

Inverclyde Council – Audit of Local Authority implementation of Interventions Food Law Code of Practice (Scotland)

Food Law Enforcement Services

August 2022

Final Report issued 04th January 2023



Foreword

Audits of Local Authorities food law enforcement services are part of Food Standards Scotland's arrangements to improve consumer protection and confidence in relation to food and feed. These arrangements recognise that the enforcement of UK food law relating to food safety, hygiene, composition, labelling, imported food and feeding stuffs is largely the responsibility of Local Authorities. These Local Authority regulatory functions are principally delivered through Environmental Health and Trading Standards Services.

The audit scope is detailed in the audit brief and plan issued to all Local Authorities under reference [FSS/ENF/22/011](#) on 22 July 2022. The main aim of the audit scheme is to maintain and improve consumer protection and confidence by ensuring that Local Authorities are providing an effective food law enforcement service. This audit was developed to verify and validate the implementation by Local Authorities of the following planned arrangement: the Interventions – Food Law Code of Practice (Scotland) 2019 (hereafter referred to as the Interventions Code 2019).

The Audit scheme also provides the opportunity to identify and disseminate good practice and provide information to inform Food Standards Scotland policy on food safety, standards and feeding stuffs.

Specifically, this audit aimed to;

- Verify that Local Authorities have implemented the Interventions Code 2019 and fully transferred all applicable food establishments to a food law risk rating.
- Verify Local Authorities' application and adherence to the Interventions Code 2019.
- Identify and disseminate good practice applied by Local Authorities.
- Identify information, evidence and potential recommendations to aid future Food Standards Scotland's policy and operational development.

Food Standards Scotland audits assess Local Authorities' conformance against retained [Regulation \(EU\) 2017/625](#) and the [Food Law Code of Practice \(Scotland\) 2019](#) and the [Interventions Food Law Code of Practice \(Scotland\) 2019](#)

It should be acknowledged that there will be considerable diversity in the way and manner in which Local Authorities may provide their food enforcement services reflecting local needs and priorities.

Following the audit, it is expected that for any recommended points for action the

Local Authority will prepare and implement an action plan, which will incorporate a root cause analysis of any non-compliance.

Root cause analysis is a technique that senior management should use to identify the root causes of non-conformities identified at the audit have been effectively addressed. An important aspect is that there is a need to ensure that the non-conformity does not recur. This should be achieved by the accurate identification of the cause(s) of the non – conformity (i.e. the root cause) and the introduction of effective preventative action.

Contents

1.0	Introduction	5
2.0	Executive Summary	7
3.0	Audit Findings	8
3.1	Section 2. Registration of Food Business Establishments	8
3.2	Section 3. Interventions	9
3.3	Section 4. Food Law Rating System	10
3.4	Section 5. Action Following an Intervention: Minimum Standards of report writing and record keeping	11
3.5	Section 6. Internal Monitoring	12
3.6	Section 7. Items to take back to FSS	13
4.0	Annex A – Action Plan	15
5.0	Acknowledgements	18

1.0 Introduction

- 1.1 The primary objective of this audit was to verify and validate the implementation by Local Authorities of the following planned arrangement: the Interventions – Food Law Code of Practice (Scotland) 2019 (hereafter referred to as the Interventions Code 2019).
- 1.2 The Interventions Code 2019 was issued under Section 40 of the Food Safety Act 1990 (“the Act”), Regulation 24 of the Food Hygiene (Scotland) Regulations 2006 and Regulation 6 of the Official Feed and Food Controls (Scotland) Regulations 2009, which empowers Scottish Ministers to issue Codes of Practice concerning the execution and enforcement of Food Law by Food Authorities.
- 1.3 The Interventions Code 2019 sets out instructions, processes and criteria to which Food Authorities are required to have regard to when they carry out Official Controls relating to all Registered Food Businesses. The Interventions Code 2019 does not apply to establishments at the level of Primary Production or Approval.
- 1.4 Implementation of the Interventions Code 2019 represents Phase 2 of a wider project by Food Standards Scotland to review and overhaul the Food Law Code of Practice (Scotland) 2019.
- 1.5 The Interventions Code 2019 introduced the Food Law Rating System (FLRS). The FLRS combines the rating systems for Food Hygiene and Food Standards into one Food Law Intervention scheme based upon a new Food Business Performance Model that targets resources on high to medium risk and non-compliant businesses. The initial agreed implementation date was 1st July 2019 with ratings to be assigned as Inspection Programmes progressed. Further detail is provided within [FSS-ENF-19-007](#).
- 1.6 During the Covid-19 epidemic Inspection Programmes were halted but as part of the Covid-19: Local Authority Recovery project, four deadlines were set by which Local Authorities were required to undertake specific tasks. Two of these deadlines related specifically to implementation of the Code with a target completion date of 1st July 2021:
 1. Desktop Transfer (of Registered Businesses to FLRS)
 2. Creation of an Intervention Programme (as required by the Interventions Code)
- 1.7 The audit aim will primarily cover the following points:

