

Local Authority (LA) Delivery: Current Situation

1 Purpose of the Paper

1.1 The LA Delivery paper at the March 2022 Board set out in broad terms our planned approach to dealing with the current challenges of LA Delivery. This paper will provide a more detailed analysis of Scottish Local Authority (LAs) Environmental Health Services and provides the Board with a summary of:

- the demand of food law delivery across the 32 LAs;
- the levels of resource for each LA;
- the challenges of maintaining a professional workforce;
- funding of the service; and,
- current and future challenges being faced.

1.2 The Board is asked to:

- **Note** the challenges and fragility of the current Local Authority Food Law delivery framework.

2 Strategic Risk

2.1 The current Strategic risk is identified under Public Sector Resourcing and the risk is defined as:

“Increasing pressures on Local Authorities and FSS result in a delivery model which lacks the resilience needed to meet future challenges”.

2.2 The “risk event” is: LAs are unable to deliver food law requirements as prescribed in the Food Law Code of practice caused by the failure to invest in the training and supply of professional resource, mainly due to funding cuts. The effect being that the demand for professionally qualified staff within LA Environmental Health Services far outstrips supply risking the ability to meet statutory food law intervention requirements and EU Exit requirements to support trade. The likelihood is rated at 5 while the impact is rated at 50 giving it the highest possible risk score of 250.

3 Local Authority Delivery Landscape

3.1 Our Local Authorities (LAs) are responsible for food law across approximately 71,000 registered businesses. This is a diverse environment that includes all of our retail food shops, take away establishments, restaurants, hospitality and catering, food manufacturers, dairy farms, egg packing establishments and fishing vessels. There are a further 697 businesses that are approved to export products of animal origin e.g. fishery dairy and meat products. This diversity requires a highly trained and multi skilled professional workforce which has been in considerable decline during the past decade.

3.2 The delivery landscape within Scottish LA areas differs enormously with a number delivering across vast geographical areas. Highland Council and Argyll and Bute in particular have large distances to travel including outlying Island communities. Delivery

within these LAs is very different to City authorities who face challenges of a different kind mainly related to density of population and a large range of different food business types. Those LAs are more likely to face a different range of public health challenges related to a population living in a built up environment, greater density of poverty and accordingly challenges brought by poor diet and obesity. Geography also impacts upon the nature of food business types. Food businesses working in the fish and shellfish area are concentrated in the North East and West of Scotland, with Aberdeenshire, Aberdeen City, Argyll and Bute, Highland, Western Isles and Shetland sharing the largest number. The Fife and Ayrshire coasts have a number of challenges related to wild shellfisheries and the policing of these has its own difficulties. Wild Game is centred in rural LAs, with Perth and Kinross, Aberdeenshire and Highland the main locations. High risk primary production activities related to soft fruits are concentrated in the middle of the Country with the Fife and Tayside regions largely affected. For many businesses the introduction of seasonal labour, mainly from Eastern Europe, is necessary to maintain production. Large scale manufacturers favour central locations closer to mature transport links and areas where recruitment of staff is more assured.

3.3 Annex A and B provides further detail of the Local Authority Areas and the number of establishments they are responsible for.

4 Local Authority Delivery Framework

4.1 The Food Law Code of Practice (Scotland) 2019 sets out instructions, processes and criteria to which the 32 unitary Local Authorities in Scotland must have regard when they carry out Official Food Controls in their role as Food Authorities. The Code is issued under section 40 of the Food Safety Act 1990, Regulation 24 of the Food Hygiene (Scotland) Regulations 2006, and Regulation 6 of the Official Feed and Food Controls (Scotland) Regulations 2009. Scottish Ministers are empowered to issue Codes of Practice concerning the execution and enforcement of Food Law by Food Authorities. In turn, Food Authorities are required to have regard to the Code when discharging their duties, and must follow and implement the provisions of the Code that apply to them. The Code also reflects the Scottish Government's approach to Better Regulation as set out in the Scottish Regulator's Strategic Code of Practice.

4.2 The current version of the Code was published in January 2019, with the Interventions Food Law Code of Practice (Scotland) published in July 2019.

