

Food Standards Scotland

North Lanarkshire Council Food Law Enforcement Services

Capacity and Capability Audit Report

6 – 8 February 2018
Closed February 2020



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.

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'

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.

¹ [\(EC\) No 882/2004](#)

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1.0 Introduction

- 1.1 This report records the results of the audit at North Lanarkshire 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:

<http://www.foodstandards.gov.scot/business-and-industry/safety-and-regulation/audit-and-monitoring>

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 North Lanarkshire 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 North Lanarkshire Council Food Service was last audited by the Food Standards Agency (Scotland) in April 2013 on the area of Food Standards. The previous audit to that was on Approved Establishments in 2009.

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 North Lanarkshire 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 verification visits to two local food business' to assess the capacity and capability of the official controls implemented by the Local Authority at those 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 Coatbridge from the 6th to the 8th February 2018.

Local Authority Background

- 1.8 North Lanarkshire Council is a unitary authority which provides all local services for the council area. The Council discharges its operational responsibilities as a food authority in relation to food hygiene and food standards enforcement through the Business Regulation team within Regulatory Services and Waste Solutions department.
- 1.9 From the 2016-2017 LAEMS return 2615 food businesses are located within the North Lanarkshire Council area. These categories include 19 primary producers, 48 manufacturers, 0 importers and exporters 61 distributors, 559 retailers and 1928 restaurants and other caterers.
- 1.10 The Environmental Services committee of North Lanarkshire Council approved a combined Protective Services Enforcement Policy on 19th April 2011. The Enforcement Policy document is undated and has no references quoted to determine its date of creation, version number or review date.

- 1.11 The policy refers to the “Regulators Compliance Code” which was issued by the Department for Business Innovation and Skills for matters outside of Scotland and it has subsequently been superseded for devolved matters by the Scottish Regulators Strategic Code of Practice (SRSCoP). The policy document also refers to the superseded Legislative and Regulatory Reform Act 2006 which introduced five principles of good regulation to which regulators must have regard to, which itself has been replaced by the Regulatory Reform (Scotland) Act 2014. The Hampton principles of 2005 are referred to and the policy states that work will follow those aims of: helpfulness, openness, proportionality, consistency, fairness and equality and targeted actions.
- 1.12 The Scottish Regulators Strategic Code of Practice (SRSCoP) however requires that Local Authorities recognise, in their policies and practice, a commitment to the five principles of better regulation: regulation should be transparent, accountable, consistent, proportionate and targeted only where needed.
- 1.13 The SRSCoP is made under section 5 of the Regulatory Reform (Scotland) Act 2014 which contains provisions for a Code of Practice in relation to the exercise of regulatory functions by a regulator. The Code will apply to the (devolved) regulatory functions of regulators which includes Local authorities (excluding planning authority functions). Regulators to whom the code applies have to have regard to the code in exercising any such regulatory functions. This duty to “have regard to” the Code means that the regulator must take into account the Code’s provisions, so any references in documentation relevant to enforcement has to follow this code.
- 1.14 There are references in the policy to the Food Law Code of Practice which are not to the current 2015 version. References in the Quality System to the current Government organisations are also incorrect.
- 1.15 Within the current departmental management structure, The Business Manager (Environmental Health) is responsible for food law enforcement and the day to day management of this is delegated to an Assistant Business Regulation Manager, and two Senior Environmental Health Officers.
- 1.16 Official controls at food businesses are delivered by a North and a South team, each managed by a Senior EHO. All Authorised Officers for Official Controls are food related specialists within these teams.
- 1.17 In the 2017/2018 Food Safety/Occupational Health & Safety Operational Plan the staff allocation indicates that there is a Business Manager (Environmental Health) supported by an Assistant Business Regulation Manager, 2 Senior EHO’s 12.5 FTE EHO’s, 1 vacant FTE EHO and 2.5 FTE Food Safety Officers. These officers are dedicated to food safety enforcement. The Operational Plan considers that the Service currently has sufficient staff to meet its statutory duties and responsibilities in terms of food safety issues.
- 1.18 The 2017/18 Operational Plan informed the auditors that the operational costs for Business Regulation Service was approximately £1 063 985. The FSS

Information Gathering Questionnaire for LA's (June 2017) returned the figure of £ 552 644 for the food safety budget for 2017-18 and that there was a detailed breakdown available. The budget had been reduced due to a deduction of 2 FTE managerial posts from £636 710 previously.