- Verification that official controls are being carried out in compliance with planned arrangements.
- Verification that planned arrangements are applied effectively.

1.8 The final report will be made available on the Food Standards Scotland website at: www.foodstandards.gov.scot/food-safety-standards/regulation-and-enforcement-food-laws-scotland/audit-and-monitoring#la

Reason for the Audit

- 1.9 The provisions for exercising the audit function are provided for in Article 3 of the Food (Scotland) Act 2015. Under that Article, the general functions of Food Standards Scotland include a requirement to monitor the performance of, and promote best practice by, enforcement authorities in enforcing food legislation. Similar powers are also contained within Regulation 7 of the Official Feed and Food Controls (Scotland) Regulations 2007.
- 1.10 Retained Regulation (EU) 2017/625 on official controls performed to ensure the verification of compliance with feed or food law also includes a requirement for competent authorities to carry out internal audits or to have external audits carried out.
- 1.11 To fulfil this requirement Food Standards Scotland, has established external audit arrangements in respect of competent authorities. These arrangements are intended to ensure competent authorities are providing an effective and consistent service for the delivery of official controls and are meeting the general criteria laid out in retained Regulation (EU) 2017/625.
- 1.12 The previous Audit of Inverclyde Council's Food Service was undertaken by Food Standards Scotland in January 2017. The food related audit prior to that was in 2015.

Scope of the Audit

1.13 The audit scope covered:

- Verification that Local Authorities have implemented the Interventions Code 2019
- The verification of application and adherence to, the Interventions Code 2019
- An assist in the identification and dissemination of good practice with regards to the Interventions Code 2019

- The provision of information, evidence and potential recommendations to aid future FSS policy and operational development.

- 1.14 The audit examined Inverclyde Council's arrangements for official controls in relation to Retained Regulation (EU) 2017/625, the Interventions Food Law Code of Practice (Scotland) 2019 and the Food Law Code of Practice (Scotland) 2019 on the verification of compliance with feed and food law.
- 1.15 The audit took place on-site over the course of two days.

2.0 Executive Summary

- 2.1 The Authority has an up to date (2022/2023) Service Delivery Plan in place. The Service plan was well documented, adequately resourced and approved, however, certain requirements of the code of practice such as incorporating new Food Businesses and revisits were not documented.
- 2.2 Although it appears that all requirements of new Food Business Registration are followed by the Authority, there was no documented procedure on Food Business Registration. An up to date list of registered food establishments within the Local Authority area is available upon request.
- 2.3 All applicable food establishments within the Local Authority area are now receiving a food law intervention as per the Interventions Code 2019. The Authority has followed the Local Authority Recovery Programme post pandemic and is currently inspecting businesses in Priorities 3 & 4 of the programme.
- 2.4 No specific timescales for corrective actions were being highlighted in inspection reports. At the conclusion of every Intervention, an Authorised Officer should document and discuss any contravention of Food Law with the Food Business Operator (FBO) highlighting the timescale for corrective action.
- 2.5 Revisits were not carried out for a small number of interventions reviewed. It is recommended that revisits are carried out where required and in line with the Code of Practice.
- 2.6 The Authority has an internal quality monitoring system in place, however, this work ceased during the pandemic and has not been reinstated in full.
- 2.7 Verification checks were carried out professionally and in accordance with the Interventions Code 2019 and Food Law Code of Practice (Scotland) 2019.

