Explanatory Memorandum to the Food Hygiene (Wales) (Amendment) Regulations 2012

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member’s Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food Hygiene (Wales) (Amendment) Regulations 2012. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM
Minister for Health and Social Services, one of the Welsh Ministers

28 March 2012
Explanatory Memorandum for the Food Hygiene (Wales) (Amendment) Regulations 2012

1. Description

The Food Hygiene (Wales) (Amendment) Regulations 2012 (“the Regulations”) will provide for the extension of Remedial Action Notices (“RANs”) to all food businesses in Wales, including those which are not subject to approval under Regulation (EC) No. 853/2004.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None

3 Legislative Background

The Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The Welsh Ministers have been designated by S.I 2005/1971 for the purposes of that section in relation to measures relating to food (including drink) including the primary production of food.

This instrument is subject to the negative procedure.

4 Purpose and Intended Effect of the Legislation

The Regulations will amend the Food Hygiene (Wales) Regulations 2006 (“the principal Regulations”) so that RANs may be issued to food business operators (FBOs) operating businesses which are not subject to approval. This will provide an enforcement tool that will help to ensure that food businesses that breach the hygiene legislation take prompt corrective action, where it is in the public interest for them to do so.

The principal Regulations provide authorised officers (“AOs”) with powers to ensure FBOs comply with food hygiene regulations. These enforcement powers include RANs to permit the AOs of enforcement authorities to require FBOs running establishments subject to approval under Regulation (EC) No. 853/2004 to remedy contraventions. RANs have immediate effect, stopping or reducing an activity until compliance is achieved.

Other enforcement tools available to AOs range from informal advice to prosecution, and a number of other sanctions may be imposed by a court.
Current Sanctions available to AOs

- Hygiene Improvement Notices: these enable authorised officers to issue notices requiring remedial works to be undertaken. They allow FBOs at least 14 days to take specified remedial action, failing which they are guilty of an offence.

- Remedial Action Notices: these permit AOs to require FBOs operating establishments subject to approval to remedy contraventions. They have immediate effect, stopping or reducing an activity until compliance is regained.

- Hygiene (Emergency) Prohibition Notices: these enable AOs to impose an immediate appropriate prohibition on a food business, including closure, where there is imminent risk of injury to health.

- Simple caution

Sanctions imposed by a Court

- Hygiene Prohibition Orders:

  (1) where a food business operator is convicted of an offence under the Food Hygiene Regulations 2006, the Court must — if it is satisfied that the construction, state or condition of premises used for the purposes of the business or the use of any process, equipment or treatment for the purposes of the business involves a risk of injury to health — make an order prohibiting the use of the process, premises, equipment or treatment concerned.

  (2) where a FBO is convicted of an offence under the Food Hygiene Regulations 2006, the Court may prohibit him from being involved in the management of a food business.

There is currently a gap in the enforcement powers available to competent authorities delivering official controls in food establishments not subject to approval. The gap occurs where there is a breach of the food hygiene legislation in these establishments and action needs to be taken quickly to control any non-compliance.

Approval, under Regulation (EC) No 853/2004, is required for food establishments handling products of animal origin which supply to another establishment/s, unless they meet the exemption criteria. Currently, an AO may serve a Hygiene Emergency Prohibition Notice (HEPN) if they find serious breaches of the hygiene legislation in establishments not subject to approval. A HEPN can be served to stop the use of a process, the premises or equipment where an “imminent risk of injury to health” can be demonstrated. The “imminent risk” must be demonstrated to a Magistrate before the Court will confirm the enforcement officer’s decision via the issue of a Hygiene Emergency Prohibition Order. The service of a HEPN would not be appropriate where an “imminent risk” cannot be demonstrated. Likewise, the service of a
Hygiene Improvement Notice (HIN) would not be appropriate for a serious breach, as a minimum period of 14 days must be allowed for the FBO to take corrective action. Examples of where a RAN might be the most appropriate enforcement tool include for instances of unhygienic practices or risk of cross contamination such as:

- A lack of proper cook or chill temperature control which allows the growth of pathogenic organisms with a risk for consumers;
- Cleaning issues which pose a risk of cross contamination of food for human consumption and require immediate attention;
- A lack of hot water supply which prevents hygienic production and poses a risk of cross contamination;

These types of non-compliances should be corrected voluntarily by FBOs, however, voluntary action cannot be relied upon, and where it is not forthcoming the enforcement powers currently available can be ineffective and/or disproportionate. The involvement of a court as required by a HEPN is not appropriate for controlling these types of non-compliance and the amount of time allowed by a HIN for an FBO to take remedial action makes them insufficiently effective. A RAN could be used to target the non-compliances without imposing a prohibition on the whole business.

