Food Standards Scotland

Perth and Kinross Council Food Law Enforcement Services

Capacity and Capability Audit Report

25-27 April 2017
1 October 2018 – evidence provided

Foreword

Audits of Local Authorities food law enforcement services are part of Food Standards Scotland 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.

UK Local Authority Food Law Enforcement data is collected via the Local Authority Enforcement Monitoring System (LAEMS) and is published on the Food Standards Agency website. FSA continue to collect this data for Food Standards Scotland. https://www.food.gov.uk/enforcement/monitoring/laems/mondatabyyear

The audit scope is detailed in the audit brief and plan issued to all Local Authorities under reference FSS/ENF/16/014 on 12 October 2016. 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 assess Local Authority capacity and capability to deliver the food service.

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 establish:

- An evaluation of the organisational, management and information systems in place to ensure they are effective and suitable to achieve the objectives of the relevant food law;
- Assessment of the capacity and capability of the Local Authority to deliver the food service;
- The provision of a means to identify under performance in Local Authority food law enforcement systems;
- The assistance in the identification and dissemination of good practice to aid consistency;
- The provision of information to aid the formulation of Food Standards Scotland policy.

Food Standards Scotland audits assess Local Authorities' conformance against Regulation (EC) No 882/2004[1] on official controls performed to ensure the verification of compliance with feed or food law and the Food Law Code of Practice (Scotland) 2015'

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.

[1] (EC) No 882/2004

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. A template for this is provided at the end of this report.

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1.0 Introduction

1.1 This report records the results of the audit at Perth and Kinross Council with regard to their capacity and capability to deliver food enforcement, under relevant sections of Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed or food law. The audit focused on the Authority's arrangements for meeting certain operational criteria, particularly on staffing related issues, registration and approval of food business operators, enforcement actions, interventions, procedures for carrying out official controls and transparency about their enforcement activities.

1.2 The report has been 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

1.3 The power to set standards, monitor and audit Local Authority food law enforcement services was conferred on Food Standards Scotland by Sections 3 and 25 of the Food (Scotland) Act 2015 and Regulation 7 of The Official Feed and Food Controls (Scotland) Regulations 2009. This audit of Perth and Kinross Council was undertaken under section 25 (1-3) of the Act, and Regulation 7(4) of the Regulations as part of the Food Standards Scotland audit programme.

1.4 As a designated competent authority as defined within Schedule 5 of the Official Feed and Food Control (Scotland) Regulations 2009 local authorities are required to comply with Article 4(6) of Regulation (EC) No 882/2004. In order to help local authorities fulfil this requirement, (as part of its central role under the Food (Scotland) Act 2015 and Official Feed and Food Control (Scotland) Regulations 2009) Food Standards Scotland will continue to deliver external audit arrangements (as done previously under Food Standards Agency). This however, does not preclude Local Authorities (LA's) from implementing their own audit regimes and in fact this will be encouraged. Food Standards Scotland's audit role therefore fulfils two different requirements.

1.5 The last audit of Perth and Kinross Council's Food Service was undertaken by the Food Standards Agency (Scotland) in November 2014. The previous audit to that was a desktop Food Standards Audit in 2013.

Scope for the Audit

1) Does the Local Authority meet certain operational criteria – such as:
   - having a sufficient number of staff who are suitably:
     - qualified
     - experienced
     - competent

    - authorised
  - ensuring that staff are free from conflict of interest
  - having contingency plans for emergencies
  - having appropriate legal powers
  - having suitable facilities and equipment

2) ensure that staff receive appropriate and on-going training
3) ensure effective and efficient co-ordination with other competent authorities and between different units of a single authority, as applicable
4) have procedures in place for the registration/approval of establishments
5) take appropriate action where businesses do not comply with the law
6) carry out internal audits or have external audits undertaken
7) be transparent about its monitoring and enforcement activity
8) prepare reports of individual controls and provide copies to businesses
9) have, use and update as necessary, documented procedures for carrying out controls

1.6 The audit examined Perth and Kinross Council's arrangements for official controls in relation to Regulation (EC) No 882/2004 on the verification of compliance with feed and food law. The audit included a verification visit to a local food business to assess the capacity and capability of the official controls implemented by the Local Authority at the food business premises and, more specifically, the relationship between Regulation (EC) no 882/2004, the Local Authority Policies and Procedures and the Authorised Officers ability to deliver official controls.