Level of Assurance

2.8 As detailed in the Audit Charter Document of March 2020 (reference FSS/ENF/18/001) the audit has been assigned as below:

Reasonable Assurance Controls are adequate but require improvement	Some improvements are required to enhance the adequacy and effectiveness of procedures. There are weaknesses in the risk, governance and/or control procedures in place but not of a significant nature.
---	--

3.0 Audit Findings

3.0 The findings reported below detail both corrective and preventive actions which are not confined to addressing specific technical requirements, but also include system-wide measures. Conclusions address the compliance with the planned arrangements, the effectiveness of their implementation and the suitability of the planned arrangements to achieve the stated objectives as appropriate.

3.1 Section 2. Registration of Food Business Establishments

Section	Audit Findings – Food Business Registration
2	<p>An online Food Business Registration service is available on the Local Authority’s website. This briefly highlights the legal requirement of registration and provides the department’s contact details if further information or assistance with the process is required by Food Business Operators.</p> <p>The Food Business Registration form provided covers all the requirements of registration as outlined in the Code of Practice.</p> <p>An up to date list of registered food establishments within the Local Authority area is available upon request and the Authority has data analyst support within the department who can easily run this list along with other Management Information System (MIS) reports.</p>
2	<p>Although it appears that all requirements of new Food Business Registration are followed by the Authority, it was acknowledged that there was not a dedicated procedure on Food Business Registration at the time of the audit. It is recommended that a procedure is put in place documenting the Registration process and detailing the requirements set out in Section 2 of the Interventions Code. (See Recommendation 1).</p>

Recommendation

1. Provide a Food Business Registration Procedure.

3.2 Section 3. Interventions

Sub section	Audit Findings – Service Planning, Interventions Programme
3.1.5	The Authority provided a current 2022/2023 Service Delivery Plan which was determined by the Authority as adequately resourced and approved by the Environment, Regeneration & Resources Committee in August 2022.
3.8.2	The Service Plan did not contain details of new Food Business establishments and how these are to be included in the intervention programme. As per the Interventions Code 2019, the Authority’s Service Plan must contain details on how new Food Business establishments are to be included in the Authority’s planned Intervention Programme. (See Recommendation 2).
3.1.6	The Service Plan included a detailed intervention programme outlining the Food Business establishment profile and the number of interventions programmed for the current year. However, it did not include an estimation of the number of revisits that will be made. It is recommended that this figure be estimated and included in the intervention programme. (See Recommendation 3).
3.11	The Authority has documented its out of hours requirements in its service plan. The normal working hours are 8am – 6pm Monday – Friday, however, staff carry out a number of enforcement visits out of hours and at weekends.
3.3	Inspections are carried out without prior warning and this requirement is documented in the Authority’s food law inspection policy. If an appointment is made, the date and/or timing of the inspection shall be arranged for the optimum time to allow specific processes or operations to be viewed in line with the purposes of the inspection, or for personnel to be in attendance with time available for the inspection process and discussions.
3	The Authority has a comprehensive Food Law Inspection Policy which details the requirements and responsibilities involved in delivering programmed food law inspections in accordance with the Food Law Code of Practice (Scotland) 2019 and the Interventions Code 2019.
3.7	Two unannounced verification checks were carried out during the audit. The first was a revisit to a retail corner shop with an onsite deli style kitchen, serving breakfast rolls and prepacked sandwiches. The officer had carried out a programmed inspection earlier in the month and a

	<p>number of food law contraventions were followed up with. The officer demonstrated a good knowledge of the legislative requirements and specifically issues relating to allergens and new legislative requirements for prepacked for direct sale products.</p> <p>The second verification check was also a revisit. This visit was chosen as there were food standards issues noted on the last programmed inspection that required a follow up. Upon arriving at the establishment, there had been a change in management since the last inspection. The officer conducted the visit appropriately and professionally, addressing all previous food law matters and dealing with issues arising during the visit.</p>
--	--

Recommendation	
2.	Ensure the Service Plan details how new food businesses will be incorporated into the Intervention Programme.
3.	Include an estimation of the number of revisits that will be made in the Intervention Programme.

