Food Standards Scotland

Moray Council
Food Law Enforcement Services

Capacity and Capability Audit Report

23-25 May 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 882/2004[1] on official controls performed to ensure the verification of compliance with feed or food law and the Food Law Code of Practice (Scotland) 2015'

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

[1] (EC) No 882/2004

Following the audit it is expected that for any recommended points for action the Local Authority will prepare and implement an action plan which will incorporate a root cause analysis of any non-compliance. A template for this is provided at the end of this report.

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1.0 Introduction

1.1 This report records the results of the audit at Moray 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 Moray 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 Moray Council Food Service was last audited for Food Standards by the Food Standards Agency (Scotland) in June 2013. The previous audit to that was an Imported Feed Audit in March 2011.

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 Moray 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 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 Elgin.

Local Authority Background

1.8 Moray Council is a unitary authority which provides all local services for the Moray Council area. The Council discharges its operational responsibilities as a food authority in relation to food hygiene and food standards enforcement through the Environmental Health team which is part of Development Services.

From the 2015-2016 LAEMS return 1300 food businesses are located within the Moray Council area. These categories include 35 primary producers, 110 manufacturers, 2 Importers and exporters 27 distributors, 304 retailers and 852 restaurants and other caterers as well as others.

1.9 The Planning and Regulatory Services committee of Moray Council approved the updated Environmental Health Enforcement policy on 12 August 2008. The policy refers to the "Enforcement Concordat" which has been superseded by the Scottish Regulators Strategic Code of Practice (SRSCoP). The policy document refers to proportionality and consistency as well as enforcement procedures and service standards and performance reporting, references are made to the Food Enforcement Service Delivery Plan and the Enforcement Delivery Procedures (Food Safety) and the FSA (Scotland) Food Law Code of

Practice. The SRSCoP is referred to in the Food Law Enforcement Service Delivery Plan.

The SRSCoP is made under section 5 of the Regulatory Reform (Scotland) Act 2014 (the Act) 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.

1.10 Within the current departmental management structure, The Environmental Health Manager is responsible for food law enforcement and the day to day management of this is delegated to a Principal Environmental Health Officer. Since the previous audit in 2013, 10 of the same staff have remained with the Council with some maintaining similar positions within the service. Internal Promotion to the position of Environmental Health Manager of an EHO and on-going staff shortages since the management change of 12.5% for 1 year, 17.5 % for the following 6 months, 30% for 6 months then returning to 17.5% to date has not resulted in a settled and stable team.

1.11 The Environmental Health Manager works with two managers for the different teams of Officers. Official controls at food businesses are delivered by an East and a West team. The recent comprehensive review covered the whole of Environmental Health and the Development Services Plan indicates that this was completed, resulting in new procedures, practices and monitoring for food safety.

1.12 In the current Food Law Enforcement Service Delivery Plan the staff allocation indicates that 10 Environmental Health Officers plus 1 part-time food safety officer are involved to a varying degree in food safety enforcement, however the LA was unable to accurately specify the exact number of Full Time Equivalent (FTE) officers dedicated to food safety enforcement as the officers are generalist and work across many areas of work. The estimated FTE was calculated by individual staff advising how much of their time they spend on food. The authority considered that there were recruitment problems in relation to professional staff and to address this has recently implemented a Graduate Student EHO post that leads to qualification being obtained more speedily.

1.13 All Authorised Officers for Official Controls are generalists within two separate teams and this was found to have operational and managerial disadvantages for the authority as compliance with the Food Law Code of Practice (Scotland) requires considerable improvements to meet the requirements for inspection at the minimum frequencies for the considerable amount of overdue category C, D and E premises.

1.14 The Lead Auditor made two requests following the audit by email to the Environmental Health Manager on the 5th and 8th June, for detailed budget information for 2017/18. This was not provided. The Service Manager informed

the auditors that the budget for Environmental Health 2017/18 was £992 000. Reference to the provided 2017-2018 Food Law Enforcement Service Delivery Plan states that the current budget for 2016/2017 for food safety enforcement is contained in an overall budget for Environmental Health which is the same £992 250. The 2016-17 plan could not be found on the Local Authority web site; however this figure is identical to that stated in the 2015-16 plan. The auditors are therefore unable to conclude that the LA does or does not have a capacity issue with regard to finance being available for the LA to fulfil its statutory food safety duties for the current year.