5 Consultation

The Food Standards Agency (“FSA”) held a 12 week public consultation on the proposed extension of RANs to all food establishments between 28 February and 23 May 2011.

The FSA received 74 responses across the UK. UK responses were received from 12 Food Liaison Groups (representing about 100 Local Authorities), 46 individual LAs, two consumer groups, one lobby group, and 13 industry respondents.

The responses demonstrated strong and unanimous enforcement and consumer group support for the extension of RANs to all food establishments across the UK.

The responses from industry were mixed. All 13 industry responses called for greater safeguards to be put in place to protect them from misuse of RANs. There were also concerns about the practicalities of RANs. The main concerns were the appeals procedure and the length of time that the process of lifting a RAN might take.

Industry consultation responses indicated uncertainty over the appeals procedure for RANs. RANs can be appealed. The appeal is heard by a Court, and, if upheld, the RAN is lifted. However, to obtain compensation for losses incurred, a business would need to undertake further legal action. Having considered the consultation responses, the FSA agree that where an appeal is upheld, compensation for losses incurred should be available at the Court hearing. This would provide business with a
safeguard against misuse, and would be consistent with existing provisions, for HEPNs. The new compensation clause would apply to RANs issued in approved establishments, as well as to those not subject to approval.

In order to issue a RAN, an AO must specify which provisions of the hygiene legislation are being breached, and what needs to be done to rectify the non-compliance. Once the non-compliance has been rectified, the RAN can be lifted by an officer at the enforcing authority. Some consultation responses from industry were concerned about how long this process might take. The statutory Food Law Code of Practice requires that the RAN must be withdrawn as soon as the AO is satisfied that the action specified in the notice has been taken. The need for an AO to lift the RAN quickly when they are satisfied the business has rectified the non-compliance will be further emphasised in FSA guidance.

A common industry concern was that RANs would be issued indiscriminately, or where informal enforcement would be more appropriate. The statutory Food Law Code of Practice requires that, except where circumstances indicate that a significant risk warrants immediate action, officers should operate a graduated and educative approach to enforcement. The FSA will continue to encourage this approach through guidance and audit.

6. Regulatory Impact Assessment

6.1 Options

Option 1

Do nothing. Authorised officers in establishments not subject to approval would continue to use the existing enforcement tools to address non-compliances with the hygiene legislation. There are certain circumstances where the current tools can be inappropriate and ineffective.

Option 2

Take action short of legislation - issue new guidance to food businesses and/or enforcers. This option was considered to ensure that regulatory enforcement was not sought where a non-regulatory solution was available.

Option 3 (Preferred Option)

Amend existing regulations to extend RANs to establishments not subject to approval. This will provide consistency of enforcement to all food businesses, strengthen the process to address breaches in the hygiene legislation and protect public health; and introduce a compensation clause to provide redress in the event of misuse.
6.2 **Costs and Benefits**

**Option 1**

There would be no incremental costs.

**Option 2**

**Costs to Industry**

The FSA would issue new guidance or revise existing guidance to encourage businesses to immediately address non-compliances with food hygiene legislation voluntarily. The FSA would not be introducing any new requirements in the guidance—it would only be re-enforcing existing messages on compliance with food hygiene legislation. The FSA already has guidance available, so the impact of any additional or amended guidance is expected to be negligible.

Any additional or revised guidance would not be specifically targeted at those food businesses that breach food hygiene legislation, there would therefore be a cost for all food businesses to familiarise themselves with it. It is therefore envisaged that there will be a small one-off cost to industry for reading and familiarising themselves with the new guidance. It is estimated that it will take 30 minutes per business to read and familiarise themselves with the new arrangements and a further 30 minutes to disseminate to key staff. This means a total of one hour for familiarising. There are currently 148,900 food businesses that are not subject to approval operating in the UK directly affected by the proposal. 7,468 of these businesses are in Wales. The table below displays the number of businesses affected in Wales, and in the UK, by business size.

