



# Food Standards Scotland

## Desktop Sampling Audit Report

### January 2020



## 1 Introduction

- 1.1 The power to set standards, monitor and audit the performance of enforcement authorities was conferred on Food Standards Scotland (FSS) by Sections 3 and 25 of the Food (Scotland) Act 2015<sup>1</sup> and Regulation 7 of The Official Feed and Food Controls (Scotland) Regulations 2009.<sup>2</sup>
- 1.2 In addition, Regulation (EU) 2017/625<sup>3</sup> on official controls performed to ensure the verification of compliance with feed or food law includes a requirement for competent authorities to carry out internal audits or have audits carried out on themselves.
- 1.3 To fulfil this requirement FSS has established external audit arrangements in respect of competent authorities. These arrangements are intended to ensure competent authorities are providing an effective and consistent service for the delivery of official controls and are meeting the general criteria laid out in the regulation.
- 1.4 The Food Scotland Act 2015 provides FSS with statutory powers to strengthen its influence over enforcement activity and to ensure national priorities and objectives will be delivered at a local level. It gives FSS powers to carry out the following duties:
- set standards of performance in relation to enforcement of feed and food law
  - monitor the performance of feed and food law enforcement authorities
  - require information from Local Authorities relating to food law enforcement and inspect any records
  - enter authority premises, to inspect records and take samples of records
  - publish information on the performance of enforcement authorities

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<sup>1</sup> [http://www.legislation.gov.uk/asp/2015/1/pdfs/asp\\_20150001\\_en.pdf](http://www.legislation.gov.uk/asp/2015/1/pdfs/asp_20150001_en.pdf)

<sup>2</sup> <http://www.legislation.gov.uk/ssi/2009/446/contents/madee>

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0625&from=EN>

- make reports to individual authorities, including guidance on improving performance
- require Local Authorities to publish these reports, and state what action they propose in response

1.5 The audits will be a systematic and independent examination of the delivery of food law by Local Authorities in Scotland.

## **2 Aims and Scope of the Audit**

2.1 This audit was commissioned to assess the consistency of sampling policies across Scottish Local Authorities, and their alignment with the requirements of the Code of Practice and supporting guidance in this area. The findings will contribute to the evidence needed by FSS to develop a future sampling strategy which will ensure there is adequate capacity and capability for official controls and surveillance of the Scottish food chain beyond EU Exit.

2.2 The aim of the audit programme was to determine whether sampling activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve the objectives of the relevant food legislation and centrally issued Guidance.

2.3 The audit also provided the opportunity to review how different Local Authorities commission and utilise their laboratory and Public Analyst Services and will therefore support FSS in understanding how these arrangements have impacted on the resilience of these services.

2.4 The findings of this audit programme will help FSS to:

- evaluate the organisational, management and operational systems in place across Scottish Local Authorities to ensure they are effective and suitable to achieve the objectives of the relevant Food Law and Codes of Practice in relation to sampling activities.
- assess the capacity and capability of the Local Authority to participate in sampling activities.

- identify under performance in Local Authority sampling activities.
- identify good practice and support the development and dissemination of guidance that will aid consistent approaches to Local Authority sampling in Scotland.
- provide information to aid the formulation of wider FSS strategy on the role of Local Authority sampling in the delivery of official controls and surveillance capability.

2.5 Regulation (EU) 2017/625, states that competent authorities, in this case Local Authorities should have in place certain controls and meet certain operational criteria. A summary of the relevant controls for this audit programme are listed below:

- having a suitable Service Plan which references sampling
- the preparation and publishing of a food sampling policy
- the suitability of the sampling policy (including resources, formulation, approach etc.)
- the availability of the food sampling policy
- the appointment of a suitable Public Analyst
- the preparation and delivery of a sampling programme detailing intended food sampling priorities
- the provision and implementation of a sampling procedure
- sampling activities as Official Controls
- the recording and monitoring of sampling activities
- sampling activities as non-official controls (surveillance, monitoring and providing advice to FBOs)
- provision of appropriate arrangements for the custody and handling of OC samples
- sampling related communications with FBOs

2.6 This Audit is set against evidence of falling sample numbers. Historically Local Authorities in Scotland recognised a sampling target of 2 samples per thousand of the population for microbiology and 3 samples per thousand for chemical

samples. In 2011 The Scottish Food Co-ordinating Committee reported that the rate of chemical sampling in Scotland had fallen from 2.58/1000 in 2002 to 1.32/1000 in 2010 and during the same time period microbiological sampling had fallen from 2.65/1000 to 1.66/1000. An analysis of data recorded on the Scottish Food Sampling Database (SFSD) suggests that in 2018/19 this figure had fallen below 1/1000 for both chemical and microbiological sampling. Whilst this may be partly attributed to improved targeting and risk based approaches to enforcement (with the aim of enhancing consumer protection), this substantial reduction seems have been driven, at least in part, by financial pressures experienced by Local Authorities.

### 3 Audit Criteria

3.1 The relevant audit criteria for this audit is the legislation, policies, procedures or other requirements used as a reference against which audit evidence is compared, i.e. the standards against which the auditee's activities are assessed. For the purposes of this audit the main reference will be:

- The Food Law Code of Practice (Scotland) 2019 which provides relevant guidance to Local Authorities on discharging their duties.
- Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products as amended, extended or applied at the date of making of The Official Feed and Food Controls (Scotland) Regulations 2009 and The Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2019 in so far as it relates to food.

## 4. Executive Summary

Responses were submitted by all 32 Local Authorities in Scotland. The key findings of the audit are summarised below with reference to the relevant sections of the Code of Practice.