5 Local Authority Resourcing

5.1 Food Standards Scotland and Scottish Government have both recognised the increase in challenge with the provision of professional staff resource and a lack of a sustainable supply of qualified Environmental Health and Food Safety Officers. As reported in December of 2021 LAs had 202 Full-time Equivalent (FTE) qualified Officers in post to deliver the demands of the Food Law Code of Practice. They carry a deficit of 60 FTE vacancies and report an estimated resource requirement to fulfil all food law and EU exit requirements totalling 380 FTE. This presents a deficit of 178 FTE or 87% which is alarming and provides strong evidence that our current model is at tipping point in terms of sustainability. Further evidence of LAs struggling to deliver has been found during FSS Audit of their delivery function where two LAs in particular are at point of failure.

5.2 The risk of allowing this to continue undermines Scotland's ability to protect consumer interests in relation to food, presents risk to public health as a result and potentially could lead to Scottish exporting businesses being rejected from importing country lists.

5.3 Food law official controls are delivered by the Environmental Health Services within LAs. Officials delivering these controls must meet the qualification standards set in the Food Law Code of Practice. To meet the standard required, officials must be qualified Environmental Health Officers or Food Safety Officers. The Royal Environmental Health Institute for Scotland is the professional body that governs the qualifications and set the professional examinations in Scotland. Over several years local authorities have been subject to financial constraints and that has severely impacted on regulatory services. Specific local authority services have been 'protected', for example education and social work meaning that the financial cuts in these services are less and other services are subject to disproportionately high cuts. Although protected to an extent, Environmental Health Services have been subject to significant and sustained cuts. This has contributed to the evolution of linked workforce problems; the number of funded posts has been reduced; when a vacancy does arise it is not filled; and training posts become less available as these are cut to reduce service costs. As a result of the absence of a training route to become a fully qualified Environmental Health Officer (EHO) in Scotland the number of students enrolling on the academic course has reduced to a critical level (see Annex D). The figures reflecting the age of EHO's each year over the last 4 years, shows an increasing number in the higher age bracket, with fewer young professionals (See Annex C). The lack of a sustainable supply of qualified Environmental Health Officers is a risk to the delivery of effective health protection services in Scotland. Within environmental health services, there are an insufficient number of Food Safety Officers qualified to carry out all food law activities, which has the potential to have a significant impact on the way food law provisions are delivered in the future. Food Law provision is a key aspect of environmental health service delivery and a public health protection measure.

5.4 This situation is not confined to Scotland with similar challenges being faced across the UK.

6 Local Authority Funding

6.1 Scottish Government provide a block grant to local authorities of approximately 85% of their net revenue expenditure, with the remainder coming mostly from local taxation, i.e. council tax. This arrangement was agreed as part of the joint service delivery relationship established under the Concordat agreement of 2007, and updated as part of the agreement reached in various spending reviews. The Concordat gave councils greater control over their budget, by removing 'ring-fencing' of funding for specific purposes and therefore enabling local management and prioritisation of their services. The amount each local authority receives is determined via the Grant Aided Expenditure (GAE) calculations and projections. GAE figures determine what share of the total revenue funding each local authority should receive on the basis of relative need. In real-terms there has been a reduction in local authorities' spending power. Local authorities have protected spending on high priority service areas such as adult and children's social care where they have significant statutory responsibilities, and as a consequence the amount they spend on other areas has fallen .

6.2 In early 2022 the FSS Enforcement Delivery Branch conducted an exercise to estimate the cost of conducting Food Law interventions.

6.3 The table below provides figures for estimated current investment based on the current number of staff, the investment figure where all vacant posts are filled and the investment required to deliver an adequately resourced workforce capable of delivering the Code of Practice in full.

6.4 Estimated Existing Funding and Requirement

A Current FTE and cost	B Funded FTE Posts and Cost	C Required FTE Posts and Cost
202 FTE	262 FTE	380 FTE
£11.2m invested	£14.24m invested	£23.5m invested

6.5 It should be noted that many LAs have budget available to recruit posts however despite repeated recruitment exercises they have been unable to attract suitably qualified officers mainly due to the acute shortage of available professionals.

7 Local Authority Challenges

7.1 EU Exit

7.1.1 The departure from the European Union has increased focus on LA food law activities and exposed issues related to capacity and capability within this delivery model.