3.3 Section 4. Food Law Rating System

Sub Section	Audit Findings
3.7.1	All food establishments (<i>with the exception of Approved establishments and primary producers</i>) are now receiving a full food law intervention as per the Interventions Code 2019. The desktop transfer was completed as part of the Local Authority Recovery Programme. Priorities 1 & 2 of the Recovery Programme have been achieved and the Authority is currently working in Priorities 3 & 4.
3.7.1 & 4	<p>Ten food business establishments were selected for review during the audit. The last intervention for each of the ten premises was assessed by means of its accompanying documentation and computer record. For all ten establishments, the last inspection form, letter and risk rating was assessed for compliance against the standard of the Interventions Code of Practice 2019.</p> <p>All seven compliance categories as outlined in the Interventions Code compliance matrix were found to be assessed and a food law risk rating allocated correctly.</p>
3.7.3 & 4.1	An appropriate and detailed food law intervention form is used by officers to gather and record information on the inspection. The form is completed online and is coded with standard phraseology with the option to also insert an officer's own wording. Of the inspection forms assessed, detailed notes were recorded along with the scope of the inspection, and

	<p>demonstrations were made of both compliance and non-compliance with food law.</p> <p>It was, however, noted on review, that the inspection form does not identify the risk rating given after the intervention. For the purposes of quality management, it is recommended that the risk rating is recorded on the inspection form and clearly illustrates how the score is being derived from the evidence gathered and documented on the inspection form.</p> <p>As per the Authority's inspection form, there is a requirement to review two high risk allergen meals / new menu items for compliance against food standard allergen information. This was noted by the auditors as a good practice, however, for five inspections reviewed, the inspections forms showed that this was not being completed. We recommend that this assessment is made during all food law inspections and recorded appropriately on the inspection form.</p>
2.3.1	The Authority does not implement an alternative enforcement strategy for Group 3 Band A rated establishments. All registered food establishments within Inverclyde Council receive an intervention in accordance to its risk rating frequency.

Recommendation

There were no recommendations for this section.

3.4 Section 5. Action Following an Intervention: Minimum Standards of report writing and record keeping

Sub Section	Audit Findings
6.1	The outcome of every programmed inspection assessed was reported in writing to the FBO by means of a letter following the inspection. These were all reported in a timely manner and documented the contraventions found and also included recommendations of good practice.
4.1.10 & 14.6.2 Food Law Code of Practice	It was found during the intervention documentation review that specific timescales for corrective actions were not being provided. For nine of the ten inspections reviewed, there was no specific timescale for corrective actions provided for the contraventions highlighted. The Authority instead provide a standard paragraph at the end of the schedules which states that the requirements should be addressed by the time of the next inspection and where compliance with legislation has been found to be poor, a revisit may be carried out. For some more serious contraventions for example cross contamination, there was no prioritisation given for the businesses as to which contraventions needed to be addressed

	immediately or within a dedicated timescale. At the conclusion of every Intervention, the Authorised Officer should document and discuss any contravention of Food Law with the FBO highlighting the timescale for corrective action. (See Recommendation 4).
4.1.10 & 28.4 (Food Law Code of Practice)	Of the interventions reports reviewed, four interventions were awarded an Improvement Required rating under the Food Hygiene Information Scheme (FHIS) and did not have a planned revisit scheduled or carried out. Where a business is allocated an FHIS Improvement Required rating, it states that major contraventions or reoccurring contraventions from previous inspections affecting consumer safety have been found. This would indicate that there are contraventions that need to be addressed either urgently or within a timely manner. It is the auditors' recommendation that the Authority's policy is updated to reflect the requirements of the code and Food businesses that fail to comply with significant or serious statutory requirements must be subject to appropriate enforcement action and revisit inspection. (See Recommendation 5).
6.1.2	It was found during the review, that inspection letter headings reference food hygiene legislation. Inspection letters should be reviewed to include referenced headings to food law legislation. (See Recommendation 6).

Recommendation

4. A timescale for corrective action should be highlighted to the Food Business Operator for Food Law contraventions.

5. Revisits should be carried out where there is failure to comply with significant and serious statutory requirements or a number of requirements that taken together indicate ineffective management.