### 4.1 Enforcement Policy and Service Planning

4.1.1 Local Authorities must have an up-to-date, documented Food Law Enforcement Policy which is readily available to Food Business Operators and / or Food Business Establishments and consumers:

- All 32 Local Authorities have an Enforcement Policy in place;
- 9 did not provide evidence of a review of their policies since the publication of the Scottish Regulators' Strategic Code of Practice in 2015;
- 19 have published either a summary, or their full Enforcement Policy.

4.1.2 Each Food Authority should complete an annual Service Plan which details the Interventions programme for the coming year. They should ensure such a programme is adequately resourced and the overall plan is subject to approval timeously at the appropriate governance level within the Local Authority:

- All 32 Local Authorities have Service Plans in place,
- 27 of these have evidence of Member or Designated Senior Officer Approval for their latest Plan.
- 22 have Approved Service Plans for 2019-2020.

4.1.3 An analysis of data held on FSS's Scottish Food Sampling Database (SFSD) indicates that there has been an overall decrease of approximately 34-37% in the total numbers of sample records submitted to the database since 2014/15 (Annexes 1 and 2). During this audit, 15 Local Authorities submitted evidence which indicated

that the resources they had allocated to food sampling had decreased over the past 3 years. An analysis of SFSD data verified a decrease of between 1% and 80% in the numbers of sampling records submitted by 14 of these Local Authorities since 2014/15. No evidence was provided to demonstrate whether the reductions in sampling activity by these 14 Local Authorities were attributable to improved targeting of resources.

4.1.4 Effective routine sampling is an essential part of a well-balanced Service Plan, however evidence shows not all Local Authorities are prioritising food sampling in service planning:

- 29 Local Authorities made reference to food sampling in their latest Plan, but 3 Local Authorities made no reference to food sampling activities;
- 22 Local Authorities included food sampling performance in their latest service plan review, The remaining 10 Local Authorities presented no evidence of food sampling performance in their latest review;
- During 2018-2019 only 14 Local Authorities submitted reports relevant to sampling activities (including Service Plans) to Members.

## 4.2 **Sampling Policy**

4.2.1 Local Authorities should prepare and publish a food sampling policy, committing the resources necessary for carrying out the programme. The findings of the audit revealed the following:

- 30 Local Authorities had Sampling Policies in place, however 2 did not provide this evidence,
- 13 Local Authorities made no reference to resources in their Sampling Policy,
- 8 local Authorities had published either a summary or a copy of their present Sampling Policy.

4.2.2 Sampling Procedures (i.e. how samples should be taken) were received from all 32 Local Authorities and although these varied in detail, most included procedures contained in the Food Law Code of Practice (Scotland) Guidance.

4.2.3 A Local Authority's Sampling Policy and Programme should cover all types of sampling work undertaken. The findings of the audit revealed the following:

- All 30 Local Authorities with sampling policies in place described the types of sampling work undertaken, however the scope of activity was found to vary. Whilst all 30 sampled foods from approved/manufacturing premises, only 18 made reference to food crime/fraud, 16 included imported foods and 3 referred to exported products. Sampling Programmes for the years 2017-20 were received from all 32 Local Authorities. However not all Local Authorities provided evidence that they had taken account of the number, type and risk ratings of the food businesses and the type of food produced in their area. The evidence suggests that there is no consistent strategy for developing sampling programmes.
- An analysis of data held on the Scottish Food Sampling Database (SFSD) identified that the distribution of sampling activity differed across different Local Authorities, with some showing a spread of sampling across manufacturers, caterers, retailers and primary producers, and others where sampling was recorded only for particular business types. This supported evidence from the audit questionnaire which indicated that not all Local Authorities participated in national co-ordinated survey programmes and that certain Local Authorities focussed their sampling activity on local food manufacturers.

4.2.4 Local Authorities must maintain documented procedures for monitoring progress of their planned intervention programmes and

the quality and consistency of interventions. Recent internal monitoring and reporting of sampling activities varied in detail between Local Authorities:

- 18 provided reports from the current year to show that sampling activity was being monitored;
- 12 had no recent examples of reports and 2 did not provide data in answer to this question;
- Of the 18 Local Authorities who had recent reports 14 provided quantitative data (i.e. sample numbers taken/results) and only 4 provided qualitative data (i.e. sample outcomes/follow-up).

4.2.5 All 32 Local Authorities indicated that they used the Scottish Food Sampling Database (SFSD) for recording their sampling activities, although only 17 confirmed that the database was used for internal monitoring and reporting purposes.

4.2.6 All 32 Local Authorities welcomed the annual reports issued by FSS to summarise food sampling data held on SFSD. These reports were found useful in directing/informing sampling programmes, comparing performance or providing general information.

### **4.3 Engagement with laboratory and Public Analyst services on sampling**

4.3.1 The Food Safety Act 1990 places an obligation for Food Authorities in Scotland to appoint Public Analysts (PAs) and to ensure that PAs and Food Examiners (FEs) are qualified in accordance with the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013. The Food Law Code of Practice (Scotland) states that the PA and FE should be consulted on the preparation of the Sampling Policy and Sampling Programme:

- Evidence of appointment of a PA was provided by 26 Local Authorities, and all 32 were able to provide the details of their FE.

All 32 Local Authorities acknowledged the role of the PA/FE in providing advice and support on sampling or sampling activities.