<table>
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<tr>
<th></th>
<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
<th>Total</th>
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<tbody>
<tr>
<td>Wales</td>
<td>6,256</td>
<td>1,073</td>
<td>122</td>
<td>27</td>
<td>7,468</td>
</tr>
<tr>
<td>UK</td>
<td>124,720</td>
<td>21,397</td>
<td>2,235</td>
<td>548</td>
<td>148,900</td>
</tr>
</tbody>
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It has been assumed that one representative per business will be required to familiarise themselves with the new guidance. It is further assumed that this will be a Business Manager. To quantify the one-off familiarisation cost to industry familiarisation cost per business is calculated by multiplying the hourly wage rate of a

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‘business manager’ of £26.10\(^2\) by the one hour taken to understand the new charging arrangements, resulting in a familiarisation cost per business of £26.10\(^3\). To quantify the overall one-off familiarisation cost to industry the familiarisation cost per firm is multiplied by the number of businesses affected by the regulation.

This results in a **one off familiarisation cost to businesses in Wales of £194,956.** The table below shows the familiarisation cost to industry in Wales and the UK.

**Option 2 - Familiarisation Costs to Industry by Business Size**

<table>
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<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Wales</td>
<td>£163,296</td>
<td>£28,016</td>
<td>£2,926</td>
<td>£718</td>
<td>£194,956</td>
</tr>
<tr>
<td>UK</td>
<td>£3,255,192</td>
<td>£558,462</td>
<td>£58,334</td>
<td>£14,303</td>
<td>£3,886,290</td>
</tr>
</tbody>
</table>

In order for ‘one-off’ familiarisation costs to be compared on an equivalent basis across policies spanning different time periods, it is necessary to ‘equivalently annualise’ costs using a standard formula\(^4\). Under Standard HMT Green book guidance a discount rate of 3.5\% is used.

A total one-off cost to industry affected by this proposal is an estimated £3,886,886. This yields an EAC for of approximately £451,560 in the UK over 10 years, and £22,649 in Wales.

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\(^2\) Wage rate obtained from The Annual Survey of Household Earnings (2011) (http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=15313). Median hourly wage of a production manager (£20.08 which has been up-rated by 30\% to cover overheads: £20.08 * 1.3 = £26.10

\(^3\) 26.10*1=26.10

\(^4\) EACB = PVCB/a\(_r\), Where a\(_r\) is the annuity rate given by:

\[
a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left( \frac{1}{1+r_i} \right)
\]

PVCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.
Costs to Enforcement Authorities

Under Option 2, the FSA would issue new guidance or revise existing guidance to AOs on methods of encouraging FBOs to rectify breaches of the hygiene legislation where corrective action is required immediately and, in their judgment, the existing enforcement powers are ineffective or disproportionate. The statutory Food Law Code of Practice and the Practice Guidance are the two main documents that set out how existing enforcement tools should be used. An amendment to either document would create a familiarisation cost to AOs. It is expected that one AO from each LA will be required to read the new or amended guidance; and disseminate the information to staff. It is estimated that an officer already familiar with the service of RANs will invest approximately 30 minutes reading and familiarising themselves with the guidance, and a further one hour disseminating to other AOs in the LA. This means a total of 90 minutes for familiarisation.

The familiarisation cost per LA is calculated by multiplying the familiarisation time, 90 minutes, by the average hourly wage rate applied to an Environmental Health Officer (EHO) of £20.46\(^5\), generating a familiarisation cost per enforcement authority of £30.69\(^6\). To quantify the overall familiarisation cost to enforcement authorities we multiply the familiarisation cost per LA by the number of LAs in Wales. There are 22 LAs and one Port Health Authority (PHA) in Wales therefore the one-off familiarisation cost for enforcement authorities in Wales is £706.

The 'one-off' transition costs to enforcement authorities are expressed as an equivalent annual cost (EAC)\(^7\). A total one-off cost to enforcement authorities affected by this proposal across the UK is an estimated £14,548. This yields an EAC of approximately £1,548 over 10 years in the UK, which equates to £82 in Wales.