2.0 Executive Summary

Capacity

2.1 There are currently two teams, based on 10 members of staff inclusive of the Environmental Health Manager. Discussions took place on the accuracy and equivalency of full time equivalent staff (FTE's) allocated to food safety and the management of these officers. It was established that each PEHO was responsible for the work of their own specialist officers, even when work streams overlapped. The Auditors considered that the Lead Food Officer was not in overall managerial control of all Officers involved in the delivery of Official Controls.

2.2 The Local Authority's intervention programme together with the establishment of 10 allocated staff informed discussions about the capacity of each officer to complete interventions. It appears that the scheduled programme for all official controls is in low single digits per officer on a weekly basis, which is relatively sufficient for the planned high risk premises but this cannot maintain the required frequency for lower risk premises which are effectively being missed.

2.3 The 2015 – 2016 LAEMS Report published on 21 November 2016 shows that for Moray Council Food Hygiene there were 1330 establishments in total, The Service Plan does not provide percentages of work completed, referring only to number of inspections completed. The LAEMS report shows 251 of 253 (99%) of high risk (A and B rated premises) and 369.480 (77%) of all other categories were achieved. The total was 620 of 733 (85%) achieved. This would indicate that the food hygiene intervention programme was not fully achieving its objectives as interventions were not being completed.

2.4 Reactive work in the area of food and health & safety duties undertaken by the Food Officers was discussed. The Local Authority was able to quantify the capacity required to meet reactive demands by providing a report from the electronic database. Time spent by Food Officers working in other areas of Environmental Health was not easily quantifiable.

2.5 The detailed budget information for the current year was requested twice from the Authority but was not fully provided, however figures in the various service plans and committee reports appeared to show static financial resources over a few years.

2.6 The training budget is not controlled from within Environmental Health/Development Services. The budget is managed by Human Resources and Environmental Health managers have to make the case for training issues.

Capability

2.7 The audit found that the Principal Officer acting as Lead Food Officer had been in post for a considerable time and was very experienced in food law enforcement.

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

2.9 The Authority has a Food Law Enforcement Service Delivery plan for 2017-2018 which follows the format of the guidance in the Framework Agreement.

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

2.11 The Principal Officer with Lead Food responsibility actions the reports produced by System Support for quantitative allocation and monitoring of official control work. With some authorised officers conducting official controls reporting to a different team manager there is considerable potential for the required inspection frequencies at all categories not being met. There appeared to be little qualitative monitoring of work across all authorised officers and no formal procedure in place to reduce the backlog of late category C. D and E rated premises. The systems in place are designed to be suitable however these are not always being implemented fully.

2.12 For the Approved Establishments within the Authority the team of officers are required to have particular knowledge of the processes within these establishments as well as knowledge of Hazard Analysis Critical Control Point Systems. This knowledge such as the processes involved at a cannery was contained within a restricted number of Officers and there was not evidence that relevant knowledge was being disseminated within the team to facilitate future official control work and ensure sufficient capacity for all areas.

2.13 To assist in the appropriate delivery of enforcement there are a series of documented policies and operational documents available to all Officers in electronic format on a central directory. However many of these documents have not been reviewed for some years and would benefit from being updated.

Level of Assurance

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

2.15 The Recommendations within this report detail the weaknesses in the controls that Moray Council should address

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.**

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 Law Enforcement Service Delivery Plan in place for 2017/2018. The Performance review against the 2015/2016 plan is in a comprehensive document and it identifies that the requirements of the FLCoP were not achieved for any of the 5 risk categories, particularly C, D and E's. There is no robust strategy identified in the document in order to address any variance from meeting the requirements of the service plan and to reduce the backlog of those outstanding C's and all of the D and E's. The Authority should set out plans for any relevant improvement or service development identified as necessary by the review.

3.3 The Development Services "Service Plan" 2016-2018 states that an achievement for 2015/16 was the completion of the comprehensive review covering the whole remit of Environmental Health resulting in new procedures, practices and monitoring for food safety and several other service areas. The documentation provided as part of this audit was either older than 2015 or was undated. Examples include the "Authorisation Procedure – Reviewed October 2014", the "Enforcement Decision procedures – Reviewed April 2013" and the "Environmental Health Enforcement Policy – undated and unreferenced".