- 22 Local Authorities indicated that they formally consulted their PA/FE on the development of their sampling programmes. 5 indicated that they consulted their PA/FE in connection with Regional/National Surveys, and a further 4 noted that they had regular discussions with their PA/FE. One Local Authority indicated that they did not consult their PA/FE in the preparation of their sampling programme.
- The evidence indicates that PAs/FEs are not being fully used in their support role by all Local Authorities. Only 6 Local Authorities confirmed that the PA/FE had accompanied enforcement staff on visits or taken samples on behalf of the Local Authority.
- There were inconsistencies in the level of engagement between Local Authorities and PAs/FEs on the determination of analysis and examination requirements for samples. 28 Local Authorities stated that the PA/FE and Local Authority Authorised Officers are jointly involved in determining the testing requirements for samples. 3 Local Authorities stated that the methods were determined by the Officer based on protocols/legislation and 1 said the Local Authority specifies the assay suite and the PA/FE specifies the assay method.

4.3.2 Procurement of Scientific Services was found to vary between the 32 Local Authorities. 16 described having service level agreements, 10 indicated that they had historical rolling agreements/contracts with their laboratory, and 2 noted that their scientific services were provided by their own Local Authority. 2 Local Authorities indicated that they had put scientific services out to tender, and a further 1 had a contract quotation process. 1 Local Authority indicated that they had an arrangement with their laboratory to pay for analysis on a per sample basis.

4.3.3 Local Authorities must ensure they have access to an adequate laboratory capacity and capability for testing. When asked if there had had been occasions when they were unable to access a particular method to support a sampling intervention, 28 Local Authorities indicated that there has never been an issue. 8 referred to the successful subcontracting of samples, where the local PA/FE laboratory was not accredited for the methodology required. 4 Local Authorities indicated that on specific occasions they were unable to access methods for sampling interventions, although these were all in niche areas that would not be routinely employed for official control purposes.

## 5 Audit Findings

### 5.1 Service Planning and Reports

5.1.1 The Food Law Code of Practice (Scotland) 2019 (Paragraph 38.1.1) states that effective routine sampling is an essential part of a well-balanced Service Plan and should therefore feature in the enforcement service of all Food Authorities.

5.1.2 To comply with the Food Law Code of Practice (Scotland) 2019 (Paragraph 27.1.2) each Food Authority should complete an annual Service Plan which details the interventions programme for the coming year and the overall plan should be subject to approval timeously at the appropriate governance level within the Local Authority.

5.1.3 Local Authorities were asked for a copy of their latest Approved Service Plan. All Local Authorities had a Service Plan in place:

- 22 Local Authorities had Approved Service Plans for the current year (2019-2020); the Approved Service plans for the remaining Local Authorities were for previous years.

5.1.4 In respect of approval at appropriate governance level:

- 27 Local Authorities provided evidence showing Member or Designated Senior Officer approval for their latest Service Plan.

5.1.5 The latest Approved Service Plans were examined:

- 29 Local Authorities made reference to food sampling.
- 3 Local Authorities have no reference to food sampling activities in their latest Approved Service Plan.

5.1.6 A copy of any review of Local Authorities performance against last years' Service Plan was requested:

- 22 Local Authorities provided a review of food sampling performance against the previous service plan (i.e. samples planned/samples achieved).
- 10 Local Authorities had no evidence of food sampling performance in their latest service reviews. (Note: 5 reviews included inspections, 2 referred to broad/general compliance with food law, 1 formerly included sampling but omitted it from their current plan and 2 – no evidence of reviews submitted).

5.1.7 Details of the budgets allocated to sampling activities annually over the last 3 years were requested. It was difficult to compare actual budgets because of variable factors included or excluded in the calculation of the financial figures presented. However the evidence broadly suggests that over the 3 years in question:

- the budget had decreased in 15 Authorities, remained static in 10 Authorities and increased in 7 Authorities (although some of these were by small amounts).
- 2 Local Authorities with decreasing budgets provided evidence that they had also reduced the number of samples they had taken during the 3 years.

5.1.8 For 14 of the 15 Local Authorities that reported reduced sampling budgets, an analysis of data held on FSS's Scottish Food Sampling Database (SFSD) verified a decrease of between 1% and 80% in the numbers of sampling records submitted by these Local Authorities since 2014/15. No evidence was provided to demonstrate whether the reductions in sampling activity by these 14 Local Authorities were attributable to improved targeting of resources.

5.1.9. It is worth noting that an analysis of data held on SFSD indicates that there has been a decrease of approximately 34-37% in the total numbers of sample records submitted to the database since 2014/15 (Annexes 1 and 2). A review of the SFSD records for each individual Local Authority showed an increase in only 3 of the 32 Local Authorities compared with 2014/15. The number of sampling

records for all of the remaining 27 Local Authorities which participated in UKFSS/SFSD during this period showed decreases.

5.1.10 Local Authorities were requested to provide copies of any reports relevant to sampling activities submitted to the Authorities Members during 2018 or 2019:

- 14 Local Authorities have submitted reports and 17 had not. 1 Local Authority was unable to provide this information.
- 13 of these reports related to Service Plans and 1 related to a Review of Enforcement and Sampling Policies and Officer Authorisations.

## 5.2 Enforcement

5.2.1 In order to comply with the Food Law Code of Practice (Scotland) 2019 (Paragraph 14.1.1) each Food Authority must have an up-to-date, documented Food Law Enforcement Policy which is readily available to food business operators and / or food business establishments and consumers.

5.2.2 Local Authorities were requested to provide a copy of their Enforcement Policy:

- All 32 Local Authorities have an Enforcement Policy in place,
- 9 have not reviewed their policies since the publication of the Scottish Regulators' Strategic Code of Practice which was published in January 2015, the principles of which are now included in the Food Law Code of Practice (Scotland) 2019.

5.2.3 Local Authorities were asked for any published summary of their Enforcement Policy:

- 19 have published either a summary or their full Enforcement Policy. (It should be noted that some authorities had outdated enforcement policies published on their web pages).

