



Food Standards Scotland

East Lothian Council Food Law Enforcement Services

Capacity and Capability Audit Report

27 – 29 June 2017



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 East Lothian 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 East Lothian 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 East Lothian Council's Food Service was undertaken by the Food Standards Agency (Scotland) in February 2014. The previous audit to that was a desktop one in 2013, with a feed audit done in November 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 East Lothian 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 East Lothian.

Local Authority Background

- 1.8 East Lothian Council has an Environmental Health Service Charter which sets out how the regulatory activities of the Environmental Health Service will be undertaken. The charter is effectively the "enforcement policy" as it sets out the key principles followed to achieve compliance with all the legislation enforced by the service. It seeks to ensure that there are maximum regulatory outcomes whilst minimising burdens on business as well as being designed to help businesses and individuals understand the objectives and methods for achieving compliance, as well as the criteria considered when deciding what are the most appropriate responses to any breaches of legislation identified. The Charter aligns with the Scottish Regulators' Strategic Code of Practice.

The principles of better regulation are listed in the introduction to the Service Charter as proportionality, accountability, consistency, transparency, and targeted, with an additional sixth principle of taking a timely approach.

East Lothian Council have actively participated in Scotland's Food & Drink County initiative following the introduction of a ground-breaking Food and Drink Business Improvement District (BID) scheme voted for by producers across the

region. As a result, the newly formed East Lothian Food & Drink Ltd is now in operation, providing a unique opportunity for local producers to take the lead in building a more prosperous future for their businesses. This has been recognised by the award of the title “Scotland’s Food and Drink County”.

- 1.9 There is an Environmental Service Plan in place for 2016/2017 which was approved by the Head of Development on 01 November 2016. The plan is satisfactory as it follows the Framework Agreement Guidance in format and content, with additional annexes covering the Scope of the Food Safety Service, the Food Safety Interventions Policy, the Food Sampling Programme 2016-2017, the Public Analyst and the Food Examiner appointments and the Food Safety financial profile.
- 1.10 Within the Environmental Health Service, the food law enforcement is being managed by the Service Manager – Protective Services. The Environmental Health Team Manager – Business Regulation (herein referred to as the Business Regulation Manager) is the Lead Officer for Food and is responsible for the food law operational delivery work carried out by the 4.3 Full time equivalents from the Team Manager, the 2 Senior EHO’s and the 2 Food Safety Officers. The Senior Environmental Health Officer level has been a recent addition to the structure.
- 1.11 The team members are multi-disciplined, covering other duties in addition to food safety. They are suitably authorised under the Food Law Code of Practice (Scotland) commensurate with their training and experience.

2.0 Executive Summary

Capacity

- 2.1 The audit found that the team is being effectively managed within a supportive and recognised service area. The Chief Executive recognises the public health importance of the work carried out and has demonstrated her support consistently.
- 2.2 The resilience of the authority for food safety has been measured and recorded and the 2 vacancies, one at a senior level and an Environmental Health Officer (EHO) have been recognised as being vital to recruit to.
- 2.3 The Lead Officer for Food is responsible for day – to – day delivery of food hygiene and food standards enforcement. It was established that work is recorded and quantified to ensure the delivery of the food service as required by the Service Plan.
- 2.4 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 satisfactory at the time of audit.

- 2.5 The Authority has an Environmental Health Service Plan 2016-2017 that is compliant with the template of the 2010 Framework Agreement on Official Feed and Food Controls by Local Authorities. The demands on the Local Authority are very well documented as are the Service Delivery interventions planned for the year.
- 2.6 The budget information produced by the Authority shows a reduction of finance to the food service of approximately £20 000 between 2015/16 and 2016/17 attributable to the renegotiation of its sampling contract. However, the recent restructure of the Environmental Health Service ensures that there will be no net negative impact on food service official control delivery with an increased budget of around £40,000 allocated to Food and Safety for 2017/18. There is an estimated annual budget for 2017/18 of £262, 979, which appeared to be managed adequately at the time of audit.

Capability

- 2.7 The Scheme of Delegation is within the Standing Orders of East Lothian Council which took effect from 25 August 2015. The authority delegated from the Chief Executive to the Deputy Chief Executives and may then be delegated on to Heads of Service. Each Authorised Officer has signed, clear, concise and appropriate Authorisation documents which were readily available and these were detailed in centrally held files for each authorised officer. The system used is clear, simple and considered as effective.
- 2.8 Monitoring of the quantity and quality of work allocated or completed is carried out regularly for the management team by the Business Regulation Manager and there are a variety of different systems and reports produced to ensure consistency and quality are monitored and reported. The capability to deliver the Authority's statutory duties under Food Law was considered satisfactory subject to the filling of vacant posts at the time of audit.
- 2.9 Effective discussions and co-operation takes place by officers working closely located within a single office.
- 2.10 For the Approved Establishments within the Authority, Officers are required to have particular knowledge of the processes within these establishments and not just knowledge of Hazard Analysis Critical Control Point Systems. Evidence of specific training in associated specialist or complex processing was available.
- 2.11 To assist in the appropriate delivery of enforcement there are a series of documented procedures available to all Officers in electronic format on a central directory. The majority of these documents are detailed and contain hyperlinks to other reference sources.
- 2.12 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.