1.7 The on-site element of the audit took place at the Authority's offices in Perth.

Local Authority Background

1.8 Perth and Kinross Council is a unitary authority which provides all local services for the Perth and Kinross Council area. The Council discharges its operational responsibilities as a food authority in relation to food hygiene and food standards enforcement through the Environmental and Consumer Services Division of its Environment Directorate. From the last reported LAEMS return some 1972 food businesses are located within the Perth and Kinross Council area. These comprise 77 primary producers, 70 manufacturers, 9 importers and exporters 29 distributors, 441 retailers and 1346 restaurants and other caterers.

1.9 Perth and Kinross Council has an approved Food Hygiene Enforcement Policy dated November 2005 which is a high level document stating the Objectives and also the procedural aspects of the policy. This document is supported further by a comprehensive set of policies and procedures which provides detailed guidance on how to use enforcement powers.

1.10 Within the current departmental management structure, a Regulatory Services Manager is responsible for food law enforcement and the day to day

management of it is delegated to the Principal Officer Food / Health and Safety. There have been few significant changes since the previous audit with key staff remaining with the Council and most maintaining similar positions within the service.

1.11 Perth and Kinross Council, Regulatory Services (including the Food, Health & Safety Team) are part of the Environment Service.

The Regulatory Services Manager works with four managers for the different teams of Officers. Official controls at food businesses are delivered by the Food/Health and Safety Team, managed by the Principal Officer Food Health & Safety. The team has 5.8 Full Time Equivalent (FTE) officers on direct food law enforcement together with 0.4 administrative support. The authority considered that there were sufficient qualified staff in post.

1.12 Generally all Authorised Officers for Official Controls are food specialists in nature and this was shown during this audit to have significant professional and operational advantages for the authority as compliance with the Food Law Code of Practice (Scotland) was found to be of a high standard.

1.13 The Council has been in a situation of substantial financial stringency in recent years. Budget information for Food Safety Enforcement, Sampling and Training was provided for financial years 15/16 and 16/17 which appeared adequate for the needs of the service.

2.0 Executive Summary

Capacity

2.1 The audit found that the Principal Officer Food / Health and Safety had been in post for less than one year having returned to a food based team from another team within the department. The transition to food enforcement is a complex one and the Principal Officer is gradually becoming proficient in the post. The previous team leader had been promoted to Regulatory Services Manager.

2.2 There are currently 5.8 FTE's in the team, based on 7 members of staff and in addition the Team Leader (Food). Discussions took place on the accuracy and equivalency of full time equivalent staff (FTE's) allocated to the Food Health & Safety Team and it was established that measures had been taken to maintain the complement of staff necessary to meet the demands of the service, using a detailed, time-based quantification of staff numbers.

2.3 Based on the Local Authority's intervention programme and the establishment of allocated staff numbers provided prior to audit, together with discussions and reviews of documentation and records, the capacity to deliver the intervention programme was considered generally satisfactory at the time of audit. It was noted that the Draft Environment Service Regulatory Services Team Plan for 2017/2018 did not refer to category D and E rated premises, this does not follow the requirements of the Food Law Code of Practice.

2.4 The 2015 – 2016 LAEMS Report published on 21 November 2016 shows that for Perth and Kinross Council Food Hygiene there were 1972 establishments

in total, the report indicates that over 99% of high risk (A & B) hygiene interventions were achieved. This would indicate that the food hygiene intervention programme was achieving its objectives in that high risk interventions were in effect being completed.

2.5 A live database report requested by the auditors found there were 4 high risk and 311 low risk interventions overdue. There were now 2001 establishments on the database. A strategy should be implemented to reduce the total of lower risk premises that are overdue. There has been a minor improvement on a similar report for a cut-off date of 31st March.

2.6 Reactive work in the area of food and health & safety duties undertaken by the Food Officers was discussed. The Local Authority was able to quantify the capacity required to meet reactive demands.

2.7 The budget information produced by the Authority appeared to show a stable allocation of finance to the service.

Capability

2.8 It was evident that Officers were clear on the Authority's procedure for conducting inspections and adhered to the Authority's Enforcement Policy and inspection procedures. The procedures and documentation provided for inspections were generally being appropriately and consistently followed and completed.

