



Food Standards Scotland

Scottish Borders Council
Food Law Enforcement
Services

Capacity and Capability Audit
Report

07 - 09 November 2016
13 September 2019 Closed



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 882/2004¹ on official controls performed to ensure the verification of compliance with feed or food law and the Food Law Code of Practice (Scotland) 2015'

¹ [\(EC\) No 882/2004](#)

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. 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 Scottish Borders 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 Scottish Borders 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 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 Scottish Borders Council's Food Service was undertaken by the Food Standards Agency (Scotland) in December 2013. The previous audit to that was in February 2012.

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 Scottish Borders 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 at Newtown St Boswells.

Local Authority Background

- 1.8 Scottish Borders Council have a Regulatory Services Enforcement policy dated 25 March 2015 which is a high level document detailing the purpose, scope and use of the policy. There is a Food Safety Enforcement Policy approved by the Regulatory Services Manager dated May 2015 which provides operational guidance to authorised officers on how to determine when to use enforcement actions. This is supported further by a Food Safety Enforcement Procedure from February 2014 which provides detailed guidance on how to use enforcement powers.
- 1.9 Within the departmental management structure food law enforcement is managed by a Regulatory Services Manager with a dedicated team led by a Principal Regulatory Services Officer and carried out by five Environmental Health Officers and one Food Safety Officer. The Environmental Health Officers and Food Safety Officer are multi-disciplined, covering other duties in addition to food safety. There is also a vacant Environmental Health post.
- 1.10 At present the management structure has a vacancy for the Principal Regulatory Services Officer who has recently left the Authority. The position of Regulatory Services Manager has been temporarily covered by the Trading

Standards and Animal Health Principal Regulatory Services Manager. Both of the posts have been non-operational since early April 2016.

2.0 Executive Summary

Capacity

- 2.1 The audit found that staff numbers relative to this year's programme of interventions was satisfactory with the current team being in post for almost two years. The officers demonstrated that they were working well together. The Food Officers also carry out reactive duties such as responding to food complaints, infectious disease investigations, new business queries, planning/building warrant submissions and all Food Officers participate in Health & Safety Enforcement. The Authority was unable to quantify this workload at the time of audit but it was agreed it wouldn't have any significant impact on Officers ability to complete their responsibilities for food at this time.
- 2.2 The budget information produced by the Authority also appeared adequate with a frozen post in the Food Team being carried over into this year's budget allocation. There had been a centralisation of the training budget some years ago, this removed the Environmental Health stand-alone training budget, and merged it with a corporate provision for training for which the Food Team will have to bid for resources. This will require to be monitored to ensure resilience.
- 2.3 The lack of a Lead Officer for Food since April 2016 has had a detrimental effect on the capacity of the Food Team to function at its most efficient level. The vacancy is being managed as well as possible but operational matters such as the production of updated inspection programmes, monitoring of work planning, internal monitoring of official controls completed, performance reviews, and the completion of allocated updating of documentation as well as the provision of professional practice and advice is becoming more difficult and is unable to be resolved in all cases by the officers in post.
- 2.4 Auditors were informed that the intervention programme in 2017/18 would increase by one third. It should be possible to service this from the existing capacity if the audit recommendations are taken on board.

Capability

- 2.5 The audit found that the Authority has a Food Safety Operational Plan 2016-2017 which satisfactorily follows the template of the 2010 Framework Agreement on Official Feed and Food Controls by Local Authorities. The demands on the Local Authority are documented as are the Service Delivery interventions planned for the year.
- 2.6 The Council's Scheme of Delegation does not specifically refer to food legislation, the Service Director has however been empowered by being authorised to carry out all functions and responsibilities in terms of all relevant legislation and regulations for Regulatory Services. The Appendix listing Food legislation is referred to in the certificate of authorisation of officers signed by the Director of Regulatory Services.