\(^6\) 1.5 hours * £20.46 = £30.69

\(^7\) EACB = PVCB/\(a_{tr}\), Where \(a_{tr}\) is the annuity rate given by:

\[
a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left( \frac{1}{1 + r_i} \right)
\]

PVCB is the present value of costs, \(r\) is the social discount rate and \(t\) is the time period over which the policy is being appraised.
**Total costs**

In Wales, the total one-off cost associated with policy Option 2 is estimated at **£195,662** (Calculated as familiarisation cost to LAs £706 + Industry £194,956).

**Option 3 (Preferred Option)**

**Costs to Industry**

There will be a small one-off cost of familiarisation to businesses that are not subject to approval and that will need to be familiar with the Regulation. As under Option 2, it is estimated that it will be the Business Manager who will be required to familiarise themselves with the Regulation, and that it will take one manager one hour (per business) for familiarisation and dissemination, and that the median hourly wage rate of a Business Manager is £26.10. There are currently around 148,900 food businesses not subject to approval in the UK that are affected by the proposal, 7,468 of these businesses are in Wales. This results in a total familiarisation cost to businesses not subject to approval of £ 194,956 and £3,386,886 in the UK.

In order for 'one-off' familiarisation costs to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs using a standard formula. Under Standard HMT Green book guidance a discount rate of 3.5% is used.

A total one-off cost to industry affected by this proposal is an estimated £3,886,886. This yields an EAC for of approximately £451,560 in the UK over 10 years, and £22,649 in Wales.

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EACB = PVCB/a_r, Where a_r is the annuity rate given by:

\[ a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left( \frac{1}{1 + r_i} \right) \]

PVCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.
It is recognised that these costs represent an over-estimate of the actual familiarisation costs. The extension of RANs does not introduce any new legislative requirements for businesses to comply with, and therefore familiarisation costs should be negligible. RANs would be used only to secure compliance with existing hygiene legislation, which businesses are already required to comply with. However, it is also recognised that some compliant businesses may choose to familiarise themselves with the enforcement powers available to AOs, despite not being required to do so. Due to a lack of evidence on the number of businesses who will choose to do this, an assumption has been made that all businesses will choose to familiarise themselves with the new power. These costs therefore represent an over estimation and the largest potential cost from Option 3.

**Costs to Enforcement Authorities**

There will be a small one-off cost to LAs for AOs to familiarise themselves with RANs, but this will only apply to those AOs who deal only with establishments not subject to approval – i.e. those officers not already familiar with RANs from their use in approved establishments.

It is expected that one AO per LA will be required to read the Regulations and disseminate the information to staff. The amendment to the text of the Regulations is not extensive and we estimate that an officer already familiar with the service of RANs will invest 30 minutes reading and familiarising themselves with the Regulations and revisions to the statutory Food Law Code of Practice and the Practice Guidance, and a further one hour disseminating to other AOs in the organisation\(^9\). This means a total of 90 minutes for familiarisation per LA.

The familiarisation cost per enforcement authority is calculated by multiplying the familiarisation time per LA, 90 minutes, by the average hourly wage rate of an EHO of £20.46\(^10\), generating a familiarisation cost per enforcement authority of £30.69\(^11\). To quantify the overall familiarisation cost to enforcement authorities the familiarisation cost per LA is multiplied by the number of LAs in Wales. There are 22 LAs and one PHA in Wales therefore the one-off familiarisation cost for enforcement authorities in Wales is £706.

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\(^9\) While we recognise that dissemination of information will result in an opportunity cost in terms of time of key staff members we anticipate that this will be minimal and the additional hour will cover these costs.


\(^11\) 1.5 hours * £20.46 = £30.69
The 'one-off' transition costs to enforcement authorities are expressed as an equivalent annual cost (EAC)\(^{12}\). A total one-off cost to enforcement authorities affected by this proposal across the UK is an estimated £14,548. This yields an EAC of approximately £1,690 over 10 years in the UK, which equates to £82 in Wales.

In the event that a business wishes to challenge a RAN, the Regulations provide an appeal mechanism. Appeals are heard by a magistrate. If the magistrate upholds the appeal, the RAN is lifted.