2.9 The Authority has a Draft Environment Service Regulatory Services team Plan for 2017/2018 which generally satisfies the requirements of the Framework Agreement. It requires further details on the intervention programme to be included as at present there is no reference to category D or E establishments.

2.10 Evidence of the authorisation process and relevant documentation was available for all officers and reference to all current legislation was present. Authorisations collectively are maintained in electronic format on a central database.

2.11 The Principal Officer and Authorised Officer activities relating to quantitative monitoring of work was reported at Team Meetings. Monitoring of the quantity and quality of work allocated or completed is carried out regularly by the Principal Officer who uses a variety of different systems to ensure consistency and quality is monitored and reported.

2.12 For the Approved Establishments within the Authority officers are required to have particular knowledge of the processes carried out within these establishments and also knowledge of Hazard Analysis Critical Control Point Systems. The authority maintains training records of such knowledge which was available to auditors. This however requires to be supported by more training in Validation and verification of food safety management systems.

2.13 To assist in the appropriate delivery of enforcement there are a series of documented policies and operational documents available to all Officers in

electronic format on a central directory. However many of these documents have not been reviewed for some years and would benefit from being updated.

Level of Assurance

2.14 As detailed in the Audit of Enforcement Authorities Policy Document of May 2016 (reference FSS/ENF/16/007) the audit has been assigned as below:

2.15 The Recommendations within this report detail the weaknesses in the controls that Perth and Kinross Council should address.

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

3.1 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.

Article 3 Regulation EC No 882/2004 - General obligations with regard to the organisation of official controls

3.2 The Authority has a draft Regulatory Services Team Plan for 2017 / 2018 which has been approved by the Head of Environmental and Consumer Services. However this draft plan does not comply with the requirements of the Food Law Code of Practice (Scotland) 2015 as it does not include all categories of premises, the final version will be drafted to have these included.

3.3 As a result of management changes in mid-2016 the Lead Food Officer was promoted to Service Manager, this ensured consistency in providing a management structure within the authority. The post of Food Safety Co-ordinator as the designated Lead Officer for Food was filled internally by an experienced Environmental Health Officer who had transferred into the food enforcement role and was found to be taking a gradual approach to managing the regular workload of the Authorised Officers and appreciating the complexities of the Food Law Code of Practice.

3.4 The Local Authority Intelligence Gathering Questionnaire (June 2016) return to Food Standards Scotland for this Authority indicated that there were 5.5 FTE posts and 0.4 administrative involved in the delivery of the food law service.

3.5 The draft Environment Service Regulatory Services Team Plan contains a chart that shows the stages from Team plan Objectives to Service Objectives to Corporate Plan objectives to Community Plan aims and onto the Single Outcome Agreement and Stakeholders.

The Regulatory Services Team Plan and the Food and Feeding Stuffs Service Delivery Plan are approved by the Head of Environmental and Consumer Services.

3.6 The 2015 – 2016 LAEMS Report published on 21 November 2016 shows that for Perth and Kinross Council Food Hygiene there were 1972 establishments in total, with 424 that were recorded on the database having not yet been rated for an intervention. There were 54 category A, 240 B's, 415 C's, 415 D's and 424 E's. The report indicates that 100% of high risk A and 99% of B hygiene interventions were achieved. The percentages for the other categories were 69% for C's, 54% for D and 100% for E's. This would indicate that the food hygiene intervention programme was achieving its objectives in that risk interventions were being satisfactorily achieved.

3.7 The same report shows that for Food Standards, 605 inspections and audits were achieved at 206 premises. A written warning was required at 78 of these establishments.

3.8 For Food Hygiene, 744 inspections and audits and 266 other official controls were achieved at 763 premises. For enforcement Actions there were 249 written warnings, 19 Remedial Action Notices, and 14 Hygiene Improvement Notices and a Voluntary Closure.

3.9 A live data report on food hygiene was requested from the food premises database at the start of the audit and this was promptly provided. On analysis this showed:

- A report requested by the auditors for the current position found there were 4 high risk and 311 low risk interventions overdue. There were now 2001 establishments on the database.
- For the previous year ending on 31st March 2017 there were 349 premises with a next visit dated due. Of these 10 were B's, 19 C's, 190 D's and 121 E's with the remainder being either outside or unrated
- There were 315 premises overdue, the risk rating breakdown for these was 4B's, 18C's, 194D's, 99E's and also 2 unrated.
- There were 7 premises recorded as being outside the Food Law Code of Practice categories, which is not a permitted status.