- 2.7 There has also been almost no formal monitoring of the current food work since April 2016 to assess if it's being carried out in a compliant manner. The limited checks carried out by auditors were found to show compliance within areas of legislation and some internal procedures. However some policies and procedures lacked detail and contained the wrong references. There was a lack of a Sampling Policy.
- 2.8 There are a number of Approved Establishments within the authority and this requires Officers to have particular knowledge of the processes within these establishments and not just a knowledge of Hazard Analysis Critical Control Point Systems. Evidence of such knowledge was not clearly documented.
- 2.9 The absence of a suitably qualified, competent and experienced Lead Officer for Food, to direct and advise staff since April 2016 has affected the performance capability of the Food Team.
- 2.10 To assist in the appropriate delivery of enforcement there are a series of documented policies and operational procedures available to all Officers in electronic format on a central directory however these documents were not always accurate.
- 2.11 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 being appropriately and consistently followed and completed.

Level of Assurance

- 2.12 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:
- 2.13 The Recommendations within this report detail the weaknesses in the controls that Scottish Borders Council should address.

Insufficient Assurance:

Controls are not acceptable and have notable weaknesses

There are significant weaknesses in the current risk governance and/or control procedures, to the extent that the delivery of the objectives is at risk. Exposure to the weaknesses identified is sizeable and requires urgent mitigating action.

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 Food Safety Operational Plan in place for 2016/2017 which was approved by the Regulatory Services Manager and the Service Director in June 2016 which generally satisfactorily follows the template of the 2010 Framework Agreement on Official Feed and Food Controls by Local Authorities. The demands on the Local Authority are documented as are the Service Delivery interventions planned for the year however there are no details of the Financial allocation in providing the service.
- 3.3 The service was being managed by an Acting Regulatory Services Manager who was not Environmental Health qualified or experienced as required by the Food Law Code of Practice, but was capable of managing the staff to meet corporate requirements and practices. As a result staff were effectively unable to pass complex enforcement decisions to this level due to the post holder not meeting the competency requirement of the Food Law Code of Practice.
- 3.4 Other than the Acting Regulatory Services Manager having management oversight of the Service, and providing support for the officers there has been little management oversight of the delivery of the food service since April 2016 by a suitably qualified and competent officer.
- 3.5 The post of Principal Regulatory Services Officer (PRSO) (who was the designated Lead Officer for Food) had been non-operational for 7 months, as a result the workload of the enforcement officers is not being effectively monitored on a regular basis an appointed suitably qualified, competent and experienced lead Environmental Health Officer.
- 3.6 Regular standing items such as the development and provision of work programmes, monitoring, mentoring and advice were not being regularly attended to as a result of the absence of the PRSO.
- 3.7 The LA Intelligence Gathering Questionnaire return to the Food Standards Scotland for this Authority in June 2016 indicated that there were 5.5 full time equivalents (FTE) in post with 4.5 EHOs and 1 FSO with 1 FTE vacant. The Food Safety Operational Plan indicated at 1/4/16 that there were 7.15 FTE as a food safety resource, this included 5.5 EHO's, and a share of the time of the PRSO, the FSO and a Technical Officer.
- 3.8 The 2015 – 2016 LAEMS Report published on 21 November 2016 shows that for Scottish Borders Council Food Hygiene there were 1734 establishments in total, with 34 not yet rated for an intervention. There were 6 A's, 123 B's, 373 C's, 429 D's and 768 E's. The report indicates that 100% of hygiene interventions were achieved. A live data report was requested from the food

premises database. On analysis this verified that of April 2016 there were no food hygiene or food standards interventions considered overdue. The Authority advised that at the end of last year contractors were used to help complete the intervention programme.

- 3.9 The same LAEMS report indicated that for Food Standards 100% of interventions were achieved across all categories and 210 establishments were subject to written warnings. However at the time of audit some slippage in the programme was evident, which included high risk food standards interventions (although this was not yet considered by the Auditors as significant).
- 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 and therefore subject to an AES.
- 3.11 Unrated premises are not entered onto the intervention programme until visited, which is in accordance with the Food Law Code of Practice. However there was evidence that some premises had not been visited in accordance with the Registration of a Food Premises Procedure which states that within 7 days of receipt of a registration application, the FBO is contacted and provided with relevant HACCP documents and guidance and then an inspection programmed within 6 – 8 weeks.