The introduction of a compensation clause will allow compensation for costs to be granted to business at the appeal hearing. If the appeal is upheld compensation will be available for FBOs, imposing a potential incremental cost to enforcement authorities. To obtain an estimate of potential costs associated with this compensation clause the proportion of RANs that will be appealed in non-approved establishments; the proportion of those appeals that are successful; and the average cost of compensation for those appeals that are upheld have been estimated.

The FSA’s surveys of RANs issued by LAs, the Department of Agriculture and Rural Development in Northern Ireland (DARD) and Meat Hygiene Service (MHS)/FSA between 2006 and 2009 looked at data from 377 RANs, none of which had been appealed. These surveys considered information from all 10,000 approved establishments across the UK. The data from LAs was gathered through a survey, based on information on the FSA’s Local Authority Enforcement Monitoring System (LAEMS) database on enforcement activities. LAEMS is a web-based system used to report local authority food law enforcement activities to the FSA. The LAEMS database does not contain detailed information on appeals or compensation, so additional surveys were carried out to gather this data.

FSA historical time series data which relates to the FSA’s own enforcement activities in 1000 approved, MHS/FSA supervised, establishments in GB, has also been considered back to 2003/04. Since 2003/04, 2,193 RANs (or Regulation 10 Notices, as they were known before 2006) have been issued, of which only 2 have been appealed.

\[^{12}\text{EAC} = \frac{\text{PV}}{\text{a}_{tr}}\text{, Where } a_{tr}\text{ is the annuity rate given by:}\]

\[a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left( \frac{1}{1 + r_i} \right)\]

PV CB is the present value of costs, \( r \) is the social discount rate and \( t \) is the time period over which the policy is being appraised.
To obtain a lower bound estimate of the number of appeals for approved and non-approved FBOs, data from the Inter Departmental Business Register (IDBR 2011) and data on the number of RANs issued and appealed has been used. According to the IDBR there are 158,900 food establishments in the UK, of which 10,000 of these require approval. It is therefore estimated that there are approximately 148,900 food establishments in the non-approved sector. There has been a decline in use of RANs in MHS/FSA supervised establishments since 2006/07, partly due to the MHS moving to escalated enforcement action against establishments as appropriate under the hierarchy of enforcement action, and it is envisaged that the number of RANs being issued is now at a stage where it is beginning to level out. On this basis and for the purpose of obtaining consistent and robust estimates, analysis is based on the last two years of data (2009/10 - 2010/11).

Based on these two years of data, it is estimated that approximately 8.5%\textsuperscript{13} of approved establishments would be subject to a RAN, of which 0.6%\textsuperscript{14} would be appealed per year. Assuming a similar percentage of non-approved establishments are likely to be issued with a RAN and to appeal one; it is estimated that approximately 12,660 RANs would be issued to establishments not subject to approval. This is calculated by multiplying the proportion of approved establishments issued with a RAN (8.5%) by the number of establishments not subject to approval (148,900). It is estimated that of the 12,660 RANs issued to establishments not subject to approval, approximately 76 will be appealed. This is calculated by multiplying the proportion of RANs issued to approved establishments that are likely to be appealed (0.6%) by the number of RANs issued to establishments not subject to approval (12,660).

In using the figures from the use of Notices in FSA approved establishments to provide the basis of the analysis, an over-estimation of the number of RANs that will be issued has been made.

The overestimate has been made because it is not possible to provide a like-for-like comparison between approved establishments and non-approved establishments. The FSA has a permanent presence establishments where they are the enforcing authority and will therefore issue Notices to address non-compliances more frequently than where establishments are visited by LA officers as part of an inspection programme.

\textsuperscript{13} \frac{(73 \text{ (RANs Issued 2009/10)} + 97 \text{ (RANs Issued 2010/11)})/2}{1000 \text{ (approved FBOs – survey sample)}} = \frac{85}{1000} = 8.5\%

\textsuperscript{14} \frac{0 \text{ appeals (2009/10)} + 1 \text{ appeal (2010/11)}}{73 \text{ (RANs Issued 2009/10)} + 97 \text{ (RANs Issued 2010/11)}} \times 100 = 0.6\%
In both 2006 and 2009, the FSA’s surveys of RANs showed that LAs issued fewer RANs, despite being responsible for a far greater number of establishments - in 2009, only 53 RANs were issued in 10,000 approved establishments.