6. The inspection letter requires a review and update to include references to Food Law.

3.5 Section 6. Internal Monitoring

Section	Audit Findings
39 Food Law Code of Practice	The Authority's service plan states that there is a system for monitoring the quality of Food Hygiene inspections. However, this has not being carried out since food law interventions restarted post pandemic. To ensure that officers are scoring consistently and for areas mentioned above, such as timescales and that revisits are carried out, the auditors recommend that quality checks and internal monitoring checks are reinstated to ensure consistency across the service and to ensure that any issues are identified and corrected where required. (See Recommendation 7).

Recommendation

7. Re-establish the internal monitoring system.

3.6 Section 7. Items to take back to FSS

Section	Audit Findings
	No items were raised in this section.

4.0 Annex A – Action Plan

Action Plan for Inverclyde Council’s Audit of Local Authority Implementation of Interventions Food Law Code of Practice (Scotland).

Inverclyde Council Recommended Point for Action	Planned Actions	Target Date for Completion	Responsible Officer(s)
1. Provide a Food Business Registration Procedure.	Draft procedure has been completed.	Completed	Team Leader Health Protection
2. Ensure the Service Plan details how new food businesses will be incorporated into the Intervention Programme.	Will include a paragraph in the Service Plan for next year as to how new food businesses are incorporated in the Intervention programme.	Completed	Environmental Health Officer
3. Include an estimation of the number of revisits that will be made in the Intervention Programme.	Will use this year’s revisit number as a guide to project into next year’s plan. However, this may have to be adjusted as this year’s inspections include many historically poor premises (e.g., takeaways) which hadn’t been inspected since pre-COVID which may give an unrepresentative figure for revisits. Will assess at year end.	Completed	Environmental Health Officer

Inverclyde Council Recommended Point for Action	Planned Actions	Target Date for Completion	Responsible Officer(s)
<p>4. A timescale for corrective action should be highlighted to the Food Business Operator for Food Law contraventions.</p>	<p>The Food Law Code of Practice (14.6.2) says significant and serious contraventions should have a definitive timescale. The Interventions Code (4.1.10) doesn't mention serious and significant contraventions or definitive timescales. Could you clarify which Code takes precedence for this requirement? We will look at a proposed timescale for those contraventions we consider to be significant and serious and add these to our standard paragraphs. This will require discussion on which contraventions are serious and significant and then manually editing the relevant standard paragraphs. Given the resource implications we have set a target date of 31 March 2023. We propose to retain the general paragraph for other contraventions which do not fall into the category of significant and serious.</p> <p>On the 22nd November 2022, a further meeting with FSS/Inverclyde was held to discuss this point. It was agreed to include a timescale for corrective actions for all</p>	<p>Completed</p>	<p>Environmental Health Officer</p>

Inverclyde Council Recommended Point for Action	Planned Actions	Target Date for Completion	Responsible Officer(s)
	contraventions of food law in accordance with the Interventions Code 4.1.10.		
5. Revisits should be carried out where there is failure to comply with significant and serious statutory requirements or a number of requirements that taken together indicate ineffective management.	We feel officer discretion and judgement is paramount in deciding when a revisit is required. However, as part of ongoing internal monitoring, a check will be made of FLRS scores. Any rating which includes a score higher than 3 will be checked for a revisit and, if no revisit done, this will be discussed with the relevant officer. Both Enforcement Policy and Inspection Policy have been updated to reflect this.	Completed	Environmental Health Officer
6. The inspection letter requires a review and update to include references to Food Law.	Will ensure that Food Information Regulations (FIR) are in the headings.	Completed	Environmental Health Officer
7. Re-establish the internal monitoring system.	1 st file check has been carried out & will continue to be carried out monthly.	Completed	Environmental Health Officer
Satisfactory evidence was received from Inverclyde Council following the Audit to allow for the closure of all Recommendations – April 2023			

5.0 Acknowledgements

The Audit Assurance Team would like to acknowledge the help and co-operation of all staff involved for their assistance while conducting this audit.

Auditors: Áine Phelan
Lindsay Matthew

Administration: Neil Douglas

Food Standards Scotland
Audit Assurance Branch

04 January 2023

Abbreviations

EU	European Union
FBO	Food Business Operator
FHIS	Food Hygiene Information Scheme
FIR	Food Information Regulations
FLRS	Food Law Rating System
FSS	Food Standards Scotland
MIS	Management Information System