## 5.3 Sampling Policy

5.3.1 In order to comply with the Food Law Code of Practice (Scotland) 2019:

- A Food Authority's Sampling Policy and Programme should cover all types of sampling work undertaken (Paragraph 38.1.2).
- Food Authorities should prepare and publish a Food Sampling Policy and make it available to businesses and consumers. The Policy should set out the Food Authority's general approach to food sampling and its approach in specific situations such as process monitoring, Home Authority liaison, inspections, complaints, special investigations and national, regional and local co-ordinated programmes. The Sampling Policy should cover all samples taken including those not taken in accordance with the Code. The Sampling Policy and the Sampling Programme should be prepared in consultation with the Food Examiner and the Public Analyst, which may take place on a local or regional basis (Paragraph 38.2.1).
- Sampling Policies should detail the factors that will be taken into account in formulating the Sampling Programme, including any national or local consumer issues that will influence the level of sampling to be undertaken (Paragraph 38.2.2).
- Food Authorities should also prepare a sampling programme that details their intended food sampling priorities. The programme should take account of the number, type and risk ratings of the food businesses and the type of food produced in the area, the Food Authority's Home or Originating Authority responsibilities and the need to ensure that the provisions of Food Law are enforced (Paragraph 28.2.3).
- Sampling Policies should commit the Food Authority to providing the resources necessary to carry out its food sampling programme (Paragraph 38.2.4).

5.3.2 In addition to the Food Law Code of Practice (Scotland) 2019, the Scottish Food Enforcement Liaison Committee (SFELC) published a document entitled Effective Food Sampling – Guidance for Local Authorities in September 2011. This document was intended to encourage Local Authorities to develop risk and intelligence based sampling policies and programmes to optimise their use of scarce sampling resources.

SFELC stated that as well as being a requirement of the Food Law Code of Practice (Scotland), food sampling is an integral component of every Local Authority's enforcement activity. The key to ensuring the effective use of sampling resources by any local authority is the preparation of a suitable Food Sampling Policy and Sampling Programme.

5.3.3 Local Authorities were asked to provide a copy of their Sampling Policy:

- 30 Local Authorities have a Sampling Policy but 2 did not provide this evidence.
- 13 Local Authorities did not include a commitment to the provision of resources necessary to carry out its food sampling programme within their Policy.

5.3.4 Only 8 Local Authorities have published either a summary, or a copy of their present Sampling Policy.

5.3.5 A Food Authority's Sampling Policy and Programme should cover all types of sampling work undertaken. Whilst all 30 Local Authorities made reference to the types of sampling work undertaken the audit revealed that the scope of sampling activity was found to vary between Local Authorities e.g.:

- All 30 are sampling foods from approved/manufacturing premises;
- 18 made reference to food crime/fraud,
- 16 made reference to inland imported food (other than national surveys),
- 3 made specific reference to sampling food from manufacturers who routinely export food or request export certificates.

5.3.6 Local Authorities were asked to provide a copy of all of their Sampling Procedures and these were received from all 32 Local Authorities. The procedures varied in the detail provided, although most Local Authorities included the procedures from the Food Law Code of Practice (Scotland) Guidance Chapter 6, such as procurement, avoiding contamination, continuity of evidence, quantities, containers, transport etc.

- 5.3.7 Copies of Local Authority Sampling Programmes for the years 2017-18, 2018-19 and 2019-20 were requested and these were received from all 32 Local Authorities. However not all Local Authorities provided evidence that they had taken account of the number, type and risk ratings of the food businesses and the type of food produced in their area.
- 5.3.8 An analysis of data held on the Scottish Food Sampling Database (SFSD) identified that the distribution of sampling activity differed across different Local Authorities, with some showing a spread of sampling across manufacturers, caterers, retailers and primary producers, and others where sampling was recorded only for particular business types. This supported evidence from the audit questionnaire which indicated that not all Local Authorities participated in national co-ordinated survey programmes and that certain Local Authorities focussed their sampling activity on local food manufacturers. The evidence suggests that there is no consistent strategy for developing sampling programmes. In some cases there was evidence that sampling activity by the Local Authority was dictated by the budget and staff resources available, rather than the business profile requirements.

Notes from Audit: 1 Local Authority does not participate in national/co-ordinated sampling programmes, 1 Local Authority's samples for 2019/20 have still to be confirmed, 1 Local Authority's sampling programme was suspended in 2017-2018 due to staff vacancies and backlog of work. 1 Local Authority has been working on its 2018/19 programme also due to staffing issues (not related to budget).

2 Local Authorities show a substantial reduction in programmed sample numbers this year: Local Authority 1 - appears to be only participating in the FSS funded Local Authority Food Sampling Grant Programme. Local Authority 2 - 17/18 = 119 samples 18/19=118 samples 19/20 = 25 bacteriological and chemical samples were planned plus those identified in the course of routine work. Interestingly 1 Local Authority quoted "Based on SFELC 2009/10 Annual Sampling Data/1000 population of Chemical rate 1.32/1000 population and Microbiological rate 1.66/1000, Total Rate 2.99/1000, this would equate to: 448

Chemical Samples & 564 Microbiological samples, which is not achievable due to budgetary constraints. Numbers of samples will therefore be based on per 10,000 population”.

5.3.9 The Food Law Code of Practice (Scotland) 2019 (paragraphs 39.3 and 39.4) states Local Authorities must maintain documented procedures for monitoring progress of the planned intervention programme and the quality and consistency of interventions undertaken by their Authorised Officers or staff supplied under contract, to ensure, so far as practicable, that Interventions are carried out competently. A monitoring system must include measures to assess adherence to the Food Authority’s planned Intervention Programme.