Level of Assurance

2.13 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:

Substantial Assurance***Controls are robust and well managed***

Risk, governance and control procedures are effective in supporting the delivery of any related objectives. Any exposure to potential weakness is low and the materiality of any consequent risk is negligible.

3.0 Audit Findings

- 3.1 This report contains conclusions stemming from the audit findings. Conclusions address the compliance with the planned arrangements, the effectiveness of their implementation and the suitability of the planned arrangements to achieve the stated objectives as appropriate.

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

- 3.2 The Authority has a satisfactory Environmental Health Service Plan for 2016/2017 which has been approved by the Head of Development on 1st November 2016 and subsequently placed in the Members' Library and on the council web site at http://www.eastlothian.gov.uk/download/meetings/id/18247/20416_environmental_health_services_plan_201617
- 3.3 The relatively recent management changes at Service Manager level has re-invigorated the process of developing service plans and provided a management structure for the Environmental Health Service. The Business Regulation Manager is the designated Lead Officer for Food and was effectively managing the regular workload of the Authorised Officers.
- 3.4 The Service Manager provided data to the auditors to show that there were 2 vacancies, one at a senior officer level and another EHO position with a FTE of 3.3 officers for food hygiene and 1 FTE for food standards. The Local Authority had considered and demonstrated that failure to recruit to vacancies would have a negative impact in maintaining confidence in the current level of Public Health assurance.
- 3.5 The Environmental Health Service plan is unusually well detailed in the Service Delivery section with the numbers of expected inspections in each risk band and the associate number of programmed inspections.
- 3.6 The interim 2016 – 2017 LAEMS data published on the FSA website on 28 June 2017 shows that for East Lothian Council in Food Hygiene there were 1150 establishments in total, with only 8 that had not yet been rated for an intervention. There were 1 category A, 57 B's, 316 C's, 364 D's and 386 E's. The report indicates that 100% of high risk (A & B) hygiene interventions were being completed. The published data indicated that there were 18 premises outside the programme. There were 1289 interventions achieved with 52 due interventions outstanding.
- 3.7 For Food Standards 620 inspections and audits were achieved with 185 other official controls being carried out. A written warning was required at 158 establishments.
- 3.8 There were an unusually low number of written warnings recorded, at 37, the authority were aware of this and indicated that it was due to a coding error on the database records. There were 4 establishments subject to notices.

- 3.9 East Lothian Council has an Environmental Health Service Charter which very clearly and simply sets out how the regulatory activities of the Environmental Health Service will be undertaken. The charter is effectively the “enforcement policy” as it sets out the key principles followed to achieve compliance with all the legislation enforced by the service.
- 3.10 A live data report was requested from the food premises database at the start of the audit which was promptly provided. On analysis this showed:
- There were a small number food hygiene interventions considered overdue, with 46 at the end of April and 58 at the end of May. These were mainly Categories D and E. There were 1193 premises listed on the Food Premises database, 70 of which were unrated.
- 3.11 The Authority reports on food hygiene differentiate between requirements or recommendations, and each is given a timescale for compliance. The LA report that the work involved in combining hygiene and standards inspections has had little impact as that was their strategy before the current working group pilot study of undertaking simultaneous food hygiene and food standards interventions finalised their project.

Good practices

The Environmental Health Service Charter setting out how the regulatory activities of the Environmental Health Service will be undertaken is an effective method of documenting how to achieve compliance with all the legislation enforced by the service.

The Environmental Health Service Charter is also available on the Council website and on the recently launched My East Lothian Environmental Health App.

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

- 3.12 The Authority has under the Standing Orders of the Council made a satisfactory scheme of delegation to committees and officers to carry out certain functions, including food safety. The Scheme of Delegation forms an appendix and the latest approval of the Standing Orders was on 15 May 2017.

The specific duties and responsibilities delegated to the Head of Service are to ensure the carrying out the Council's duties and responsibilities as a Food Authority under the Food Safety Act 1990, Agriculture Act 1970 and other legislation

The Standing Orders are clear, concise and appropriate.