2.0 Executive Summary

Capacity

- 2.1 There are currently two teams, each led by a Senior EHO, based on 17 FTE members of staff and also a Business Manager (Environmental Health) supported by an Assistant Business Regulation Manager.
- 2.2 Each Senior EHO was responsible for the work of their own team on a geographical split across the LA area. The Business Manager (Environmental Health) was the nominated Lead Food Officer without having overall daily operational control of all Officers involved in the delivery of Official Controls.
- 2.3 The Local Authority's intervention programme together with the establishment of 12.5 Full Time Equivalent Officers informed discussions about the capacity of each officer to complete interventions. It appears that the scheduled programme for all official controls is approximately 100 interventions generated per month, which achieves the target of completing the planned intervention programme which the Authority state as being within their capacity.
- 2.4 The Food Safety Operational Plan details the demands on the business Regulation Service as follows:

<u>Category</u>	<u>Hygiene</u>	<u>Standards</u>
A	9	11
B	156	974
C	865	1604
D	730	n/a
E	825	n/a

- 2.5 Reactive work in the area of food enforcement undertaken by the Food Officers was discussed and the Local Authority was able to demonstrate sufficient capacity was available to suitably action these events.
- 2.6 The detailed budget information for the current year from figures in the various service plans and committee reports appeared to show static financial resources over a few years when compared to Full Time Equivalent posts available.
- 2.7 The training budget is not entirely controlled from within Environmental Health/Development Services operational budget. A Corporately managed independent training services budget is managed by Human Resources and Environmental Health managers have to make the case for training issues.

Capability

- 2.8 The audit found that the Business Regulation Manager acting as Lead Food Officer was experienced in food law enforcement.
- 2.9 It was evident that not all Officers were clear on the Authority's procedure for conducting inspections. Officers adhered to the Authority's Enforcement Policy and inspection procedures of providing advice and support but it appears that some were reluctant to consider the use of enforcement actions. The protocols and documentation provided for inspections were generally not suitable in design or as an effective record of the intervention findings.
- 2.10 The Authority has a satisfactory Food Safety/Occupational Health & Safety operational Plan for 2017-2018 which follows the format of the guidance in the last version of the Framework Agreement.
- 2.11 Evidence of the authorisation process and relevant documentation were available for the officers requested and reference to most current legislation was present, however some important legislation updates had not been included, the changes required are neither difficult or complex to achieve.
- 2.12 The Assistant Business Regulation Manager produces reports from the system database for quantitative allocation of official control work. With authorised officers conducting official controls the required inspection frequencies categories are being met. However the requirement to have a premise broadly compliant within 3 months of a primary inspection or to take formal enforcement action was not always being followed. There appeared to be little effective qualitative monitoring of work across all authorised officers. The systems in place do not appear to have a focus on the quality of completed interventions.
- 2.13 For the Approved Establishments within the Authority the team of officers are required to have a detailed, relevant and up to-date knowledge of the processes within these establishments as well as knowledge of Hazard Analysis Critical Control Point Systems. Some evidence of this was provided at audit and further details have been provided.
- 2.14 To assist in the appropriate delivery of official controls and 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 which were reviewed in November 2017 are incorrect and would benefit from being updated without delay.
- 2.15 The Quality System that is referred to within the operational documents does not appear to be fully functional.

Level of Assurance

- 2.16 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:

- 2.17 The Recommendations within this report detail the weaknesses in the controls that North Lanarkshire Council should address.

Level of Assurance

Limited Assurance Controls are developing but weak	There are weaknesses in the current risk, governance and/or control procedures that either do, or could, affect the delivery of any related objectives. Exposure to the weaknesses identified is moderate and being mitigated.
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3.0 Audit Findings by Article

- 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 Environmental Services committee of North Lanarkshire Council approved a combined Protective Services Enforcement Policy on 19th April 2011, however the document is undated and has no references quoted to determine its date of creation, version number or review date and had several references which are out of date. The policy requires to be reviewed and where necessary should be updated and published as at present it is not publically available. It does not appear to refer to actions following the finding of repeat contraventions which were found to be taking place on food business establishment documents provided to the auditors.
- 3.3 The policy refers to the “Regulators Compliance Code” which has subsequently been superseded by the Scottish Regulators Strategic Code of Practice (SRSCoP) for devolved matters. The policy document also refers to the Legislative and Regulatory Reform Act 2006 which introduced five principles of good regulation to which regulators must have regard to, which itself has been replaced by the Regulatory Reform (Scotland) Act 2014 for devolved matters. The Hampton principles of 2005 are referred to and the policy states that work will follow those aims of: helpfulness, openness, proportionality, consistency, fairness and equality and targeted actions.
- 3.4 The Scottish Regulators Strategic Code of Practice (SRSCoP) however requires that Local Authorities recognise, in their policies and practice, a commitment to the five principles of better regulation, these are: regulation should be transparent, accountable, consistent, proportionate and targeted only where needed.
- 3.5 The SRSCoP is made under section 5 of the Regulatory Reform (Scotland) Act 2014 which contains provisions for a Code of Practice in relation to the exercise of regulatory functions by a regulator. The Code will apply to the

(devolved) regulatory functions of regulators which includes Local authorities (excluding planning authority functions). Regulators to whom the code applies have to have regard to the code in exercising any such regulatory functions. This duty to “have regard to” the Code means that the regulator must take into account the Code’s provisions, so any references in documentation relevant to enforcement has to follow this code.