5.3.10 Recent examples of reports used for the internal monitoring and reporting of sampling activities were requested from all Local Authorities. These reports varied substantially in detail, making it difficult in many cases to establish present sampling activity.

- 18 Local Authorities provided reports from the current year to show that sampling activity was being monitored,
- 12 had no recent examples of reports and
- 2 Local Authorities did not provide data in answer to this question.

5.3.11 Of the 18 Local Authorities who had recent reports 14 provided quantitative data (i.e. sample numbers taken/results) and 4 provided qualitative data (i.e. sample outcomes/follow up).

(Note: A report from SFSD detailing sampling activity from 1 April 2019 - 31 December 2019 (See Annex 3) shows sample numbers range from a low of 6 samples taken by 1 Local Authority to a high of 994 samples taken by another Local Authority. These figures provides further evidence that there is no consistent strategy for developing sampling programmes.

5.3.12 FSS produce Annual Sampling Reports which summarise the findings of sampling activities undertaken across Scotland and Local Authorities were

asked if they found these useful. The 32 Local Authorities responded that these reports are useful for the following purposes:

- 18 to direct/inform their sampling programmes;
- 3 to compare performance with other Scottish Local Authorities;
- 6 for information only;
- 5 indicated that the reports are useful but gave no further explanation.

5.3.13 All Local Authorities were asked if all of their sampling activity is recorded on the Scottish Food Sampling Database (SFSD) and all 32 Local Authorities confirmed that they utilised the database.

5.3.14 All Local Authorities were asked if SFSD is used for internal monitoring and reporting of sampling activities. 17 Local Authorities responded positively confirming that they do use SFSD to develop their own reports on sampling activities and 15 Local Authorities responded negatively.

## **5.4 Public Analyst/Food Examiner**

5.4.1 In order to comply with Section 27 of the Food Safety Act 1990 every Food Authority in Scotland is required to appoint one or more PA's for the purposes of the Act within the Authority's area.

5.4.2 Food Authorities must ensure for the purposes of the Food Safety Act 1990, that PAs and FEs are qualified in terms of the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013.

5.4.3 The Food Law Code of Practice (Scotland) 2019 (Paragraph 38.2.5) states that the Sampling Policy and the Sampling Programme should be prepared in consultation with the FE and the PA, which may take place on a local or regional basis.

5.4.4 All Local Authorities were asked to provide details of the appointment of a PA at a laboratory accredited for the purposes of analysis, which is listed as a designated official control laboratory:

- 13 Local Authorities provided direct evidence of appointment of the PA either through a report to Members or via letter of appointment.
- 12 had evidence of the appointment through a Service Level Agreement
- 1 had evidence through a Tender document.
- 6 Local Authorities had no available evidence of the appointment of their PA.

5.4.5 Details of the FE used by Local Authorities were requested and all 32 Local Authorities provided the relevant information confirming the FE utilised by the Authority.

5.4.6 Local Authorities were asked to provide details of how the Sampling Policy and Sampling Programme had been prepared in consultation with the PA/FE as required by the Food Law Code of Practice (Scotland) 2019 (Paragraph 38.2.5):

- 22 Local Authorities formally consult their PA/FE on their sampling programme either directly or through local Liaison Groups.
- 5 consult their PA/FE in connection with Regional/National Surveys.
- 4 had regular discussions with their PA/FE.
- 1 Authority had no PA/FE input in the development of its Sampling Programme.

5.4.7 Local Authorities were asked if the PA/FE has a role in the provision of advice on sampling or sampling activity (i.e. are there occasions when the PA/FE would accompany the sampling officer on a visit to advise on appropriate sampling points or go out and take the samples themselves?):

- All 32 Local Authorities stated that the PA/FE had a role in providing advice and support on sampling or sampling activities (examples included sample protocols, advice on complaint samples, complex queries, sample size, equipment, transport etc.).
- Only 6 Local Authorities confirmed that the PA/FE had actively accompanied enforcement staff on visits or taken samples on behalf of the Local Authority, suggesting that PA/FEs are not being fully used in their support role by Local Authorities.

5.4.8 Local Authorities were asked to describe how the analyses and examination methods to be undertaken on submitted samples are determined, to include details of how the extent of this is decided by the PA/FE or, alternatively, the Officer prescribing the testing parameters for samples based solely on legislative requirements. The evidence highlighted inconsistencies in the level of engagement between Local Authorities and PEs/FEs on the determination of analysis and examination requirements for samples as follows:

- 10 indicated that the PA/FE and Local Authority Officers are jointly involved in the decisions on examination methods, mostly agreed at the sample planning stage.
- 11 stated that the methods were determined by the Officer, but with PA/FE advice when required.
- 3 stated that the methods were set by the Officer using protocols/legislation.
- 7 advised that the methods are primarily set by the PA, but with Officer liaison if necessary.
- 1 said the Officer specifies the assay suite and the PA/FE specifies the assay method.

5.4.9 The arrangements for procuring Scientific Services (both PA and FE) was requested and the arrangements were found to vary between Local authorities as follows:

- 16 have service level agreements,
- 10 have historical rolling agreements/contracts in place,
- 2 have scientific services provided in-house,
- 2 have put scientific services out to tender,
- 1 has a contract quotation process and
- 1 indicated that they pay per sample.