7.1.2 The impact is not equal across all LAs with some reporting minimal disruption. For others the impact of delivering Export Health Certification (EHC) and/or support attestations in the fishery products sector has brought other core statutory food law functions under pressure with disruption of delivery in other areas expected. This is particularly the case for the LAs with the greatest number of approved fishery product establishments. The greatest density of these are located in Aberdeenshire, Aberdeen City, Highland, Argyll and Bute and Shetland although there is also significant activity across Fife, Ayrshire, Moray and Dumfries & Galloway. The Export Hub locations that centralise the administration of EHCs have assisted greatly in reducing the burden that local certification of all consignments would otherwise require. However LAs still require to provide support attestation documents for businesses using the Hub facilities. It is also important to note that the Hubs provide support for consignments entering the EU, they do not alleviate any pressure for locally supplied EHCs for other Countries that the UK is increasingly trading with e.g. China, United States.

7.1.3 In addition to export certification there is an expectation that LAs will conduct inspections required as a condition for pre-export approval and continued export. This is currently not being done.

7.1.4 There will be an impact upon LA's acting as Food Import destinations. To date 16 applications for Border Control Posts in Scotland have been received. Of these 4 have been approved and designated. These will all require LA resource to conduct Imported Food and Feed checks.

7.2 Covid – 19

- 7.2.1 Local Authority Environmental Health and Trading Standards services are authorised to enforce The Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020. They were key enforcers of the Scottish Governments Covid-19 control Strategic Framework and until the recent relaxation of protective measures they continued to be involved in enforcement of the Regulations and local outbreak investigations.
- 7.2.2 At the start of the Pandemic, FSS provided flexibility from the Food Law Code of Practice as agreed by the Minister to allow resource availability for tackling the public health crisis. This flexibility continued for almost a year and a half with FSS working with LAs on a re-start programme of work in an effort to assist LAs in recovering the backlog of missed interventions in a planned, controlled and uniform manner. LAs have now re started their intervention programmes, however it is likely to take considerable time, estimated at 18 – 24 months until any normalcy is returned.
- 7.2.3 The work that Environmental Health Officials undertook during the pandemic has led to heightened visibility and focus on Environmental Health as key public health professionals and concern Scottish Government wide about LA capacity.
- 7.2.4 As a result Scottish Government commissioned their Organisational Readiness team to convene a working group to consider capacity of the Profession. This group is still on-going with work focussing on training pathways, entry routes and encouraging more academic institutions to offer professional degree and postgraduate courses.

7.3 Domestic changes introduced by FSS

- 7.3.1 On the establishment of Food Standards Scotland in 2015 a number of initiatives were delivered to improve the delivery of food law official control activity.
- 7.3.2 The design and implementation of the Food Law Rating System (FLRS) was a significant step forward. This system brings together hygiene and standards under one Food Law inspection and applies a risk-based approach according to the type of business. It is designed to ensure that resources are focused on the highest risk establishments and that food standards issues are given appropriate scrutiny. Whilst the approach has been welcomed it is reported that FLRS required additional resource to implement effectively. FLRS will be subject to scrutiny by FSS audit team to assist in evaluating its effectiveness and its impact.
- 7.3.3 Official Control Verification (OCV) is a more thorough approach to the assessment in relation to approved establishments. This is a scientific based approach to the assessment of such establishments and provides a methodical approach to ensuring compliance with the regulatory requirements, secures a high level of public health protection and protects the reputation of Scottish food businesses. The system was developed due to criticism from The EU Commission Santé F Directorate and third country auditors who were not content with the level of scrutiny applied. Once fully implemented across all Scottish LAs, it will ensure a high level of consistency in the standards applied. It does require a greater level of resource than was previously applied, but delivers an assurance of effective controls that

underpins both consumer confidence domestically as well as confidence in the Scottish food sector for export markets supporting future growth. LAs are in various stages of implementation dependent upon the number of establishments they have and the inspection cycle. It is being applied as inspections are due and when new approval applications are received.