This data on RANs is the best data available. The data shows that, historically, very few RANs have been subject to appeal. To provide a sensitivity test, historical FSA data on Hygiene Improvement Notices (HINs)\(^{15}\), which are known to be issued at a higher frequency, and which have historically been subject to appeal more frequently was used. Data collected between 2003/04 and 2010/11 shows that there were 4678 HINs issued in GB by the FSA with only 7 being appealed. (Source: FSA Annual Report 2010/11)

HINs require remedial work to be undertaken, and allow FBOs a minimum of 14 days to take the measures specified in the notice. Any FBO who fails to comply with a HIN is guilty of an offence.

If the FBO disagrees with the decision of the enforcement authority, the FBO may choose to appeal the HIN to a court. This makes the HIN more comparable to a RAN than a HEPN. This is because a FBO is also able choose to appeal a RAN, while a HEPN is always considered by a court after being issued. This is why data on the number of HINs that have been appealed is also included.

Comparing HINs served by the FSA in approved establishments with RANs that might be served in establishments where there is no permanent presence will provide a considerable overestimate of the number of RANs likely to be issued, and must be considered with caution.

Using the number of HINs issued and appealed to provide an upper bound estimates. It is estimated that, on average, approximately 23,824\(^{16}\) RANs would be issued to non-approved FBOs, out of which approximately 223\(^{17}\) would be subject to appeal per annum.

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\(^{15}\) Hygiene Improvement Notices (HINs) can be used as an enforcement tool in circumstances where the FBO refuses to take voluntary action. In contrast to RANs, they permit a minimum of 14 days for the FBO to take corrective action and therefore lack the immediate effect of RANs. Despite this fact we believe they are similar enough to RANs to provide an upper bound value, given their characteristics with regards to the frequency of appeals. For more information on HINs see paragraph 10.

\(^{16}\) \[186 \text{(HINs Issued 2009/10)} + 133 \text{(HINs Issued 2010/11)/2)/} 1000 \text{(approved FBOs – survey sample)} = \frac{(160/1000)}{*} 148,900 \text{(non-approved FBOs)} = 23,824 \]

\(^{17}\) \[3 \text{(appeals)} / (186 \text{(HINs Issued 2009/10)} + 133 \text{(HINs Issued 2010/11)/2)} = (1.5/160)* 23,824 \text{HINs (average annual estimate)} = 223 \text{appeals} \]
It is estimated that, on average, the number of RANs that would be subject to appeal would range between 76 (lower bound) and 223 (upper bound); a best estimate of 150 appeals per annum\textsuperscript{18}.

FSA data shows that no RAN has so far been appealed successfully. The only successful appeal in the data is an appeal against a Regulation 10 Notice in 2005. On this basis it is assumed that between approximately 0.3\%\textsuperscript{19} and 1\%\textsuperscript{20} of appeals would be successful and granted compensation; a best estimate of 0.7\%. Using this best estimate (0.7\%) it is calculated and estimated that the range of the number RANs appealed that are likely to be upheld and result in compensation. It is estimated that the number of successful appeals would range between 1 (lower bound)\textsuperscript{21} and 2 (upper bound)\textsuperscript{22}, a best estimate of 2\textsuperscript{23} per annum.

In the case where an appeal is successful, compensation will be limited to direct costs incurred by the business arising from the issue of the RAN, in the same way that compensation is provided for under HEPN provisions. The compensation awarded in these circumstances will vary on a case-to-case basis. The British Retail Consortium (BRC) have provided figures which show that closing a busy supermarket delicatessen counter would cost approximately £50,000 per week. This is likely to be at the top end of potential costs to business. However, where the food hygiene legislation had not been breached and the business was challenging the enforcement authority over it, it would be unlikely that the RAN would remain in place for a full week before it was lifted.