5.4.10 Finally, in order to ensure Local Authorities have access to an adequate laboratory capacity and capability for testing, they were asked if there had been

any occasions where they had been unable to access a particular method required to support a sampling intervention:

- 28 Local Authorities responded indicating that there had been no issues accessing sampling methods and 8 referred to the successful subcontracting of samples where the local PA/FE laboratory was not accredited for the methodology required for a particular sampling intervention.
- 4 Local Authorities indicated that they were unable to access methods for sampling interventions i.e. (i) Polymerase Chain Reaction assay of norovirus in shellfish – The Local Authority had to establish a laboratory, (ii) survey to determine the extent of an emerging issue - accredited sampling methodology had not been approved, (iii) difficulty in finding analysis for *B. cereus* toxins, (iv) quantification of micro-plastic in shellfish. (Note: these are all in niche areas that would not be routinely employed for official control purposes).

## 6 Conclusions

### 6.1 Enforcement Policy and Service Planning

6.1.1 Whilst all Local Authorities have an Enforcement Policy in place, 9 have not reviewed their policies since the publication of the Scottish Regulators' Strategic Code of Practice which was published in January 2015, the principles of which are now included in the Food Law Code of Practice (Scotland) 2019.

**Several Local Authorities do not have an up-to-date Food Law Enforcement Policy.**

6.1.2 Only 19 Local Authorities have published either a summary or a copy of their full Enforcement Policy.

**A significant number of Local Authorities do not have their Enforcement Policies readily available to Food Business Operators and/or Food Businesses.**

6.1.3 Only 27 Local Authorities provided evidence showing Member or designated Senior Officer Approval for the current Service Plan.

**Some Local Authorities did not provide evidence to show Service Plans had been approved timeously at the appropriate governance level within the Local Authority.**

6.1.4 It was difficult to determine the resources allocated for food sampling, due to the variable factors included in the calculation of the financial figures presented. However the evidence shows that budget cuts are having an impact on food sampling. 2 Local Authorities with decreasing budgets provided evidence that they had reduced their sampling programme.

**A separate analysis of sampling records held on SFSD between 2014/15 and 2018/19 suggested that there has been a significant reduction in overall sampling activity across Scotland. SFSD sampling records have reduced for the majority of individual Local Authorities during this period. There is**

**no Guidance provided by FSS on the content and format of resources required for sampling.**

6.1.5 Effective routine sampling is an essential part of a well-balanced Service Plan and should feature in the enforcement service of all Local Authorities. However Local Authorities are not all prioritising food sampling in service planning. All Local Authorities have Service Plans in place, but 3 had no reference to food sampling within their most recent Plan. 10 Local Authorities presented no evidence of food sampling performance in their most recent Service Plan review. Only 14 Local Authorities submitted reports on sampling (including Service Plans) to the Authorities Members during 2018 or 2019.

**A significant number of Local Authorities did not include sampling and performance in their Service Plans or reviews and many Local Authorities did not submit reports to Members.**

## 6.2 Sampling Policy

6.2.1 30 Local Authorities had evidence of a Sampling Policy being in place while 2 did not. 8 Local Authorities have published either a summary or a copy of their Sampling Policy, the other 24 have not.

**Some Local Authorities did not prepare and publish a food sampling policy and make it available to businesses and consumers.**

6.2.2 13 Local Authorities did not include a commitment to the provision of resources within their Policy.

**Many Sampling Policies did not commit the Local Authority to providing the resources to carry out its sampling programme.**

6.2.3 All 32 Local Authorities provided Sampling Procedures which varied substantially in detail, but most Local Authorities included the procedures from Chapter 6 of the [Food Law Practice Guidance \(Scotland\)](#).

6.2.4 A Local Authority's Sampling Policy and Programme should cover all types of sampling work. The audit revealed all 30 Local Authorities with sampling policies

in place described the type of work undertaken, however the scope of activity was found to vary.

Whilst Sampling Programmes were received from all 32 Local Authorities not all Local Authorities provided evidence that they had taken account of the number, type and risk rating of the food businesses and the type of food produced in their area, as required by the Food Law Code of Practice (Scotland) 2019.

An analysis of data held on the Scottish Food Sampling Database (SFSD) identified that the distribution of sampling activity differed across different Local Authorities, with some showing a spread of sampling across manufacturers, caterers, retailers and primary producers, and others where sampling was recorded only for particular business types. This supported evidence from the audit questionnaire which indicated that not all Local Authorities participated in national co-ordinated survey programmes and that certain Local Authorities focussed their sampling activity on local food manufacturers.

**Not all Local Authorities had prepared a food sampling programme representative of the profile of their area.**

- 6.2.5 In some cases, there was evidence that sampling activity by the Local Authority was dictated by the budget and staff resources available, rather than business profile or official control requirements.

**The evidence suggests that there is no consistent strategy for developing sampling programmes.**

- 6.2.6 Only 18 Local Authorities provided evidence of recent examples reports used for the internal monitoring of sampling activity. Of those that did provide evidence the detail varied substantially, making it difficult in many cases to establish present sampling activity from these reports.

**Many Local Authorities did not maintain documented procedures for monitoring progress of the planned intervention programme.**

6.2.7 All 32 Local Authorities use the Scottish Food Sampling Database (SFSD), although only 17 confirmed that the database was used for internal monitoring and reporting purposes.

6.2.8 All 32 Local Authorities welcomed the annual reports issued by FSS to summarise food sampling data held on SFSD. These reports were found useful in directing/informing sampling programmes, comparing performance or providing general information.

### 6.3 Engagement with scientific services on sampling

6.3.1 6 Local Authorities had no available evidence of the appointment of their PA. In terms of Section 27 of the Food Safety Act 1990, every food authority in Scotland, is required to appoint one or more public analysts for the purposes of the Act within the authority's area.

**Not all Local Authorities had evidence of the appointment of a PA available.**

6.3.2 All 32 Local Authorities provided the relevant information confirming the FE utilised by the Authority.

6.3.3 Although all 32 Local Authorities stated that the PA/FE has a role in providing advice and support on sampling or sampling activities, 1 Local Authority had no evidence of PA/FE input into their Sampling Policy/Programme.