- 7.3.4 In October last year the new rules related to full ingredient labelling for allergens in pre-packed for direct sale products came into force. This has added to the inventory of regulations for which LAs are responsible.
- 7.3.5 Future rules and regulations are also expected in areas such as price promotions with other initiatives expected to support the Scottish Governments Obesity Strategy. These are expected to fall to LAs to deliver locally.
- 7.3.6 The continued reliance on Environmental Health Services across the broad range of duties in addition to food continues. For example LAs will be responsible for undertaking assessment of the standards of domestic accommodation being made available for Ukrainian refugees under the 'Homes for Ukraine' scheme. It is understood that more than 19,000 properties are being made available under the Scottish Government Super Sponsor scheme in addition to those under the UK Homes for Ukrainians scheme.
- 7.3.7 The emergence of Monkey Pox may also require local mitigation measures the controls of which are time consuming, complex and costly.
- 7.3.8 While some LAs may be able to protect front line food officers from facilitating this work others will rely on all their officers regardless of their main duties to deliver Government expectations.
- 7.3.9 In general terms LAs continue to navigate a rapidly changing food environment with massive growth of online food sales, domestic production and food delivery services most of which happened during the Covid-19 Pandemic.

The current framework for delivery of interventions is based on a traditional model that originated in the 1990's. Other European Countries and the United States have shown that modernisation is possible. Scotland has an opportunity to rebalance towards a risk based approach using intelligence and technology to improve efficiency and target resource.

8 Local Authority Audit

- 8.1 FSS has a statutory responsibility to monitor the performance of LAs in delivering food law. This is done through the collection of quantitative data and through a formal audit assurance programme.
- 8.2 Findings from assurance audits over recent years have highlighted concerns over the capacity, and capability of LAs to deliver food law. Once audits are complete LAs are required to put in place an action plan to address any recommendations raised. Implementation of these action plans is subsequently monitored by FSS. It has been evident recently that FSS audit intervention has helped LAs focus attention and resource to address some significant long term issues which may not have otherwise been addressed.

8.3 Capacity/Capability Audits and “Temperature Check” Surveys carried out by the FSS Domestic Assurance team have confirmed that, as indicated above, the capacity challenge is the primary issue which is leading, or has now led, to an inability to deliver in full the requirements of the Food Law Code of Practice.

8.4 Of the three audits completed since last Summer, two have been allocated an Insufficient Assurance rating indicating that “there are significant weaknesses in the current risk, governance and/or control procedures, to the extent that the delivery of objectives is at risk”

8.5 It is also considered that as a direct and indirect result of this Capacity issue, there have been significant impacts across LAs on both Capability and Competence. Of particular note:

- i. An over-reliance on the Lead Food Officer Role
- ii. A lack of succession planning and resilience
- iii. Skills erosion as experienced staff are replaced by inexperienced (both from a technical and management skill perspective)
- iv. Significant additional capacity issues with IT and admin support
- v. Issues with Management Information Systems (MIS) reliability, usability and reporting functionality
- vi. A lack of internal qualitative and quantitative monitoring
- vii. Out of date staff authorisations, local working instructions and policies
- viii. Concerns over local ability to deliver new expectations (FLRS, OCV, Allergens etc.)
- ix. The impact of competing priorities (e.g. Export Health Certification, Planning issues, Ukraine).

9 FSS Initiatives to support LAs and continue to modernise the delivery framework

9.1 The Corporate Plan for this year (22/23) identifies a range of measures to help modernise the current framework. These include:

- a) monitor the reinstatement of official control delivery at food establishments across Scotland including the gathering of re start data via regular temperature check questionnaires and data on estimated future resource requirements;
- b) modernise the Primary Production enforcement regime delivered by LAs to target resource at high risk areas and allow remote intervention where appropriate;

- c) consideration of long term funding mechanisms for LA via development of a framework for Official Control cost recovery;
- d) Data and Digital Strategy - Developing a new data/ digital strategy for FSS which aims to improve the linkage and use of data sets across all areas of FSS business. An effective data/digital strategy is needed to assist in identification of and hence targeting intervention activity at high risk businesses;
- e) Horizon Scanning and Surveillance – Ensuring we have the appropriate processes in place for identifying emerging and future risks to the food chain and sampling strategies for assessing potential impacts on Scotland;
- f) Provide an effective Food Law Business Portal to assist business compliance and assist LAS in management of new businesses and in the provision of business support and education; and
- g) Development of an Enforcement Delivery Re-Balance Strategy. This Blue Print will consider initiatives to modernise the current delivery model and developing a system that targets resources more effectively.