- 3.6 There are references in the policy to the Food Law Code of Practice which are not to the current 2015 version. References in the Quality System to the current Government organisations are also incorrect.
- 3.7 The Authority has a Food Safety/Occupational Health & Safety Operational Plan in place for 2017/2018. The Plan was suitably approved by the Infrastructure Committee on 16 August 2017. The required review is being completed and evidenced by the minutes of the Environmental Health managers’ meetings.
- 3.8 The Food Safety/Occupational Health & Safety Operational Plan 2017-2018 links to the Environmental Health Service Plan, North Lanarkshire Council’s Corporate plan, the Partnership Single Outcome Agreement and ultimately the Scottish Governments National Outcomes, thereby giving a continuum to the delivery of services.
- 3.9 The plan contains sufficient detail on the Service Delivery Intervention programme with a breakdown of the food premises risk category profile which shows the following:

Category of premises	Food Hygiene profile	Food Standards profile
A	9	11
B	156	974
C	865	1604
D	730	n/a
E	825	n/a
total	2585	2589

- 3.10 The 2016-17 LAEMS report submitted by the Authority indicates that 531 high risk (A & B) hygiene interventions and 3037 other interventions were achieved, totalling 3568 interventions achieved from the following premises profile.

Category	Number
Restaurants/caterers	1928
Retailers	559
distributors/transporters	61
Manufacturers/Processors/Packers	44
approved establishments	18
Slaughterhouse/cutting plants	6
total	2616

The total number of premises sub types was 2617

- 3.11 These reported figures indicated an unusually low number of food hygiene written warnings recorded; at **756** from the 531 high risk interventions and the total of **3568** interventions. This may have been as a result of miscoding and so be underreported. The Authority reviewed the data for the signed off and published LAEMS return and subsequently informed the auditors that the actual figures were **808** written warnings and **2015** Primary inspections.
- 3.12 The submitted LAEMS returns indicated **13** Hygiene Improvement Notices (HINs) and **2** Remedial Action (RANs) or detention notices served, which again is an unusually low figure in relation to the number of interventions. From the practical application of the enforcement policy observed and documents provided, the policy would seem to be focussed on the outcome of assisting food businesses achieve compliance through closely spaced, repeat follow up inspections. In some circumstances the use of enforcement notices may have secured earlier compliance with food safety requirements. As the Authority are early adopters of the new annex five scheme, they will be changing to a prescriptive way of processing follow up visits, including the use of formal notices in accordance with the proposed revisions to the Food Law Code of Practice Hygiene Improvement Notices section (15.2). The Authority subsequently informed the auditors that there were **21** HINs and **4** RANs served during the period of interest, indicating a substantial difference from their original figures. On review it was found that 21 HINs were prepared, 8 of which were never served. As these did not match LAEMS criteria they were not counted by that system, whereas the LA database rightly records that this work was done and that the notices were not issued.
- 3.13 For Food Standards, **1283** inspections and audits (as well as **11** sampling visits during other interventions that do not contribute towards the LAEMS return) were carried out at **1281** premises during the year. Enforcement actions were, **1** improvement notice and **171** written warnings, this latter figure is extremely low for the number of interventions completed in relation to the risk profile within the LA. The Authority considered that the number of intervention reports (written warnings or letters) has simply been under-reported. It is thought that the food standards element of a dual food safety inspection has been improperly coded, in error. There may be similar under-reporting for 'sampling visits'. Combined inspections have been the norm in this Authority for a number of years. During and after the audit a further check was made by the Authority and subsequently revised figures of **85** sampling visits and **256** contravention letters (written warnings) were presented to the auditors. These figures would indicate that the database, unless carefully and effectively managed can produce official statistics that require further detailed explanation.
- 3.14 There were changes in 2017 at management level within Environmental Services which was found not to have ensured continuity in monitoring or supporting documentary systems for the management of the service as evidenced by the errors in the Enforcement Policy, the quality system, the inspection documentation and the protocols.
- 3.15 The Business Manager (Environmental Health) is the designated Lead Officer for Food, however the regular work of the authorised officers was not under

the direct control of this post, the (Temporary) Assistant Business Manager (Business Regulation) has control over Officers' regular work whilst retaining certain duties for the substantive post.

