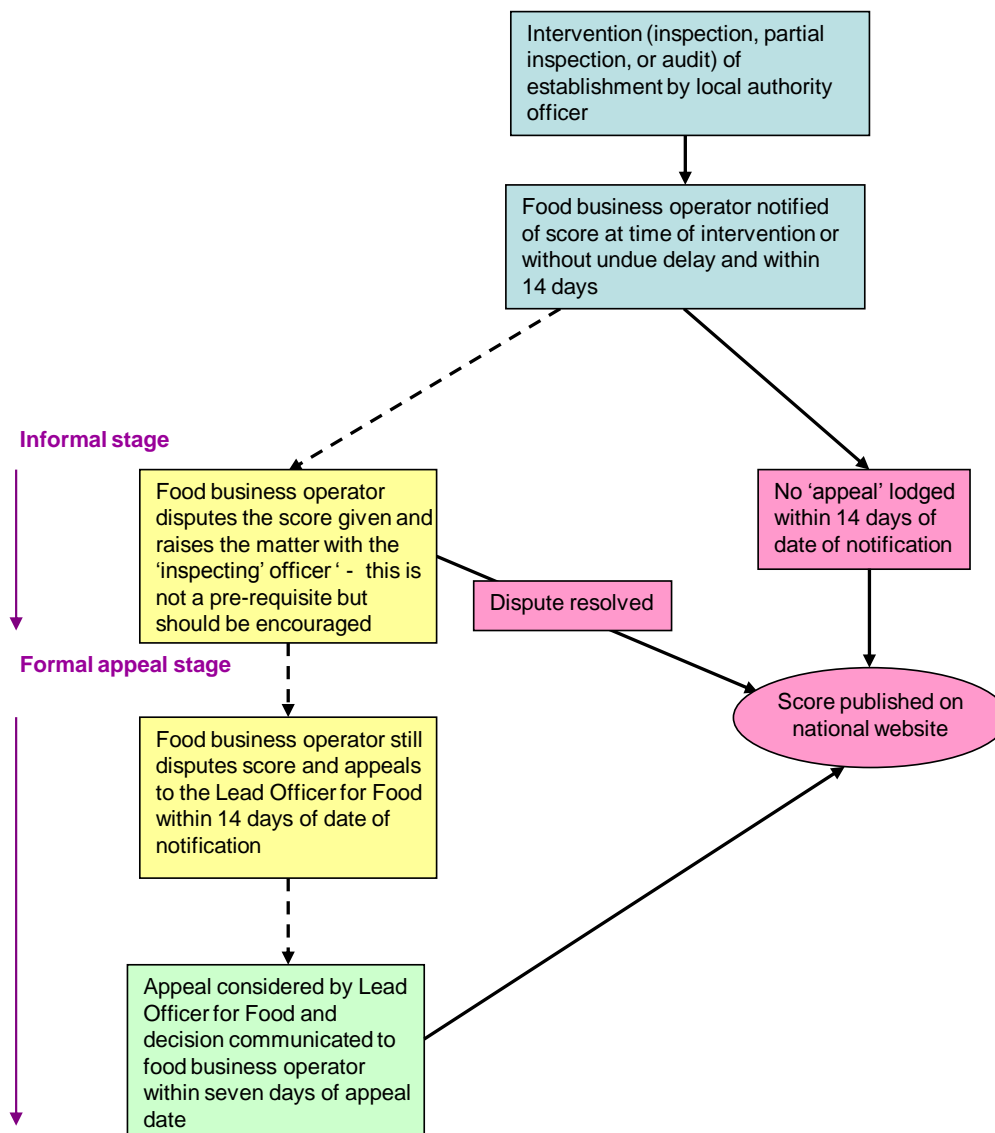


DRAFT Guidance on appeals

Introduction

1. The national six-tier 'scores on the doors' (SotD) scheme will include safeguards to ensure fairness to businesses. In this respect, local authorities must have a procedure in place for food business operators to dispute the score given in respect of their establishment if they consider it to be unjust.
2. The appeal mechanism is illustrated in the following flow chart. In essence, if a food business operator considers that the score given by the 'inspecting officer' (i.e. the officer undertaking the intervention - an inspection, partial inspection or audit) is unjust, s/he may appeal this with the local authority's Lead Officer for Food or in his/her absence, by the designated deputy.
3. Although not part of the SotD appeal process, the food business operator may still use the local authority's formal complaints procedure if s/he is dissatisfied with any aspect of the authority's services.
4. Guidance (in question & answer – Q&A - format) is provided below to assist local authorities in providing information to businesses on the appeal procedure. The guidance will be kept under review and will be revised and updated as necessary to reflect the experience of local authorities operating the scheme.

Flowchart illustrating the appeals procedure



Notes

Any reference to numbers of 'days' includes weekends and bank holidays.

Sufficient legal protection is given to food business operators if appeals against a disputed score are determined by the Lead Officer for Food. There is no legal requirement for the local authority complaints procedure to form part of the SotD appeal mechanism. This does not, however, prevent a food business operator from using the complaints procedure where s/he is dissatisfied with any aspect of the authority's services.