10 Risk Appetite

- 10.1 The Board undertakes a regular review of its risk appetite and LA delivery is at the highest level of risk. The direct levers of managing this risk lies with LAs rather than FSS and despite the changes we have made to help improve the current system, the audits are demonstrating that the risks are materialising more frequently. The key question for the Board is whether the current situation changes the Board's risk appetite.
- 10.2 The Executive has considered the risk appetite statement and the reality of where we are suggests that in the areas of Public Health/Consumer Protection, where the current appetite to material risks that have potentially significant impact on public health is "averse", we are demonstrating more risk tolerance than the appetite suggests. On that basis the Board can either stick with the original appetite or amend it. Amending it gives the Executive a bit more latitude in terms of managing the risk; if the Board are content that it does not change, then the Executive will take that decision to reinforce our concerns at various levels of Government, including of course Board inter-action with Government officials and Ministers.

11 Next Steps

11.1 The Board will receive a series of papers during 2022 to inform them of LA Delivery matters and to outline proposals for modernisation and re-balance of the current delivery framework for Board discussion.

12 Equality Impact Assessment and Fairer Scotland Duty

12.1 Completion of an Equality Impact Assessment (EQIA) and a Fairer Scotland Duty Assessment are not required for this paper.

13 Conclusion/Recommendations

13.1 Current LA delivery continues to be the highest strategic risk caused by the pressures of a significant lack of resources as well as the impact of Covid-19, EU Exit and increasing demands for support to government initiatives on existing requirements under current Food Law.

13.2 The Board is asked to:

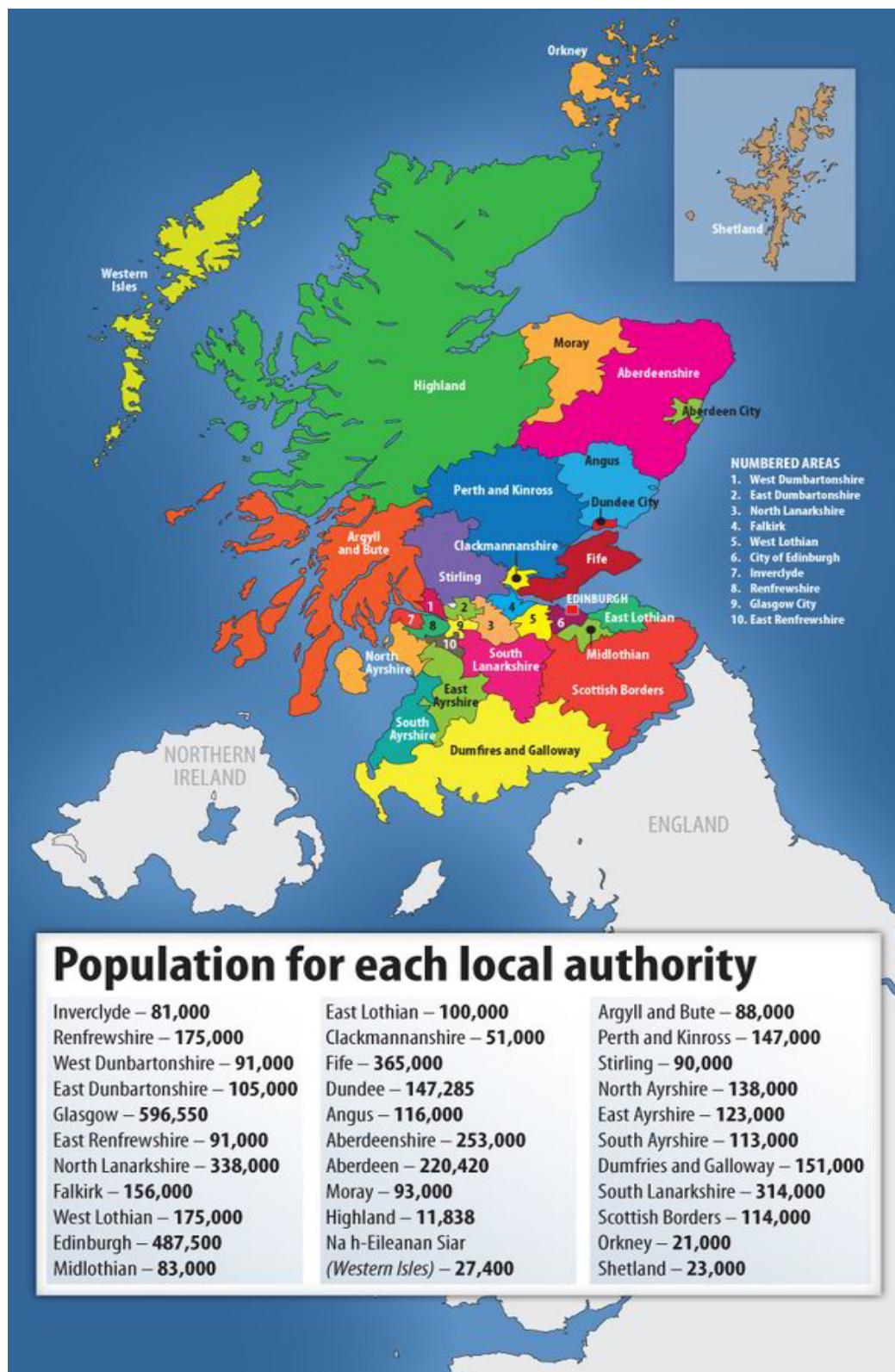
- **Note** the challenges and fragility of the current Local Authority Food Law delivery framework.