3.4 The provided copy of the Service Plan 2016-2018 which was found to cover 2016 -2019 is also potentially misleading in relation to the Capacity to deliver Official Controls as under Key Drivers as it states at point 3.7.12 "The audit function of the Food Standards Scotland has been recently completed and in addition to reality checks during the audit, unannounced audits are to be introduced." This is contrary to long established published FSS policy which was most recently notified to LAs and published on the FSS website as reference FSS/ENF/16/007. For this audit the LA was given 3 weeks' notice, which cannot be considered as "unannounced". Competent Authority audits have never been unannounced and the Authority have agreed that when the

document is replaced a statement about the notice given of an audit will be provided.

3.5 The Food Law Enforcement Service Delivery Plan 2017-2018 links to the above plan which is in turn is linked to "The Moray 2026 – A plan for the future" thereby giving a continuum to the delivery of services.

3.6 The Food Law Enforcement Service Delivery plan is accurate in its references to the 2015 Food Law Code of Practice and the Scottish Regulators Strategic Code of Practice. It also refers to the issue of having only one officer inspecting approved establishments. There is a potential issue should that officer be unavailable.

3.7 Since February 2015 there have been no management changes at Environmental Health Manager or Lead Food Officer level which has ensured continuity in developing service plans and providing a management structure for the service. The Principal EHO (East) is the designated Lead Officer for Food and was managing the regular workload of the Authorised Officers. However the Lead Officer has no overall management control of Food Officers working in the West Team.

3.8 The Local Authority Intelligence Gathering Questionnaire (June 2016) return to Food Standards Scotland for this Authority indicated that there were 3.5 Food Hygiene FTE's required with 3.5 FTE's in post, the authority consider an additional 2.5 are required.

3.9 There was no evidence of a documented system for the equal allocation or distribution of reactive work.

3.10 The 2016 - 2017 LAEMS Report return shows that for Moray Council Food Hygiene there were 1330 establishments in total, with 181 that were recorded on the database having not yet been rated for an intervention.

The breakdown of premises indicated 19 category A, 77 B's, 312 C's, 360 D's and 369 E's. The return indicates that 255 of 258 high risk (A & B) hygiene interventions were achieved with 416 of 498 of all other interventions similarly achieved. This would indicate that the food hygiene intervention programme was not achieving its objectives of interventions being effectively completed as required by the Food Law Code of Practice.

3.11 For Food Standards, 580 inspections and audits, and 86 Sampling visits were achieved at 434 premises. Enforcement actions that were taken included 3 voluntary closures, 6 seizures, detentions or surrender, 1 improvement notice and 145 written warnings. There were 405 premises in total subject to official controls.

3.12 For Food Hygiene, 416 inspections and 255 other official controls were achieved at 398 different premises. For enforcement Actions there were 144 written warnings, 1 Remedial Action Notices, no Hygiene Improvement Notices, 15 seizure, detention & surrender of food and 3 voluntary closures.

Proportionally this is a low set of figures, which reflect the enforcement policy of the authority.

3.13 A live data report was requested from the food premises database at the start of the audit which was provided. On analysis this showed the following had been missed:

	Food Hygiene	Food Standards
A	4	2
B	6	76
C	119	214
D	161	n/a
E	296	n/a
Unrated	196	303

The authority explained that this could partly be as a result of the authority's participation in the 2012-15 Scottish Food Enforcement Liaison Committee's Implementation Strategy for the Food Standards Agency's Cross Contamination Guidance of 2011-12. The Food Law Code of Practice requires all food premises to be included on an intervention programme that has specific minimum inspection frequencies for the different risk categories. These minimum frequencies are not being achieved by this authority.

3.14 The Authority advised that food hygiene and food standards interventions were carried out at the same time, however with regard to food standards the majority of premises are considered low risk. The Authority has an Alternative Enforcement Strategy (in the form of a questionnaire) which is not being used.