- 3.16 The Information Gathering Questionnaire for Local Authorities (June 2017) return to the Food Standards Scotland for this Authority indicated that there were 12.4 full time equivalents (FTE) in post with 3 management levels above the Senior Officers.
- 3.17 A live data report was requested from the food premises database at the start of the audit which the Authority was able to provide. The Authority is maintaining the premises database using an acting-up member of staff who is able to produce reports for management.
- 3.18 Onsite analysis of this report showed that the database was able to provide the figures for food hygiene, with only 18 low risk premises being overdue at the end of 2017, with 19 premises being unrated and 6 having no due date. These figures support the statement by the Authority that there are sufficient officers in post. Based on the nature and scope of the subsequent data corrections by the Authority and that the auditors are unable to verify these amended figures as correct as it would indicate issues with the collation of data from the database and that is not being effectively utilised.
- 3.19 The Authority has a long standing policy of combining food hygiene and food standards interventions at the same time. For food standards the majority of premises are considered low risk (C's). The LA report that the work involved in interventions combining hygiene and standards inspections allows both programmes to remain on target for completion in accordance with the Food Law Code of Practice.
- 3.20 The Food Safety "Operational Plan" 2017-2018 states that the operational costs for the Business Regulation Service is approximately £1 063 985, with no break down for the non-fixed costs involved in delivering Official Food Controls.
- 3.21 Officers were provided with a monthly list of scheduled interventions and were responsible for a particular geographic area, known as wards.
- 3.22 The Authority does not use any Alternative Enforcement Strategies, (AES) choosing to conduct official control interventions at all planned visits. There was a reference from an Officer to the use of AES at a dairy farm, which the Authority concludes may have been the use of inaccurate terminology.
- 3.23 Officers delivering Official Food Controls are specialist Food and Health and Safety Officers and database records show that these ranged widely between 26 to 250 recorded interventions per Officer over a 12 month period. These figures generally combined both hygiene and standards.
- 3.24 The Authority's database provided substantially different information on categories like visits, notices and written warnings between the signed off and submitted LAEMS return and the reports either requested by, or provided to,

the auditors. This would appear to be based on miscoding and discrepancies between the LAEMS system and the Local Authority database based on one or a combination of the following:

- (a) Database reports require housekeeping to remove inapplicable codes;
- (b) The codes could be better organised;
- (c) There has been relative inexperience in recent reporting.
- (d) There has been human error.

The use of the database to help in managing the service by the provision of suitable and effective reports being available and utilised should be a priority for the Authority.

Recommended Point for Action: Competent Authorities

The database used by the Authority does not comply with the Food Law Code of Practice or Regulation (EC) No 882/2004 due to certain data coding errors.

Article 4 Regulation (EC) 882/2004 Official Feed and Food Controls)
Section 6.2.1. of the Food Law Code of Practice (Scotland) 2015.

Recommended Point for Action: Food Service Plan

The Authority did not have a satisfactory Enforcement policy in place at the time of the audit.

Article 3 Regulation EC No 882/2004

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

- 3.25 The Authority has an approved scheme of delegation from March 2016 which appropriately delegates powers. The Head of Regulatory Services & Waste Solutions has been delegated the powers of the Council which includes the general delegation to sign and to issue authorisation to officers to exercise statutory powers.
- 3.26 Discussion took place on the general scheme of authorisation and the LA have taken the pragmatic approach of defining the legislation where powers are available by designating groups of legislation to Officer levels. The individual officer authorisation documents are then detailed by groupings including the Food Hygiene (Scotland) Regulations which lists the individual powers appropriately.
- 3.27 The documented list of legislation groups was updated at 11 January 2017 but was found to contain numerous references to out of date legislation, one of which is The Imported Food Regulations 1997, which were revoked entirely in

2005 by the Official Feed and Food Controls (Scotland) Regulations. The Products of Animal Origin legislation has been replaced with the Trade in Animal Related Products Regulations which now requires to be added to the list.

- 3.28 The reference to the Food and Environment Protection Act 1985 should be removed as that is within the remit of the Scottish Government.

Recommended Points for Action: Procedures

The Environmental Health authorisation documentation is not currently up to date

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

Article 6 Staff performing official controls (Staff Authorisation and Training)

- 3.29 Officers qualifications were not always fully available due to IT related retrieval issues however we were informed that copies had been retained on file. Some examples were available and were provided to verify this. CPD records to demonstrate that all Officers have completed the required 10 hours as required by the Food Law Code of Practice were presented as hard copy in training folders.
- 3.30 Some training records were provided, auditors asked for further copies to be provided electronically and these were subsequently provided. Performance Review and Development (PRD's as appraisals) were not being formally completed and the LA has no access to some previously completed electronic copies due to IT issues from the managers who recently left. PRD's are about to restart using a new corporate framework.
- 3.31 Annual PRD's have been conducted intermittently for a number of years, any training requests or employee development needs are raised and addressed outside of the system. The FLCoP requires that where an assessment of the officer's competency identifies training needs, appropriate additional training shall be provided or the officer's responsibility appropriately restricted. Without appropriate assessments being evidenced the FLCoP is not being followed.
- 3.32 Auditors requested further evidence be provided in addition to the evidence already presented for training in Hazard Analysis and Critical Control Points (HACCP) principles, and these were subsequently provided. However, as there was no evidence of any officers having attended any training in Validation and Verification of Food Safety Management Systems based on HACCP to ensure that officers could robustly challenge the documentation provided by food business operators, this should be added to officers PRD's and training needs assessments.