Recommended Point for Action: Procedures

The Authority does not have a designated Lead Officer for Food in post.

Article 4 of Regulation (EC) No 882/2004
Section 4.7 Food Law Code of Practice (Scotland) 2015

Recommended Point for Action: Food Service Plan

The Authority does not have a comprehensive Food Safety Plan in place for 2016/17

Article 3 Regulation EC No 882/2004

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

- 3.12 The Authority has a scheme of delegation from 2014 which appropriately delegated powers to the Service Director - Regulatory Services, however the specified delegated functions do not appear to contain a specific reference to

food law enforcement powers. Further documentation signed by the Director refers to out of date legislation.

- 3.13 The Authority has procedures for both food hygiene and food standards. Examples of these produced at the audit had been reviewed by officers after April 2016 as part of the annual policies and procedures review and amendments had been made, however some of these were found to contain errors and inaccurate references to the Food Law Code of Practice (Scotland).
- 3.14 In terms of properly maintained facilities and equipment the Authority has a database administered by two experienced and competent members of staff who are responsible for producing reports from the database. When Officers wish to amend premises records on the database this is done by placing a job request with these members of staff. This system appears to be working at the present time, however limiting Officer access to the database and the practice of Officers creating requests for updating premises information may prove problematic in the future. It would be appropriate to review staff access to the database and consider the benefits of sharing database expertise particularly on the production of database reports.

Recommended Point for Action: Procedures

The Authority does not have a suitably detailed scheme of delegation.

Article 4 of Regulation (EC) No 882/2004

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

- 3.15 Officers have responsibility for a variety of food business operators, including those approved under Regulation (EC) 853/3004 laying down specific hygiene rules for food of animal origin (which were mainly fishery products establishments). For Officers carrying out interventions of specialist or complex manufacturing processes the Food Law Code of Practice requires additional training and a demonstration of their competence to undertake such inspections.

Competence had in the main been gained by working with other officers within the authority or by individual research. There was a lack of documentation to verify such training in the processes involved within these establishments.

- 3.16 Evidence of formal training in Hazard Analysis and Critical Control Points (HACCP) principles and also the Validation and Verification of Food Safety Management Systems based on HACCP was not readily available for all officers.

Recommended Point for Action: Training

The Authority have not ensured that all Officers have received appropriate training enabling them to undertake their duties competently.

Article 6 of Regulation (EC) No 882/2004
Section 4 and Annex 2 of the Food Law Code of Practice (Scotland) 2015.

Articles 8(1) and (3) Regulation EC No 882/2004 - Control and verification procedures

- 3.17 The Authority has an internal monitoring procedure which has been approved and reviewed by the PRSO in March 2015.
- 3.18 The requirements of this procedure have not been followed in the absence of a PRSO since April 2016, however to compensate for this there has been an effort by Officers to ensure some internal monitoring is taking place with regard to formal Notices and letters through verification of documentation by a second Officer.
- 3.19 With regard to regular quantitative assessment of the intervention programme, this has failed to be monitored in the absence of the Lead Officer, however a recent review has taken place (at the 6 month period) to ensure that the intervention programmes are currently on track. This however had not identified the overdue food standards interventions.

Recommended Point for Action: Monitoring

The Authority have a monitoring procedure which is not being implemented.

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

- 3.20 Inspection paperwork is presented or sent to food business operators following interventions – from the records checked these appear to follow the requirements of the Food Law Code of Practice (Scotland).