3.15 From the Moray Council website the Revenue Budget Paper for 2016/17 shows that for Environmental Health the budget for that period is £1,053,000 with no break down for Official Food Controls. The Service Manager informed the auditors that the budget for 2017/18 was £992, 000.

Recommended Point for Action: Food Service Plan

The Authority did not have a satisfactory Food Safety Service Plan in place for 2017/18 at the time of the audit

Article 3 Regulation EC No 882/2004

Recommended Point for Action: Food Service Plan

The Authority are not meeting the minimum inspection frequencies required by the Food Law Code of Practice (Scotland) 2015

Article 3 Regulation EC No 882/2004

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

3.16 The Environmental Health Enforcement Policy was approved by the planning and regulatory services committee on 12 August 2008.

3.17 The Environmental Health Enforcement policy is undated and had several references which are out of date, the policy requires to be reviewed and where necessary should be updated. It does not appear to refer to repeat contraventions but in general is suitably detailed to enable the required enforcement action to be taken effectively. However in practice from the LAEMS returns there is very little recorded enforcement action.

3.18 The Authority has a satisfactory scheme of delegation from which appropriately delegated powers are given to the Director of Development Services. The Auditors consider the present scheme where each officer carries multiple signed authorisation documents as documentary overload, and would suggest that this be included in the review of work to make it both modern and streamlined, relying less on multiple cards with the related administrative burdens.

3.19 The Authority is maintaining their database using two experienced and competent members of staff within the department who are able to produce a variety of reports for management. The PEHO has used the reports to assess the work priorities and to ensure that there is a reasonable allocation of PI work to all members of the team.

3.20 Approximately 10 of the Authorised Officers within the team have been in post, or within the team, for a considerable time. Since February 2016 when the internal promotion to the position of Environmental Health Manager of an EHO, and the on-going staff shortages including two retirements in just over 2 years together with an inability to find and recruit a suitable replacement for an experienced food enforcement officer has led to shortages of 12.5% for 1 year, 17.5 % for the following 6 months, 30% for 6 months then returning to 17.5% to date. These matters have in the opinion of the authority not resulted in a settled and stable team.

***Recommended Points for Action*: Procedures**

The Environmental Health Enforcement Policy is not currently up to date

Article 4 of Regulation (EC) No 882/2004

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

3.21 Officers qualifications were not always fully available due to IT related retrieval issues and the auditors were informed that copies had been retained on file. 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 an excel file with individual officer details.

3.22 Annual ERDPs have not been conducted 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 the FLCoP is not being followed.

3.23 Evidence of formal training in Hazard Analysis and Critical Control Points (HACCP) principles was provided and was discussed with the Lead Food Officer during the audit. The majority of officers had received this training, and of these officers, 4 also have attended 5 days HACCP training in Validation and Verification of Food Safety Management Systems based on HACCP.

3.24 Officers have responsibility for a variety of food business operators, including those approved under Regulation (EC) No 853/2004 - laying down specific hygiene rules for food of animal origin. For Officers carrying out inspections of specialist or complex manufacturing processes the Food Law Code of Practice requires additional training and a demonstration of competence to undertake such inspections. Due to recent changes in the storage of these documents there was a lack of evidence provided to demonstrate the additional training or the assessment of competency and training requirements required to comply with the Food Law Code of Practice. The authority has informed the auditors that they are working towards a corporate training management system which will ensure adequate recording of training needs, training received and retrieval of training evidence.

3.25 Officers delivering Official Food Controls are generalist Officers and spent time in 2016/17 ranging from approximately 3 visits a week to cover PI's and revisits, to 1 visit a week. They also dealt with a number of Service Requests in this period ranging from 279 annually for one Officer to 12 for another.

3.26 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. Those Officers who have received suitable training should be allocated the 4 food standards premises at this rating.

Recommended Point for Action*: *Training

The Authority should access and evidence additional training and be able to demonstrate competence in terms of inspection of specialist or complex manufacturing processes.

Assessments of authorised officer training needs are required to

take place to identify if further training is required.

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

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

3.27 The Authority has policies and procedures for the range of official controls and compliance with the Food law Code of Practice. Examples of these documents were produced for the audit and are generally fit for purpose. However, it was noted that most of these were not controlled versions and many were last updated in 2013, and as a result require a review to make them accurate. The lack of a planned review is contrary to the requirement of the Service Plan which states an annual review will be completed of these.