- 3.33 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 Official Controls Verification course. The new course requires participants to have a significant HACCP knowledge.
- 3.34 Officers have responsibility for a variety of food business operators, including 16 approved under Regulation (EC) No 853/2004 - laying down specific hygiene rules for food of animal origin. For Officers carrying out interventions in these establishments the Food Law Code of Practice requires competence in the inspection of specialist or complex manufacturing processes.
- 3.35 Multiple online training modules relevant to effective food law enforcement have been completed. During the onsite audit evidence of additional training, particularly in relation to hygiene related areas was provided to demonstrate awareness of the requirements to demonstrate competence to undertake such inspections in the processes involved within these approved establishments relevant to the Authority's area.
- 3.36 When undertaking interventions in category A food standards premises, the Food Law Code of Practice requires an Officer to have been appropriately trained and be able to demonstrate that they are competent to assess quality assurance systems. The Local Authority should ensure by reviewing training records that only those Officers who have received such suitable training should be allocated food standards premises at this rating.

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

- 3.37 The Food Business Inspection Form used by Officers covers the requirements of Annex II of Regulation 852/2004 in varying levels of detail, with the format following themes to consider. The section on HACCP provides almost no guidance for officers to record their findings against and appears to be considerably less detailed than the other prescriptive sections of the form. In numerous cases the areas covered were only indicated by a tick on the form, evidence of compliance or otherwise was frequently not present. There appears to be little order to the form to aid in an effective intervention record being completed, it neither follows the format of Annex II or the flow of food through a FBO establishment. As a result the evidence provided in the completed forms reviewed by Auditors does not comply with the requirements of the Food Law Code of Practice.
- 3.38 The Food Safety Intervention Policy refers to The Food Law Code of Practice repeatedly with little or no detail on how officers are to relate that to the successful local delivery and recording of their intervention activities.

The Authority has policies, procedures and protocols for the range of official controls and compliance with the Food Law Code of Practice. Examples of these documents were produced for the auditors and these are insufficient as they are lacking in specific details as how to do the required activities and also refer to incorrect documents.

- 3.39 The Authority has no clear procedure, policy or protocol on the “Quality and Consistency of inspections” which should cover many aspects of the work of the team, including intervention performance, enforcement actions, letters and reports. There are regular staff meetings and briefings which are minuted. However, the evidence available shows that there has been limited recent internal monitoring with the focus being quantitative rather than on the qualitative aspects of the official control.
- 3.40 The Authority has an internal monitoring procedure which is effectively a protocol of what requires to be done, there is insufficient detail on how this is done, recorded and followed through. An example is that “Managers must ensure that ... Contravention letters and a selection of other outgoing letters ...are reviewed,” Auditors found that letters and inspection reports for the same interventions were mis-aligned as they did not match, quoted different legislation which was not always appropriately referenced and were not being supported with other documentary or risk scoring evidence. The Authority has a procedure that all letters were being sent hard copy following a check by the senior EHO’s without ready access to supporting qualitative information.
- 3.41 The electronic database is being used to provide ongoing intervention programmes which are monitored by the provision of a variety of reports to determine the delivery dates of the programme. The Assistant Business Manager (Business Regulation) was able to produce documentation as evidence that work programmes were being set, monitored and supported by using the database to provide intervention programmes.
- 3.42 Sufficient evidence of qualitative assessments to verify compliance with the Food Law Code of Practice requirements by means such as shadowed inspections are not taking place. It is recommended that the Authority follow the guidance issued by Food Standards Scotland in FSS/ENF/17/010 of 27 March 2017 available at <http://www.foodstandards.gov.scot/publications-and-research/fss-enf-17-010-internal-monitoring-guidance>

Recommended Points for Action: Monitoring

1. The Policies and Procedures provided were not sufficiently detailed to facilitate consistent and appropriate intervention or enforcement activities to take place.
2. The quality of interventions is not being effectively monitored; the focus is on successfully achieving a performance target set by the last intervention date and risk rating.
3. 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

- 3.43 Inspection documentation as a report followed by a letter is provided or sent to food business operators (FBO) following interventions and these records were available either electronically or in hard copy. These differentiate between legal requirements or recommendations, however letters checked at the time of audit did not always quote the correct legal reference, so the FBO would not be able to readily identify the European legislation used and contravened. It was not clear from the record of Intervention which legislation was being referred to or the individual time scales required for compliance.
- 3.44 Food hygiene and standards items on both the record of intervention reports and the post intervention inspection reports (i.e. letters) were not always sufficiently precise and were not always being given appropriate timescale for achieving compliance. The completion of the intervention report and the subsequent letter was not always based on the collection or retention of sufficiently clear or detailed evidence from the aide memoire.
- 3.45 Some potentially serious legal requirements in relation to hygiene and food safety management systems were apparently given up to 6 weeks to be remedied. Follow up inspections took place by officers within that time limit, however these occurrences were not being monitored effectively by the Authority as the Senior Officers initialing all letters were not always routinely provided with evidence to verify their contents or requirements.
- 3.46 Records were available from the electronic database and from those items checked relating to food hygiene matters, these generally appear to follow the requirements and principles of the Food Safety Intervention Policy for a series of repeat visits.