Question and answer guidance

Q1. Should the 'score on the door' (score) be notified to a food business operator at the end of the intervention or at a later date?

A1. Local authorities operating the national scheme must have a policy for communicating the 'score on the door' score to businesses. The decision on when a business should be notified of its score must be in accordance with that policy.

The score must be provided in writing whether it is notified at the time of intervention (this must be an inspection, partial inspection or audit) or afterwards. For multi-site businesses, local authorities must ensure that the score is communicated to the head office.

If not notified at the time of intervention, the score must be communicated in writing without undue delay and within 14 days¹ from the date of the intervention.

Irrespective of when the food business operator is notified of the score, information should be provided in writing about how to appeal it. This must make clear that the notification of the score triggers the start of the 'appeal' period.²

Q2. What information should the local authority provide to a food business operator with the notification of the establishment's score?

A2 The following information should be provided:

- details of why the establishment was scored as it was and, in cases where the top score has not been achieved, what priority actions are needed for each of three Annex 5 elements that are used for SotD in order to improve the level of legal compliance (see Q&A 3);
- details of when the score will be published on the national website (see Q&A 4), and when the food business operator will receive a certificate/sticker to voluntarily display the score at the establishment;
- details of the mechanism for appealing the score (if the top score was not given), including -
 - the deadline by which an appeal to the Lead Officer for Food must be made (see Q&A 4);
 - contact details (name, telephone number) for the 'inspecting officer' and Lead Officer for Food (see Q&A 6);
- a weblink to more general information on the scheme (including information on the appeals and re-visits mechanisms, and template forms for lodging an appeal, for requesting a re-visit, and for submitting a 'right

¹ Where reference to numbers of 'days' are made in this guidance it includes weekends and bank holidays.

² The rule established by section 7 of the Interpretation Act 1978 will be applied for the purposes of notifying the score to food business operators. Section 7 is concerned with the service of documents by post. Under that rule as applied for the purposes of notifying the score to food business operators, notification will be regarded as having been given by properly addressing, pre-paying and posting a letter informing the food business operator of the score. It will be regarded as being effective at the time at which the letter would be delivered in the ordinary course of post. All notifications will be sent by first class post. A letter sent by first class post is taken to be delivered on the second working day after posting.

to reply') or hardcopies of information and template forms on request from the food business operator.

Q3. How should details of why the establishment was scored as it was and on what priority actions are needed to improve the level of legal compliance be presented to the food business operator?

A3. It will be helpful to the food business operator if the information is presented for each of three elements assessed - hygiene, structure and confidence in management/control procedures.³

Q4. How long does a food business operator have to appeal the score before it is published?

A4. The appeal has to be made in writing within the period of 14 days beginning with the date of notification.⁴

A copy of the standard template form for appealing the score is provided at [Appendix 1](#).

After that period has expired, the score will be published on the national website if no appeal has been lodged.

Q5. When is it appropriate for a food business operator to use the appeals procedure?

A5. The appeals procedure is relevant where the food business operator believes that the score given is unjust as it does not reflect the hygiene standards and management controls found at their establishment on the time of intervention.

An appeal is **not** appropriate in circumstances where a food business operator has requested a re-inspection/re-visit for re-scoring on the basis that non-compliance(s) identified at the time of the initial intervention have been rectified. A food business operator, however, may appeal after a re-inspection/re-visit if s/he considers that the 'new' score given is unjust (see Q&A 8).

³ This issue will be considered further by the Working Group on Consistency issues including the possibility of developing a standard notification form.

⁴ The rule established by section 7 of the Interpretation Act 1978 will also be applied in respect of lodging of an appeal by the food business operator with the local authority Lead Officer for food (see footnote 2). Under that rule as applied for the purposes of appealing the score, an appeal will be regarded as having been made by properly addressing, pre-paying and posting a letter informing the local authority Lead Officer for Food that an appeal is being made. It will be regarded as being effective at the time at which the letter would be delivered in the ordinary course of post. Proof of posting should be retained by the food business operator in the event that verification is required that an appeal has been made.

Q6. How should appeals be handled?

A6. A graduated approach should be adopted.

In the first instance, it may be possible for the inspecting officer to resolve any dispute about the score informally by further clarifying and explaining how it was derived. Although not a pre-requisite, food business operators should be encouraged to do this and every effort should be made to resolve the matter at this stage before resorting to the appeal procedure.

If the dispute is not resolved informally, the food business operator may lodge an appeal in writing and the matter should be considered by the Lead Officer for Food or in his/her absence, the designed deputy.

In some circumstances, a further visit to the establishment may be required. This will depend on the nature of the injustice alleged and whether a decision can or cannot be made on the basis of the paperwork associated with the intervention and the score given.

The Lead Officer's decision should be communicated to the food business operator as early as possible and within a maximum of seven days from the date that the appeal was lodged, after which time the score will be published on the national website.

Q7. Where the score is being appealed should the score be published on the national website and displayed at the establishment?

A7. No. Until the outcome of the appeal is determined by the Local Authority's Lead Officer for Food, the website will show that, for the establishment in question, the assessment of hygiene standards is 'awaiting publication'.