3.28 The Authority has a section in the Food Safety Intervention Procedures document referencing the "Quality and Consistency of inspections" which covers 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 quantative rather than on the qualitative aspects of the official control.

3.29 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

3.30 The electronic database is being used by the PEHO on a regular basis preparing weekly and fortnightly update reports to provide monitoring of the progress of the planned intervention programme.

3.31 To ensure that enforcement measures are consistently applied the Authority is trialling the use of electronic tablets that allow a standard data set to be recorded, with the additional flexibility of adding information by photographs, sketches or free field text. The Authorised Officers on the two reality visits took contrasting approaches to the methods of use. One did not have the tablet at the official control and the other used it to record the layout and annotate photographs to specific points of the sketch. The Environmental Health Manager informed the auditors that the tablet replaces manual entry to the database and removes duplication and allows validation. Manual entry can be completed without the tablet but as this involves numerous keying tasks before the relevant field can be entered it is significantly more resource intensive than using the bespoke app.

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

The Policies and Procedures were not always current and many require a review as documented within the Service Plan.

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.

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

3.32 Inspection documentation is created as either a computer generated electronic report, or a letter which is sent to food business operators (FBOs) generally by email following interventions. Records were available from the electronic database and from those checked items relating to food hygiene matters generally appear to follow the requirements of the Food Law Code of Practice.

3.33 Tablets have been trialed by the authority for the inspection and report writing process after being introduced in 2015. The Environmental Health Manager informed the auditors that a fully in-house developed software programme had been required to connect the tablet to the database and had subsequently written that "there are no licensing issues with using our own produced app and the database" and "there is no double handling of data other than any quick notes that were made during the inspection" and "I appreciate that the two staff made different use of the table on site but as advised the full mobile utilisation of the tablet is still being worked on. It takes a considerable time for experienced staff to change their inspection technique and fully embrace the capability of the table to aid their work".

The auditors verified that there was that double handling and complexity associated with the recording of information on the database. The IT Systems Support Officer was requested to provide specific premises history and even the officer took some time to provide the information. Auditors are not required to be proficient with the IT used by a Local Authority; however it is expected that the information requested is readily available.

3.34 The auditors were informed by a number of officers that to simplify the Food Business Operators' compliance inspections where multiple contraventions and recommendations are found these are generally reported in writing with only the major contraventions and recommendations listed. This, however, was not the evidence found during the 2 reality check interventions, where letters subsequently sent by the Officers involved were suitably detailed.

3.35 The present system as demonstrated of temporarily recording detailed information collected during an official control intervention in different areas on the tablet and then uploading it to the electronic database format makes it

difficult, particularly for the auditors, and potentially any officer unfamiliar with the premises to quickly update themselves with the premises history. The description provided by the Environmental Health Manager during the audit was that information was "scattered to the 4 winds". There is a mobile app already available from their software supplier which the Environmental Health Manager believes would incurring "significant costs and on-going maintenance costs" and "does not have the capability that our bespoke app has and would cause a return to the significant amount of double and triple handling of the data".

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

3.36 Two real time unannounced verification checks were carried out during the audit, the first was to a high risk caterer last inspected in December 2015 when it had been re-rated from a C to an A. The previous inspection had been in 2010 and as a result it had not been on the intervention programme as it was not a high risk premises (i.e. an A or a B). The Officer involved had previous recent knowledge of the business and demonstrated an excellent working relationship with the FBO and was both professional and competent in his handling of the inspection. The Officer made extensive use of photographs to record his findings. Various matters that arose during the inspection were dealt with confidently by the Officer.

3.37 A second real time unannounced verification check was carried out at a high risk butcher premises where the officer had also previously inspected the premises. This inspection was overdue, having been last inspected on 11 April 2017 and being scheduled for an intervention twelve months later i.e. 11 April 2017. A number of issues that were found were dealt with during the intervention and then by the officer at subsequent visits. The auditors witnessed the initial intervention where the officer commenced the inspection of the premises and processes without the usual precautions of wearing protective clothing or hand washing. The Authorised Officer then focused on Ready to Eat (RTE) products and production, cross contamination and temperature control in parts of the premises but did not review identification marks, personal hygiene or hand washing procedures thoroughly during the remainder until this was raised by the auditors.