The only successful appeal was against a Regulation 10 Notice in 2005. This appeal resulted in a cost to the enforcement authority of £21,000. Due to uncertainty around the average cost of compensation per an appeal; the only data available has been used to construct a range of estimates. Taking £21,000\textsuperscript{24} as the lower bound estimate of the cost of compensation per an appeal; and £50,000\textsuperscript{25} as the upper

\textsuperscript{18} 76 (lower bound) + 223 (upper bound)/ 2 = 150 (best estimate) appeals per annum

\textsuperscript{19} 1 successful appeal as per Regulation 10 Notice (proxy for successful appeal)/(186 (HINs Issued 2009/10) + 133 (HINs Issued 2010/11)) = (1/319)*100 = 0.3\%

\textsuperscript{20} 1 successful appeal as per Regulation 10 Notice (proxy for successful appeal)/(73 (RANs Issued 2009/10) + 97 (RANs Issued 2010/11)) = (1/170)*100 =0.6\%=1\%

\textsuperscript{21} 0.7\% (best estimate) * 76 (number of appeals (lower bound)) = 0.53 = 1

\textsuperscript{22} 0.7\% (best estimate) * 223 (number of appeals (lower bound)) = 1.6 = 2

\textsuperscript{23} 1 (lower bound) + 2 (upper bound)/ 2 = 1.5 = 2 successful appeals (best estimate)

\textsuperscript{24} Regulation 10 Notice in 2005 only successful appeal - cost to enforcement authorities of £21,000 (lower bound estimate)

\textsuperscript{25} Based on figures from BRC, which show closing a busy supermarket deli counter would cost approximately £50,000 (upper bound estimate)
bound estimate; it is estimated that the average cost of compensation ranges between £42,000\textsuperscript{26} and £100,000\textsuperscript{27} per annum, a best estimate of £71,000\textsuperscript{28}. This equates to a total cost of approximately £710,000 over 10 years; an annual average cost of £71,000. These costs are presented as indicative estimates only, given the lack of available data, and should therefore be treated with caution.

The total cost associated with policy Option 3 is estimated at between £4,262,957 and £4,762,203 over 10 years (NPV) with a best estimate of £4,512,580; an annual average cost of £46,143.

**Benefits**

**Option 1**

There are no incremental benefits. This option is the baseline for comparison.

**Option 2**

**Benefits to Consumers**

There will be limited improvement in consumer safety from issuing FBOs and enforcement authorities with new or revised guidance on compliance, as guidance is already available to FBOs on meeting legal hygiene requirements. The current enforcement tools would continue to be applied, and there would continue to be a gap in the enforcement powers available to AOs delivering official controls in food establishments not subject to approval.

This option would therefore not meet the policy objective.

**Benefits to Industry**

There would be no benefit to industry from Option 2. Guidance is already available to FBOs on meeting legal hygiene requirements. Refreshed or new guidance might encourage some businesses to take corrective action in circumstances where they have not in the past, but it does not guarantee this.

\textsuperscript{26} £21,000 (lower bound compensation) * 2 (number of successful appeals (best estimate)) = £42,000

\textsuperscript{27} £50,000 (upper bound compensation) * 2 (number of successful appeals (best estimate)) = £100,000

\textsuperscript{28} £42,000 (lower bound compensation) + £100,000 (upper bound compensation)/ 2 = £71,000 (best estimate)
Option 3 (Preferred option)

Benefits to Consumers

Data from UK Health Protection Agencies show that in 2009 there were 97 reported foodborne outbreaks, affecting 3,440 people, with a related economic cost of £1.76 billion in lost earnings and permanent disability to the UK economy. Option 3 could deliver public health benefits as it is likely to reduce health risks to consumers posed by food business operators with poor hygiene practices. However, these benefits are very difficult to quantify due to lack of robust data on the effects of improved hygiene practices.

Benefits to Industry

Industry is likely to benefit from increased consumer confidence in food safety thus facilitating trade. Also the RAN does not lead to a Court hearing for which a food business operator is likely to need to spend time preparing for and attending, and can be lifted quickly and simply when the non-compliance has been resolved.

All FBOs are required to meet the same standards. The extension of RANs will help address those businesses operating who will, or are unlikely to, comply with these requirements voluntarily.

Benefits to enforcement authorities

Long-run improvement in compliance levels enabling enforcement authorities to free up resources and target high-risk establishments.

6. Competition Assessment

The SI is exclusive to Wales, and replicates equivalent legislation being made in Scotland, Northern Ireland and England.

The Food Hygiene (Wales) (Amendment) Regulations 2012 will not limit the number or range of suppliers directly or indirectly nor will it limit the ability or reduce incentives of suppliers to compete vigorously.

7. Small Firms Impact Test

There are no specific or disproportionate impacts on small businesses identified.