Recommended Point for Action: Reports

1. The Authority have a system for providing reports and letters to food business operators, however the reports and letters sent do not always clearly indicate the specific EC legislation that the FBO is required to action so as to achieve compliance.
2. These hand-written on site reports do not always indicate timescales for the FBO to achieve compliance.
3. Timescales for compliance are not being effectively monitored as some serious contraventions appeared to be being given up to 6 weeks to be remedied, although follow up work was done within that timescale.

Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls)
Sections 14.6 and 28 of the Food Law Code of Practice (Scotland) 2015.

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

- 3.47 A real time un-announced verification check was carried out at a high risk butcher during a programmed inspection. The Officer involved had carried out the previous interventions at the premises and was familiar with the business. The FSS Auditors interviewed the Officer and allowed a short time to prepare for the intervention including reviewing the files and records.
- 3.48 The high risk butcher was last inspected in October 2017 when it had been rated an A risk category and a follow up mentoring visit was made within 2 weeks. On the reality check the Officer demonstrated a good working relationship with the FBO and handled the dynamics of the inspection well.
- 3.49 There was an initial emphasis on the structural aspects of the premises, followed by detailed questioning about cross contamination, chemical dilutions and usage and personal hygiene. These were simple verification checks to complete, initially the required HACCP elements were not thoroughly covered. Subsequently the EHO used another aide memoire based on Butchers licensing to ensure that more HACCP details were adequately covered, only non-compliances are noted.
- 3.50 During the intervention there was a period where RTE hot food was produced in substantial quantities with considerable risks of cross contamination. The Officer observed the process of production and service closely.
- 3.51 The previous visit by this officer was to provide mentoring on ButcherSafe, however, the in house produced Food Safety Management System document seen at the reality check was dated 2005, which the Authority say had been updated by the business operator and reviewed by the officer previously. However, the documented evidence available for this and previous interventions does not indicate that critical control points were suitably covered and documented during the intervention.
- 3.52 The Authority operates in a way that incorporates Food Standards as an integral part of the intervention, however the scope of the inspection record does not suitably cover the business operations. Areas such as recipes, ingredients, specifications, composition, origin and quality and animal byproducts do not appear to be covered. Some areas indicated that topics had been assessed but the comments box alongside was blank. During the intervention it appeared that the FBO was unclear on the subject of allergens, which had been covered in a letter from the previous intervention, this was followed up in subsequent visits and letters.
- 3.53 A second real time unannounced verification check was carried out at a high risk caterer with a second officer who had also previously inspected the premises on 21 February 2017. The officer dealt professionally with the challenge from the food handler present, representing the absent FBO, and conducted a more structural based rather than HACCP based intervention with a closed question being asked on the risk of cross contamination from a raw meat preparation area and a closed question on cleaning practices. As a result

it was not established if all food related activities had been identified and included in the intervention.

- 3.54 Time scales for corrective actions appeared not to be provided to the Food Handler present. The auditors considered that HACCP was inadequately covered, as there were insufficient questions or evidence provided to establish a level of knowledge and application by the food handler relevant to the hazards present in the business. This was explained as being an adaptation to the situation prevalent. Responses to less expansive questions were considered better than none at all when attempting to communicate with a belligerent food handler at the time of the visit. These matters were further discussed with the FBO at a subsequent follow up meeting.
- 3.55 Areas of investigation raised on previous interventions were not covered adequately and the food handler was unconcerned about rectifying these, despite a warning letter and an enforcement notice having been served. The Authority's Enforcement Policy is quite clear that at this stage there should be an escalation in enforcement to notice procedure, but the Officer was not prepared to do so, preferring a discussion with a senior officer at the LA owing to the absence of the FBO at that time.
- 3.56 The auditors present were of the opinion that alternative enforcement options may have been required had a more HACCP based intervention been carried out at this inspection, or that the inspecting officer had clearly informed the food handler at the time of the hampering nature of the behaviors being demonstrated and the lack of information being provided as a statutory part of the intervention.
- 3.57 Food Standards is designed to be an integral part of the intervention, however it may have been due to the challenges presented that the reduced meaningful dialogue almost entirely caused limited information gathering options. As a result very little detail appeared to be collected or recorded on areas such as allergens, traceability and country of origin, labeling, food contact materials or composition of products. During the intervention it appeared that the food handler was unclear on the subject of the allergen matrix in use at the business.

Recommended Point for Action: Control activities, Methods and techniques

The aide memoire used for the official control intervention was insufficient and there was not enough evidence to demonstrate both compliance and non-compliance with Food Law,

Article 10 of Regulation (EC) 882/2004 (Official Feed and Food Controls)
Section 27.4 of the Food Law Code of Practice (Scotland) 2015.