3.10 The Authority advised that where practical, food hygiene and food standards interventions were carried out at the same time, however with regard to food standards the majority of premises are considered low risk. The Authority use Alternative Enforcement Strategies (in the form of a questionnaire) with degrees of follow up for both Food Hygiene and Food Standards

Articles 4(2) to (6) Regulation EC No 882/2004 - Designation of Competent Authorities

3.11 The Environment Service provided an approved Food Hygiene Enforcement Policy from 1997 which was last amended in 2005, on review at the Authority's Office it was found that later copies are available. As legal requirements have changed since then, the policy is out of date, specifically in reference to the service of Remedial Action Notices. This should be addressed without delay by a method of document control that removes superseded copies and ensures that only one current valid copy is available.

The policy details the formal enforcement actions that are available to the authority such as notices, seizure and reports to the Procurator Fiscal. The Appendix to this policy contains a Food Safety Enforcement Action Template that provides a structured and consistent approach to further actions for officers to follow. It is suitably detailed to enable the required enforcement action to be taken effectively.

3.12 To ensure that enforcement measures are consistently applied the recorded outcome of all inspections is based on an assessment of the physical conditions witnessed at the time of visiting together with an assessment towards establishing the requisite procedures and documentation based on Hazard Analysis and Critical Control Point (HACCP) principles which are appropriate to the business concerned.

3.13 The Authority provided a Draft V6 of the Scheme of Delegation from November 2011. The scheme has delegated powers which are given to the Executive Director Environment who can further delegate to the Head of Environmental and Consumer Services who then delegates to their Managers. Officer Authorisations are held centrally in an electronic file, with officers carrying written authorisations listing their powers.

3.14 Discussion took place on the general scheme of authorisation and the method of individual documentation for officers. The individual officer authorisation documents are appropriately detailed for the Food Safety Act and the Food Hygiene (Scotland) Regulations as the list of individual powers are listed.

3.15 The Authority is maintaining their database and was able to produce reports requested by the auditors and also supplementary ones that are in use by the authority on a regular basis. The Principal Officer Food Health & Safety uses a variety of methods including reports from the database to assess the work priorities and to ensure that there is a reasonable allocation of work to all members of the team.

3.16 The Authorised Officers within the team have been in post for a considerable time, leading to a settled and stable team.

Article 6 Regulation EC No 882/2004 – Staff performing official controls

3.17 Officers qualifications are retained electronically on file. Documentary evidence was available to demonstrate that Officers have completed the required 10 hours of continuing professional development as required by the Food Law Code of Practice.

3.18 Evidence of satisfactory training in Hazard Analysis and Critical Control Points (HACCP) principles was available, however the Validation and Verification of Food Safety Management Systems based on HACCP was of a similar position to that previously found in the 2014 audit in that more training on this subject was required to ensure that officers could robustly challenge the documentation provided by food business operators.

The previous verification & validation courses provided by Food Standards Agency (Scotland) are no longer available. All officers carrying out official controls at approved premises will now be required to undertake the new FSS verification course, three of which shall be delivered this year. The new course assumes a significant HACCP knowledge.

3.19 Officers have responsibility for a variety of food business operators, including those approved under Regulation (EC) No 853/2004 - laying down specific hygiene rules for food of animal origin. For Officers carrying out inspections of specialist or complex manufacturing processes the Food Law Code of Practice requires additional training and a demonstration of competence to undertake such inspections. However during the onsite audit there was a lack of evidence of additional training and the demonstration of competence to undertake such inspections in the processes involved within these approved establishments relevant to the Authority's area. Subsequently satisfactory evidence was provided by the authority on a follow up visit.

Articles 8 (1) and 8 (3) Regulation EC No 882/2004 – Control and Verification procedure

3.20 The Authority has Policies and Inspection procedures for both food hygiene and food standards. Examples of these documents were produced for the audit and are generally fit for purpose. However it was noted that many were not controlled versions and some referred to out of date codes of food law practice.

3.21 The Authority has a variety of internal monitoring procedures for the quality and quantity of intervention and enforcement actions, these are generally satisfactory.

3.22 Officers are discussing enforcement issues between themselves and are communicating with each other to ensure consistency in enforcement is taking place.