3.38 The Officer dealt with the specific matters arising relating to an identified failure in the temperature control of in-house produced ready to eat hot take away products. This ensured that food which could not be assured as safe was removed from sale and voluntary surrendered to the LA. The Food Business Operator understood the issues and was prepared to change the established practices, which had previously not been either identified in practice or in the food safety management documentation by the officer, to ensure compliance.

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

3.39 The Authority sends samples for examination and analysis to Aberdeen Scientific Services.

3.40 A sampling policy and programme were in place and were being followed.

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

3.41 The Authority has an electronic database of the food premises within their area. At the time of audit the database appears to be comprehensive and includes hundreds of records showing inspections overdue by many years. The authority explained that this could be due to premises not being removed from the database when being re-occupied or closing for business. The inspection programme includes due, overdue, unrated and missed interventions. The database requires to be maintained to reflect the accurate status of registered or approved premises within the authority. Food Standards Scotland have recently issued guidance to Local Authorities on this, 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

3.42 The Authority has a Food Enforcement Policy in place supported by procedures and guidance notes, these contain references to out of date reference sources and the dates of review are previous to the issue of the 2015 Food Law Code of Practice (Scotland). These documents would benefit from being reviewed and where necessary updated on a regular and frequent basis.

3.43 The authority does not encourage rapid escalation to formal enforcement action preferring to adopt a 3 strikes approach. The 2015 - 16 return for LAEMS indicated that for the LA's number of establishments, there had been 6 seizures, 3 premises subject to HIN's and 3 premises subject to a RAN and 271 written warnings. The 2016 – 2017 return shows a different pattern of 3 Voluntary closures, 15 seizures and 1 RAN and 144 written warnings.

3.44 The Authority procedure on Alternative Enforcement Strategies (in the form of a questionnaire) for both Food Hygiene and Food Standards is not being enforced.

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

Auditors:
Graham Forbes
Kevin McMunn
Raymond Pang

4.0 Annex A
Action Plan for Moray Council: Capacity and Capability Audit, May 2017

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
The Authority did not have a satisfactory Food Safety Service Plan in place for 2016/17 at the time of the audit Article 3 Regulation EC No 882/2004	Draft plan to be completed and published	31 Nov 2017	James McLennan and Karen Sievewright
The Authority are not meeting the minimum inspection frequencies required by the Food Law Code of Practice (Scotland) 2015 Article 3 Regulation (EC) No 882/2004	Root cause analysis completed and appropriate actions will be implemented based on the findings. Enterprise has now been purchased which allows more specific targeting and monitoring against targets to be completed in real time. Reintroducing Alternative Enforcement Strategy	31 Dec 2017 30 Oct 2017	Karen Sievewright and System Support and IT

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
The Environmental Health Enforcement Policy is not currently up to date Article 4 of Regulation (EC) No 882/2004	To be reviewed and updated	31 Dec 2017	James McLennan, Kevin Boyle and Karen Sievewright

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
The Authority should access and evidence additional training and be able to demonstrate competence in terms of inspection of specialist or complex manufacturing processes. Assessments of authorised officer training needs is required to take place to identify if further training is required Article 6 of Regulation (EC) No 882/2004 Section 4 of the Food Law Code of Practice (Scotland) 2015.	ERDP to identify training requirements, individual training programmes created. Specialist training provided when this becomes available and internal training and dissemination continued. Training records to be maintained Note HR are now the budget holders for training and have advised they intend to create a matrix but there is no timescale given for this.	31 Mar 2018	James McLennan, Kevin Boyle and Karen Sievewight

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
The Policies and Procedures were not always current and many require a review as documented within the Service Plan. 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. Article 8 of Regulation (EC) No 882/2004 (Official Feed and Food Controls) Section 39 of the Food Law Code of Practice (Scotland) 2015.	Policies and Procedures to be reviewed and updated as required Monitoring the quality of inspections to be reviewed and enhanced	31 Dec 2017 31 Mar 2018	James McLennan and Karen Sievewright