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

- 3.58 The Authority sends samples for examination and analysis to Glasgow Scientific Services.
- 3.59 A food sampling policy and procedure dated November 2017 was provided, Review of the document demonstrated that it referred to out of date legislation and terminology.
- 3.60 The references to quality assurance procedures proved to be unidentifiable and the link provided to the formal sample form was incorrect. Many of the appendices were not able to be identified and officers were unsure about the use of the quality assurance system. The review of the quality assurance system does not appear to be suitable to maintain it appropriately.
- 3.61 It was clear that the LA were sampling in accordance with National Sampling protocols and Guidance, however there was little evidence that the requirements of the Food Law Code of Practice were being followed in the development of the sampling programme to take account of the number, type and risk ratings of the food businesses and the type of food produced in the area, together with any home or originating authority responsibilities.

Operational practices had changed to use different methods of sampling and this had not been reflected in the recent update of the sampling procedure.

Recommended Point for Action: Reports

The Authority have documentation for the management of food sampling which does not appear to be accurate, appropriate or in compliance with the requirements of the Food Law Code of Practice,

Article 11 of Regulation (EC) 882/2004 (Official Feed and Food Controls)
Section 38 of the Food Law Code of Practice (Scotland) 2015.

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

- 3.62 The Authority has an electronic database of the food premises within their area. At the time of audit the database appears to be accurate and contains appropriate records. To assist Local authorities in the use of databases. Food Standards Scotland have issued guidance to Local Authorities on this in March 2017, available at <http://www.foodstandards.gov.scot/publications-and-research/fss-enf-17-010-internal-monitoring-guidance>

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

- 3.63 The Authority has a Food Enforcement Policy in place supported by Procedures and guidance notes, however as previously mentioned these would benefit from being reviewed as they contain references to out of date reference sources and where necessary updated on a regular and frequent basis. This should provide a structure indicating how the subject covered by the procedure has to be implemented locally and then be up to date.
- 3.64 There were 21 establishments subject to Hygiene Improvement Notice's, 4 subject to a Remedial Action Notice, and 808 establishments subject to written warnings from the 2015 premises subject to official control during the previous 12 months. The Officers would appear to be following the Food Safety Intervention Policy of primarily using education followed by the application of the principles (proportionality, consistency, targeting, transparency and accountability) required by the Enforcement Policy and The Regulators Code.
- 3.65 The available options of notices and certification which could potentially simplify some areas of work have not been included in the current documentation or systems of work. There has been proportionately little enforcement culminating in the service of formal notices, this appears to be a result of the interpretation of the policy by officers to continually revisit non-compliant premises. The Policy is unclear about the definition of "a refusal or lack of interest from the FBO to resolve any outstanding issues". As a result the well-established "pitch a tent" approach is resulting in enforcement Officers not taking formal action when it would also satisfy the public interest and be likely to succeed.
- 3.66 The Authority does not have any Alternative Enforcement Strategies for official controls, the standard practice is to complete interventions at all food businesses.

Recommended Point for Action: Action in the case of non-compliance

The Authority has documentation for food law enforcement which is unclear about the actions to take with regard to the nature of breaches identified and the history of compliance of the FBO.

Article 54 of Regulation (EC) 882/2004 (Official Feed and Food Controls)
Section 14 of the Food Law Code of Practice (Scotland) 2015.

Auditors:
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Kevin McMunn
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Jamie McMeeking (FSA in Wales)

4.0 Annex A

Action Plan for North Lanarkshire Council: Capacity and Capability Audit, February 2018

Recommended Point for Action	Planned actions	Target date for completion	Audit Update February 2020
<p>The Authority did not have a satisfactory Enforcement policy in place at the time of the audit</p> <p>Article 3 Regulation EC No 882/2004</p>	<p>A revised enforcement policy and its explanatory report have been submitted for consideration by Elected Members at the Infrastructure Committee Meeting on 12 September, 2018.</p> <p>Subject to Committee approval, the revised enforcement policy will be published on line.</p>	12/09/2018	Actions for Article 3 completed following documents received from Local Authority up to December 2019.
<p>The Environmental Health authorisation documentation is not currently up to date.</p> <p>Article 4 of Regulation (EC) No 882/2004 Section 4 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>Amend the on line document to delete expired legal references and include emerging enactments.</p> <p>To streamline procedures, except where specifically required, only Acts of Parliament will be listed and not subordinate Regulations etc.</p>	By 30/09/2018	Actions for Article 4 completed following documents received from Local Authority up to December 2019
<p>The database used by the Authority does not comply with the Food Law Code of Practice or Regulation (EC) No 882/2004</p> <p>Article 4 Regulation (EC) 882/2004</p>	<p>The following measures have been or will be implemented in full by the target date:</p> <ol style="list-style-type: none"> 1. Coding errors and other database deficiencies identified and 	<p>By 31/03/2019</p> <p>(Point number 2 completed on 25/05/18.)</p>	Actions for Article 4 completed following documents received from Local Authority up to December 2019