**All Local Authorities should develop their Sampling Policy and Programme in consultation with the PA/FE.**

6.3.4 Only 6 Local Authorities confirmed that the PA/FE has accompanied enforcement staff on visits or taken samples on behalf of the Local Authority.

6.3.5 The evidence gathered highlighted inconsistencies in the level of engagement between Local Authorities and PEs/FEs on the determination of analysis and examination requirements.

6.3.6 The majority of Local Authorities procure Scientific Services either by service level agreement or by historical rolling agreements/contracts. However 2 Local Authorities had put Scientific Services out to tender, 1 has a contract quotation process and another pays per sample. Paragraph 5.1.7 provides evidence that decreasing budgets are having a negative impact on food sampling.

**There is no consistent strategy in place for commissioning Scientific Services in Scotland. Decreasing Local Authority budgets and variability in contractual and funding arrangements could present a significant risk to the future sustainability of these services.**

6.3.7 Most Local Authorities reported that there have been no issues accessing sampling methods and many referred to the successful subcontracting of samples, where the local PA/FE laboratory was not accredited for the methodology required for a particular sampling intervention. 4 Local Authorities indicated that there were specific occasions where they were unable to access methods for sampling interventions, although these were in niche areas that would not be routinely employed for official control purposes.

## 7 Recommendations

### 7.1 Enforcement Policy and Service Planning

7.1.1 The evidence suggests that not all Local Authorities are prioritising food sampling in service planning, some with no reference to food sampling activities in their most recent Service Plan or Service Plan review. It was also evident that the Enforcement Policies in some Local Authorities were not up-to-date.

7.1.2 All Local Authorities are aware of their responsibilities in terms of the Food Law Code of Practice (Scotland) 2019 and as such are required to:

- Keep their Enforcement Policy up-to-date and to address in particular, the Scottish Regulators' Strategic Code of Practice published in January 2015, the principles of which are now included in the Food Law Code of Practice (Scotland) 2019.
- Ensure that their current Enforcement Policy is readily available to Food Business Operators and / or Food Business Establishments.
- Complete an Annual Service Plan, to include effective routine sampling and to be approved timeously at the appropriate governance level within the Local Authority.

#### **Recommendation 1 – Local Authorities**

7.1.3 Some Local Authorities had outdated policies published on their web pages. It is recommended that that Local Authorities ensure that their web pages are reviewed regularly by the appropriate level of command.

#### **Recommendation 2 – Local Authorities**

7.1.4 10 Local Authorities presented no evidence of food sampling performance in their most recent Service Plan review. A regular review of performance is an essential element in order to address any variance from meeting the requirements of the Approved Service Plan and identification of areas for improvement. An annual performance review was required by The Framework Agreement on Official Feed and Food Law Controls but is no longer in force. The forthcoming Administration

and Service Planning Food Law Code of Practice (Scotland) should consider the inclusion of a performance review on the previous year's performance against the Service Plan and also a provision that any variance in meeting the Service Plan should be addressed by the Local Authority in its subsequent Service Plan.

### **Recommendation 3 – FSS**

7.1.5 The evidence shows that reductions in Local Authority budgets are having an impact on food sampling activity, which is an essential official control to ensure the verification of compliance with feed and food law. Consideration should be given to the need for Local Authorities to give greater priority to their food sampling policy and ensure there is consistent funding strategy in place to ensure capacity and capability in the future.

### **Recommendation 4 - Local Authorities and FSS**

## **7.2 Sampling Policy**

7.2.1 2 Local Authorities had no evidence of a Sampling Policy being in place and only 8 Local Authorities have published a copy of their Sampling Policy. Local Authorities will be aware their responsibilities in terms of the Food Law Code of Practice (Scotland) 2019 and should:

- Include a commitment to the provision of resources in their Sampling Policy.
- Publish their Food Sampling Policy and make it available to businesses and consumers.

### **Recommendation 5 – Local Authorities**

7.2.2 Many Local Authorities made no reference to resources within their Sampling Policy and it was difficult to compare actual budgets allocated to sampling because of variable factors included in the calculation of the financial figures presented. The forthcoming, Administration and Service Planning - Food Law Code of Practice (Scotland) should consider detailing the format of financial figures presented to permit comparison between Local Authorities.

### **Recommendation 6 – FSS**

7.2.3 Sampling Procedures were received from most Local Authorities although these varied substantially in detail. It is recommended that training in sampling methods and techniques be considered to ensure continued professional competence.

**Recommendation 7 – FSS**

7.2.4 The scope of food sampling activity varied within Service Plans and not all Local Authorities had taken account of the number, type and risk rating of the food businesses and type of food produced in their area as required by the Food Law Code of Practice (Scotland) 2019. Not all Local Authorities participated in national co-ordinated survey programmes and certain Local Authorities focussed their sampling activity on local food manufacturers. There was also evidence that sampling activity by Local Authorities was dictated by budget and staff resources available. It is recommended that a national strategy be considered to ensure consistency in developing and implementing sampling programmes. It is also recommended that consideration be given to a review and a relaunch of the Effective Food Sampling Guidance for Local Authorities published in 2011 by SFELC as a contribution to the development of a strategy for food sampling programmes. These issues could also be addressed through a Food Law Code of Practice review.

**Recommendation 8 – Local Authorities and FSS**

7.2.5 Recent internal monitoring and reporting of sampling activities varied substantially in detail between Local Authorities and was absent in some. It is recommended that the existing Internal Monitoring Advice for Local Authority Food and Feed Law Enforcement Services be refreshed to include sampling activities and then be relaunched.