- 3.13 The scheme of authorisation and the method of individual documentation for officers were examined and it was found that 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.
- 3.14 The Enforcement Policy has been developed within a comprehensive Service Charter which not only sets out how the regulatory activities of the Environmental Health Service will be undertaken but also provides operational information to users of the Service, prescribing standards that can be expected and the actions open to users should they have concerns or complaints. The Charter aligns with the Scottish Regulators' Strategic Code of Practice and is designed to help businesses and individuals understand the Service's objectives and methods for achieving compliance, as well as the criteria considered when deciding what the most appropriate response is to a breach of legislation. The Charter meets the requirements of the Food Law Code of Practice (Scotland) by reference to the Code provisions.
- 3.15 The Service Charter was authorised by the Head of Service on 07 November 2016 and it is suitably detailed to enable the required enforcement action to be taken effectively.
- 3.16 The Authority is maintaining their database and was able to produce reports for the auditors. This is facilitated by a dedicated, experienced member of the office staff. The Team Manager uses the database to assess the work priorities and to ensure that there is a reasonable allocation of work to all members of the team. Very comprehensive monitoring, management and profiling have been carried out at different times and it is clear that the scope of the work is fully understood.
- 3.17 The EHO's and 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

- 3.18 Officers have the appropriate qualifications and copies are retained on file. Documentary evidence was available to demonstrate that all officers have completed the required 10 hours of continuing professional development as required by the Food Law Code of Practice.
- 3.19 Evidence of formal training in Hazard Analysis and Critical Control Points (HACCP) principles was readily available. The authority had recently procured and financed a bespoke specialist training event that considerably enhanced the knowledge of attendees on HACCP including validation and verification.
- 3.20 When undertaking interventions in the single category "A" food standard premises, if the business is engaged in the manufacture and processing of foodstuffs with documented quality assurance systems, 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.

Several Officers have received suitable training and they should carry out the food standards official controls at the category A rated premises.

- 3.21 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 interventions in these approved establishments the Food Law Code of Practice requires competence in the inspection of specialist or complex manufacturing processes, Officers who have conducted Official Controls at approved establishments have received a variety of appropriate training in specialist/complex processes.

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

- 3.22 The Authority has policies, procedures, Enforcement guidance, Officer procedural notes, Managers guidance notes for the range of official controls and compliance with the Food Law Code of Practice. Examples of these detailed documents were produced for the audit and are fit for purpose.
- 3.23 The Authority has a very detailed and comprehensive internal monitoring procedure for many aspects of the work of the team and these facilitate the production of a variety of reports that allow the managers to be aware of the status of the work planning process.
- 3.24 The electronic database is being used to provide on-going intervention programmes which are monitored by the provision of a variety of reports to determine the delivery of the programme. The Authority will shortly introduce an app on new tablets to enhance Officers flexibility to record and report intervention outcomes.
- 3.25 Qualitative assessments such as paired inspections are taking place when required in accordance with the monitoring procedure. These accompanied inspections are routinely taking place where it is expected that there could be potential complications arising from the intervention. The team meetings have a Standard agenda and are minuted to ensure records are maintained.

Article 9 Regulation EC No 882/2004 - Reports

- 3.26 Inspection documentation is created as both a report and/or a letter which is provided or sent to food business operators (FBOs) following interventions. These records were available electronically. From the records checked those relating to food hygiene matters generally appear to follow the requirements of the Food Law Code of Practice.
- 3.27 Food standards items on inspection reports were being given a timescale for achieving compliance to the FBO and the guidance on whether the item is a recommendation or a requirement was sufficiently precise.

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

- 3.28 A real time un-announced verification check was carried out at a caterer during a programmed inspection. The officer responsible for the premises involved had recently carried out a number of previous interventions several months before and was therefore familiar with the business and its methods of operation. The officer had prepared for the inspection by reviewing the file and records.
- 3.29 The various serious hygiene, training and cross contamination matters that were identified during the inspection were dealt with confidently and professionally by the officer who in consultation with her line manager served two Remedial Action Notices which resulted in the business closing until the Officer was satisfied the risks were controlled. The main finding was the potential cross contamination of raw and ready to eat foods in the kitchen and the lack of understanding of this issue by the FBO. The Food Business Operator clearly did not understand the issues and was only offering to clean the premises in an attempt to ensure compliance.

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

- 3.30 The Authority sends samples for examination and analysis to Edinburgh Scientific Services.
- 3.31 A comprehensive sampling policy and programme were in place, were being followed and very well managed by a responsible member of the team.
- 3.32 The audit looked at several sample failures and found that the Authority had followed these up appropriately in all cases and records were provided to verify this.

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

- 3.33 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.

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

- 3.34 The Authority has an innovative method of referring to their Food Enforcement Policy by the use of an Environmental Health Service Charter to demonstrate both a commitment to ensuring a safe, prosperous economy and community at the same time as maintaining compliance with the Scottish Regulators' Strategic Code of Practice and other centrally issued guidance is in accordance with the Enforcement Principles.
- 3.35 There were 4 establishments subject to Hygiene or Remedial Action Notices, and only 37 establishments being suitably coded on the electronic database as

being subject to written warnings from the 98% of interventions achieved across all 5 risk categories. The Officers would appear to be following the Environmental Health Service Charter primarily using education followed by the application of the principles of proportionality, consistency, targeting, transparency and accountability.

3.36 The authority use Alternative Enforcement Strategies for both either Food Hygiene or Food Standards as official controls.

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Annex 1

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
There is no required Action Plan for East Lothian Council following the Capacity and Capability Audit of June 2017			