Article 10 Regulation EC No 882/2004 - Control Activities, Methods and Techniques

- 3.21 A reality check was carried out during a programmed inspection to a high risk butchers, it was observed that the officer had prepared for the intervention. The inspection started with the intention of reviewing previous records however this changed when a more serious food safety issue was found to exist and which required immediate attention.
- 3.22 The Officer dealt with the matters arising in a confident and satisfactory manner and worked with the Food Business Operator throughout the inspection to ensure that the food involved was removed from sale and voluntarily disposed of.

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

- 3.23 The required Food Sampling Policy document was not available as a published document and in discussion it was not clear if there was actually one in place. There is a Sampling Food Premises procedure, dated June 2015 which has yet to be approved, however the majority of the document is essentially a desk guide to ensure that the administration of the process is carried out consistently.
- 3.24 The Authority sends samples for examination and analysis to Edinburgh Scientific Services. When a certificate is received from the food examiner or Public Analyst they are interpreted by a combination of Officers as considered appropriate. The practice is to follow up on all borderline and unsatisfactory samples by re-sampling. This was found to be carried out in practice by auditing the activities related to a sample failure recorded on the UK Food Surveillance System database.

Recommended Point for Action: Sampling

The Authority do not have a published sampling policy

Article 11 of Regulation (EC) 882/2004
Section 38.2 of the Food Law Code of Practice (Scotland)

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

- 3.25 The Authority has an electronic database of the food premises within the area. At the time of audit the database appears to be accurate and contains appropriate records.

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

- 3.26 The Authority has a Draft Regulatory Services Enforcement Policy supported by an approved Food Safety Enforcement Policy dated May 2015. These appear to be satisfactory in terms of the Food Law Code of Practice (Scotland). However this is not supported by satisfactory enforcement procedures.
- 3.27 With 12 establishments subject to Hygiene Improvement Notices, 1 subject to a Remedial Action Notice and 644 establishments subject to written warnings the Officers would appear to be correctly following the Food Safety Enforcement Policy not to move direct to enforcement but to be proportionate when dealing with breaches of legislation.
- 3.28 The Authority uses Alternative Enforcement Strategies (in the form of a questionnaire) for both Food Hygiene and Food Standards. There is a procedure to follow for this which was not subject to audit at this visit.

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4.0 Annex A

Action Plan for Scottish Borders Council: Capacity and Capability Audit, November 2016

Recommended Point for Action	Planned actions	Target date for completion	LA Actions
The Authority does not have a designated Lead Officer for Food in post.	Appoint Interim Lead Officer	In place	Lead Officer recently appointed
Article 4 of Regulation (EC) No 882/2004 completed following a revisit in November 2017 and subsequent documents received from Local Authority			
The Authority does not have a comprehensive Food Safety Plan in place for 2016/17.	Review FSP	31/3/17	Satisfactory Food Plan in place
Article 3 of Regulation (EC) No 882/2004 completed following a revisit in November 2017 and subsequent documents received from Local Authority			
The Authority does not have a suitably detailed scheme of delegation.	Code of Governance / Scheme of Delegation approved by Council 29 March 2018.		Satisfactory scheme of delegation in place
Article 4 of Regulation (EC) No 882/2004 completed following a revisit in November 2017 and subsequent documents received from Local Authority			
The Authority have not ensured that all Officers have received appropriate training enabling them to undertake their duties competently.	Review training needs	Ongoing – dependent on availability of suitable courses and training budget	Satisfactory evidence of CPD provided
Article 6 of Regulation (EC) No 882/2004 completed following a revisit in November 2017 and subsequent documents received from Local Authority			

The Authority have a monitoring procedure which is not being implemented.	Instigated	Ongoing	Satisfactory evidence of internal monitoring provided.
Article 8 of Regulation (EC) No 882/2004 completed following a revisit in November 2017 and subsequent documents received from Local Authority			
The Authority do not have a published sampling policy.	Awaiting approval	31/3/17	Sampling Policy approved and published
Article 11 of Regulation (EC) No 882/2004 completed following a revisit in November 2017 and subsequent documents received from Local Authority			