Please direct queries to:

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ANNEX A

Map of Scottish Local Authority Areas and Population



ANNEX B
Local Authority Businesses and Number of staff December 2021

Local Authority	Number of registered food businesses	Number of approved establishments	Total Number of Establishments	Professional food law staff in place
Aberdeen City	2542	32	2574	6.75
Aberdeenshire	3748	76	3824	11.6
Angus	1650	13	1663	6.16
Argyll and Bute	2674	58	2732	7.5
Clackmannanshire	615	1	616	3.7
Comhairle Nan Eilean Siar	992	34	1026	2.18
Dumfries and Galloway	2533	37	2570	3.5
Dundee	1564	5	1569	6.9
East Ayrshire	1333	14	1347	5
East Dunbartonshire	981	2	983	2.4
East Lothian	1212	8	1220	5.4
East Renfrewshire	854	0	854	2.7
Edinburgh City	5961	11	5672	15.2
Falkirk	1484	7	1491	7.2

Fife	5227	36	5263	15.63
Glasgow	7277	33	7310	21.7
Inverclyde	700	3	703	2.02
Highland	4356	74	4430	9.1
Mid Lothian	1013	11	1024	2.8
Moray	1508	11	1519	3
North Ayrshire	1470	10	1480	5.4
North Lanarkshire	2519	20	2539	15
Orkney	639	30	669	2
Perth & Kinross	1895	8	1903	5.5
Renfrewshire	1719	7	1726	5.25
Scottish Borders	2159	30	2189	2.5
Shetland	631	21	652	2.5
South Ayrshire	1742	25	1767	4.6
South Lanarkshire	2786	26	2812	10.3
Stirling	1656	5	1661	2.2

West Dunbartonshire	826	5	831	2.35
West Lothian	1773	13	1786	4.8

ANNEX C**Numbers of Environmental Health Professionals 2016 - 2021**

These figures are collated by The Society of Chief Officers of Environmental Health in Scotland from LAs and reflect the total number of qualified Officers. These Officers may work in other disciplines of Environmental Health rather than be employed in direct food law duties.

EH Age Range	2016	2017	2018	2019	2020	2021
21-34	102	78	73	68	62	59
35-49	410	365	329	309	298	253
50-54	162	160	170	168	161	167
55-59	128	128	132	143	140	116
60+	56	56	59	62	62	85
Total	858	787	763	750	723	681

ANNEX D**Total number of EH students/graduates in training**

A total of 8 students of Environmental Health and Food safety have recently qualified sitting their professional examinations in April 2022. These graduates all had trainee posts and are working within their LA areas. There are 3 Environmental Health students in their 4th year, 14 in 3rd year, 15 in year 2 and 5 in year 1 so in 4 years' time a total of 37 if all qualify and choose to work within a Local Authority setting.