<p>Official Feed and Food Controls) Section 6.2.1. of the Food Law Code of Practice (Scotland) 2015.</p>	<p>corrected.</p> <ol style="list-style-type: none"> 2. Training in database report writing for all food law managers. 3. Written database work instructions to be issued to all food law enforcement personnel. 		
<p>The Policies and Procedures provided were not sufficiently detailed to allow consistent and appropriate intervention or enforcement activities to take place.</p> <p>Article 8 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 39 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>Managerial and front-line food safety enforcement officers to review and revise all existing policies, procedures and to provide clear work instructions where required.</p>	<p>By 30/06/2019</p>	<p>Actions for Article 8 completed following documents received from Local Authority up to December 2019</p>
<p>The quality of interventions is not being effectively monitored; the focus is on achieving a performance target set by the last intervention date and risk rating.</p> <p>Article 8 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 39 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>The Authority will use FSS guidance in developing in-house intervention monitoring checks. Since May, 2018, food law enforcement officers took full ownership of their intervention reports. The capacity freed in managerial commitment has been used to facilitate improved internal quality assurance monitoring.</p>	<p>By 30/06/2019</p>	<p>Actions for Article 8 completed following documents received from Local Authority up to December 2019</p>
<p>The procedural notes were not always current and many require a review.</p> <p>Article 8 of Regulation (EC) 882/2004</p>	<p>Stand-alone work instructions, linked to the revised policies and procedures mentioned above, are to be produced.</p>	<p>By 30/06/2019</p>	<p>Actions for Article 8 completed following documents received from Local Authority up to December 2019</p>

(Official Feed and Food Controls) Section 39 of the Food Law Code of Practice (Scotland) 2015.			
<p>The Authority have a system for providing reports and letters to food business operators, however the reports and letters sent do not always clearly indicate the specific legislation that the FBO is required to action so as to achieve compliance.</p> <p>Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Sections 14.6 and 28 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>At training events and team meetings, food law enforcement officers were instructed to ensure accurate and comprehensive references to EU food law in their reports.</p>	<p>By 31/03/2019 (Completed on 30/06/18)</p>	<p>Actions for Article 9 completed following documents received from Local Authority up to December 2019</p>
<p>These reports do not always indicate timescales for FBO to achieve compliance.</p> <p>Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Sections 14.6 and 28 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>At training events and team meetings, food law enforcement officers were instructed to ensure timescales are included in all formal reports, where appropriate.</p>	<p>By 31/03/2019 (Completed on 30/06/18)</p>	<p>Actions for Article 9 completed following documents received from Local Authority up to December 2019</p>
<p>Timescales for compliance are not being effectively monitored as some contraventions appeared to be given up to 6 weeks to be remedied.</p> <p>Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Sections 14.6 and 28 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>The following action has been or will be to be taken by the target date specified:</p> <ol style="list-style-type: none"> 1. At training events and team meetings, food law enforcement officers have been instructed to ensure timescales feature in all intervention reports. 	<p>By 31/03/2019 (Points numbers 1, 2 and 3 completed by 30/06/2018.)</p>	<p>Actions for Article 9 completed following documents received from Local Authority up to December 2019</p>

	<ol style="list-style-type: none"> 2. Timely follow up interventions continue in accordance with individual compliance limits conferred in those reports. 3. Managers to review full supporting documentation and other evidence when monitoring progress on interventions. 4. The above to be incorporated within a revised monitoring policy, a document which will be informed by FSS guidance in developing in-house intervention monitoring checks. 	<p>(Point number 4, no later than end of March, 2019.)</p>	
<p>The aide memoire used for the official control intervention was not appropriate and there was insufficient evidence to demonstrate both compliance and non-compliance with Food Law.</p> <p>Article 10 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 27.4 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>The follow action has been or will be to be taken by the target date specified:</p> <ol style="list-style-type: none"> 1. A revised aide memoire/inspection form has been issued to all food law enforcement officers in advance of a Service training event in September, 2018 prior to implementation. 2. Further changes may take place as a result of this Authority's participation and collaboration with its peers at the West of Scotland Food Liaison Group. 	<p>By 31/03/2019</p>	<p>Actions for Article 10 completed following documents received from Local Authority up to December 2019</p>

<p>The Authority has documentation for the management of food sampling which does not appear to be accurate, appropriate or in compliance with the requirements of the Food Law Code of Practice.</p> <p>Article 11 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 38 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>The following action has or will be to be taken by the target date specified:</p> <ol style="list-style-type: none"> 1. Documentation to be reviewed, sampling programme to be revised and implemented ahead of the target date. 2. Revised sampling policy to be published. 	<p>By 31/03/2019</p>	<p>Actions for Article 11 completed following documents received from Local Authority up to December 2019</p>
<p>The Authority has documentation for food law enforcement which is unclear about the actions to take with regard to the nature of breaches identified and the history of compliance of the FBO.</p> <p>Article 54 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 14 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>All existing policies are under review and will be supplemented by new work instructions, where required.</p>	<p>By 30/06/2019</p>	<p>Actions for Article 54 completed following documents received from Local Authority up to December 2019</p>