3.23 The electronic database is being used by the Team Leader to provide real time monitoring of the intervention programme, a variety of reports using a

dashboard of performance measures is available for all staff but is not regularly used by all authorised officers.

3.24 Qualitative assessments such as shadowed inspections are taking place when required in accordance with the monitoring procedure.

***Recommended Point for Action*: Monitoring**

The Procedural notes were not always current and many require a review.

Article 8 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 39 of the Food Law Code of Practice (Scotland) 2015.

Article 9 Regulation EC No 882/2004 - Reports

3.25 Inspection documentation is created as either an electronic report, or a carbonated written report and a letter which is provided or sent to food business operators (FBOs) following interventions. Any revisits are generated accordingly. Records were available and from those checked items relating to food hygiene matters generally appear to follow the requirements of the Food Law Code of Practice. A timescale for achieving compliance on each legal requirement is however not always clearly provided to the FBO This should be introduced as a requirement on all reports and included on regular monitoring activities.

***Recommended Point for Action*: reports**

The Authority have a well tried system for providing reports to food business operators, which indicate clearly the revisit policy, however the letters sent do not always clearly indicate individual timescales for the FBO to achieve compliance.

Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 28 of the Food Law Code of Practice (Scotland) 2015.

Article 10 Regulation EC No 882/2004 – Control activities, Methods and techniques

3.26 A real time un-announced verification check was carried out at a high risk Butcher during a programmed inspection. The officer had not been scheduled for the inspection but had adequately prepared for it by reviewing the file and records. The Officer involved had not carried out the previous intervention at the premises but was familiar with the business from previously inspecting it.

3.27 The Officer dealt with the matters arising relating to an identified failure in the food safety management system in a confident and satisfactory manner and worked with the Food Business Operator throughout the inspection. This ensured that food that could not be assured as safe was removed from sale and voluntary disposed of immediately. The Food Business Operator understood the issues and was prepared to change practices to ensure compliance as well as to rationally discuss the requirements of the FSMS with the Authorised Officer.

Articles 11 (1) to (3) and (5) to (7) Regulation EC No 882/2004 – methods of Sampling and Analysis

3.28 The Authority sends samples for examination and analysis to Dundee Scientific Services.

3.29 The audit looked at sample failures from an approved establishment cheese producer and found that the Authority had followed these up appropriately and records were provided to verify this. An officer discussion also clarified that the sampling procedure was being followed and highlighted the benefit of an experienced food safety officer investigating a potentially serious microbiological issue.

3.30 A sampling policy, programme and officer procedural notes were in place.

Article 31 Regulation EC No 882/2004 – Registration/Approval of Feed and Food Business Establishments

3.31 The Authority has an electronic database of the food premises within their area. At the time of audit the database appears to show a substantial number of premises that may not be on current inspection programmes.

Article 54 Regulation EC No 882/2004 – Action in case of non-compliance

3.32 The Authority has a series of Food Enforcement Policies in place supported by Procedures and guidance notes, however as previously mentioned these would benefit from being reviewed and where necessary updated on a regular and frequent basis.

3.33 The Authority uses Alternative Enforcement Strategies (in the form of a questionnaire) for Food Hygiene premises allocated a risk rating of less than 30 under the Food Law Code of Practice scoring system.

3.34 The Officers would appear to be following the Food Safety Enforcement Policy of primarily using education followed by the application of the principles of proportionality, consistency, targeting, transparency and accountability.

Auditors:
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Food Standards Scotland

4.0 Annex A

Action Plan for Perth and Kinross Council: Capacity and Capability Audit, April 2017

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
The Procedural notes were not always current and many require a review. Article 8 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 39 of the Food Law Code of Practice (Scotland) 2015.	Review of Policies and procedures carried out regularly Document control of policies and procedures reinstated	31 December 2017	Robert Lyle/Fiona Patterson
Action plan for Article 8 completed following evidence provided 01 October 2018			

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
The Authority have a system for providing reports to food business operators, however the letters sent do not always indicate timescales for FBO to achieve compliance. Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 28 of the Food Law Code of Practice (Scotland) 2015.	Modify Enforcement Action Template which is left with the FBO post-inspection to indicate timescales for compliance	31 December 2017	Robert Lyle/Fiona Patterson
Action plan for Article 9 completed following evidence provided 01 October 2018			