The previous score will not be displayed on the website.

In relation to display at the establishment, where the score is notified at the time of the intervention, the sticker and certificate for the previous score should be removed and a new sticker provided (and the new certificate should be issued within 14 days). Where the score is notified at a later date the new sticker and certificate should be provided with the notification of the new score, and it should be noted that the display of misleading stickers and certificates may constitute an offence, for example an offence under the Consumer Protection from Unfair Trading Regulations 2008, which impose a general prohibition on unfair commercial practices. The Office of Fair Trading, local authority trading standards services in Great Britain and the Trading Standards Service of the Department of Enterprise, Trade and Investment in Northern Ireland enforce the Regulations.

Q8. Should appeals lodged later than 14 days after the notification of the score be considered?

A8. No. Appeals must be made within 14 days of the notification of the score. After this time, the score should be published on the website.

Q9. Can a food business operator appeal a 'new' score given following a re-inspection/re-visit that they have requested?

A9. Yes. As with the initial assessment, a food business operator may appeal in such cases if it is considered that the 'new' score is unjust. Appeals must be made within 14 days of the notification of the score. After that period has expired, the score should be published on the national website if no appeal has been lodged.

Q10. When will the score be published on the website following an appeal?

A10. The score will be published when the Lead Officer for Food has reviewed the score and communicated the outcome of the appeal to the food business operator.

Q11. What happens if the food business operator disagrees with the outcome of the appeal?

A11. The food business operator can challenge the local authority's decision by means of judicial review.

The food business operator has recourse to the local authority complaints procedure (including taking the matter to the Local Government Ombudsman where appropriate) if they consider that a council service has not been properly delivered.

Q12. Will the food business operator have a 'right to reply' and will this be published on the website?

A12. Yes. Food business operators will have a 'right to reply' which will be published on the website with the score. The purpose is to enable the food business operator to give an explanation of subsequent actions that have been taken to rectify non-compliances or mitigation for the circumstances at the time of the inspection, rather than to complain or criticise the scheme or 'inspecting officer'.

Food business operators will be able to send comments electronically or in writing to the local authority. The text may be edited by the local authority before being published on the website in order to remove any offensive, defamatory, clearly inaccurate or irrelevant remarks.

A copy of the standard template form for submitting a 'right to reply' is provided at Appendix 2.

Q13. Is the local authority's complaints procedure part of the appeal process?

A13. No. Sufficient legal protection is given to food business operators if appeals against a disputed score are determined by the Lead Officer for Food. There is no legal requirement for the local authority complaints procedure to form part of the SotD appeal mechanism.

This does not, however, prevent a food business operator from using the local authority's complaints procedure where s/he wishes to complain about the process followed in delivery of a service.

Appendix 1 - Appeals form

Notes for businesses

- As the food business operator of the establishment, you have a right to appeal the score given following your inspection if you do not agree that the score reflects the hygiene standards and management controls found at the time of the inspection.
- **You have 14 days (including weekends and bank holidays) from the date of receipt of the notification letter to lodge an appeal.**
- Please use the form below and return it to the address at the bottom of the page.
- The Lead Officer for Food will review your score and communicate the outcome of your appeal to you within seven days

Food business operator

Business name:

Business address:

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Date of inspection:

Score given:

Date notified of score:

I do not agree with the score on the door given by the inspecting officer because (please explain below under each of the three headings):

Compliance with food hygiene and safety procedures
Compliance with structural requirements
Confidence in management/control procedures

Signed:

Name:

Position:

Date:

Once completed, please return this form to:

Lead Officer for Food:: [\[insert details\]](#)
 Address: [\[insert details\]](#)

Appendix 2 - Right to reply form

Notes for businesses

- As the food business operator of the establishment you have a right to reply in respect of the score given following your inspection.
- The purpose is to enable you to give an explanation of subsequent actions that have been taken to make the required improvements as detailed in the inspection letter, or to explain mitigation for the circumstances at the time of the inspection. It is not for making complaints or for criticising the scheme or inspecting officer.
- If you wish to use this right to reply, it will be displayed on the website with your score.
- Please use the form below and return it to the address at the bottom of the page.
- Your comments will be reviewed by the inspecting officer and may be edited before being published on the website in order to remove offensive or defamatory remarks.
- The website will state that the accuracy of your comments has not been verified by our officers.

Food business operator

Business name:

Business address:

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- I agree with the inspection results but have since carried out the following improvements (tick all that apply):
- The establishment has been thoroughly cleaned.
 - The establishment has been or will shortly be fully renovated.
 - A new management system has been implemented.
 - There is now a new manager and/or new staff.
 - The staff have been trained/re-trained/given instruction/are under revised supervisory arrangements.
 - Other – please expand below and use only the space provided

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- The conditions found at the time of the inspection were not typical of the normal conditions maintained at the establishment and arose because (Please explain below and use only the space provided. You can also state any other improvements made):

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Signed:

Name:

Position:

Date:

If you wish to view your website entry visit: [\[insert link\]](#)
Once completed, please return this form to: [\[insert Local Authority contact details\]](#)