**Recommendation 9 – FSS**

7.2.6 The success of FSS Annual Sampling Reports should be noted, all 32 Local Authorities found these useful for information, comparing performance and for informing their sampling programmes. Consideration should be given to the publication of these reports as a means of raising the profile of Local Authority food sampling work and its importance in the delivery of official controls and public health protection.

### **Recommendation 10 – FSS**

- 7.2.7 Some Local Authorities already utilise SFSD for their internal monitoring and reporting of sampling activity, but the audit findings suggest that there is scope to promote its use for this purpose. SFSD could be further developed to promote/enhance this function.

### **Recommendation 11 – FSS**

#### **7.3 Engagement with Scientific Services on Sampling**

- 7.3.1 Some Local Authorities had no available evidence of the appointment of a PA. All Local Authorities should have available evidence on the appointment of their PA to ensure compliance with the Food Safety Act 1990.

### **Recommendation 12 – Local Authorities**

- 7.3.2 Whilst all Local Authorities stated that the PA/FE has a role in providing advice and support on sampling activities, not all had evidence of PA/FE input into the development of their sampling programme. All Local Authorities should prepare their sampling Policy and Programme in consultation with the PA/FE in accordance with the Food Law Code of Practice (Scotland) 2019.

### **Recommendation 13 – Local Authorities**

- 7.3.3 The evidence gathered highlighted inconsistencies in the level of engagement between Local Authorities and PEs/FEs on the determination of analysis and examination requirements. It was also established that Local Authorities are not fully utilising PAs/FEs in their support role. This further highlights the need to consider a national strategy, for food sampling and testing, to maximise the efficient use of scarce resources.

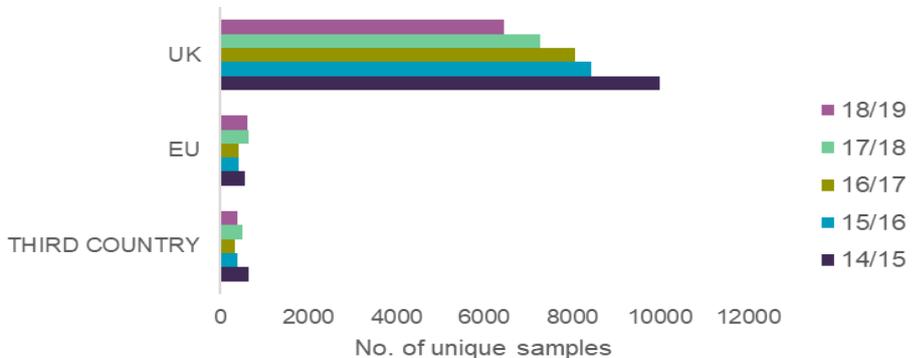
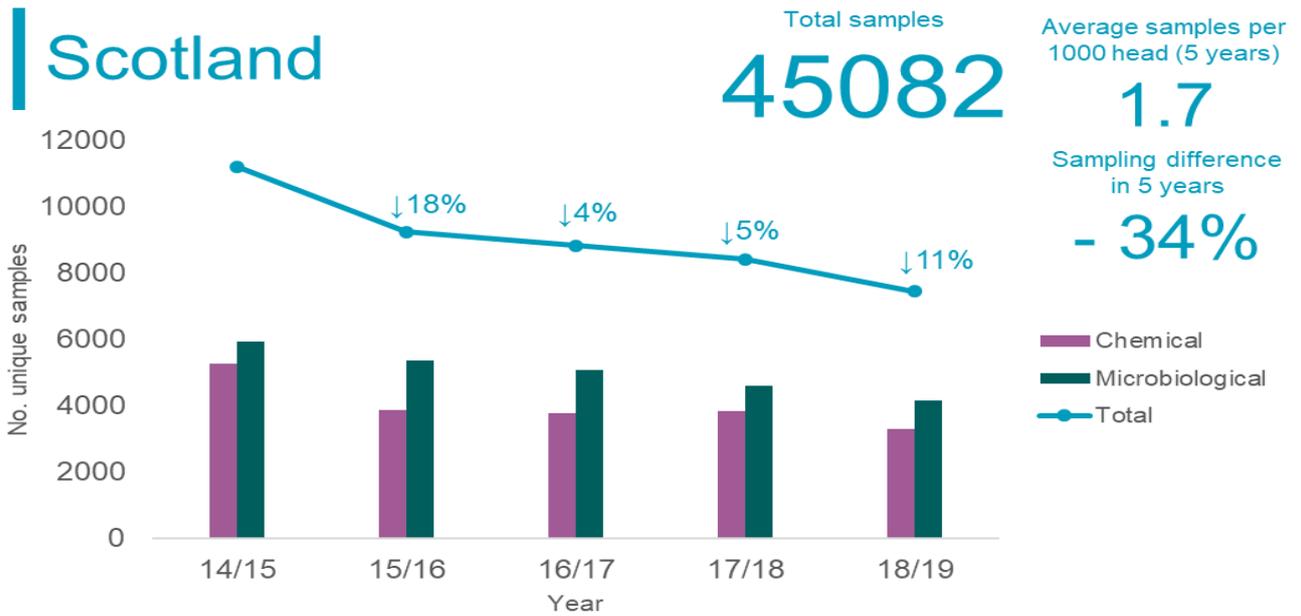
Scientific Services are procured by Local Authorities either by service level agreement, historical rolling agreements/contracts. However, 2 Local Authorities have put scientific services out to tender, 1 has a contract quotation process and 1 pays per sample. The variable arrangements for commissioning these services Consideration should be given to the impact of variable arrangements for

commissioning these services and the need for a more consistent and sustainable funding strategy to support Scientific services into the future.

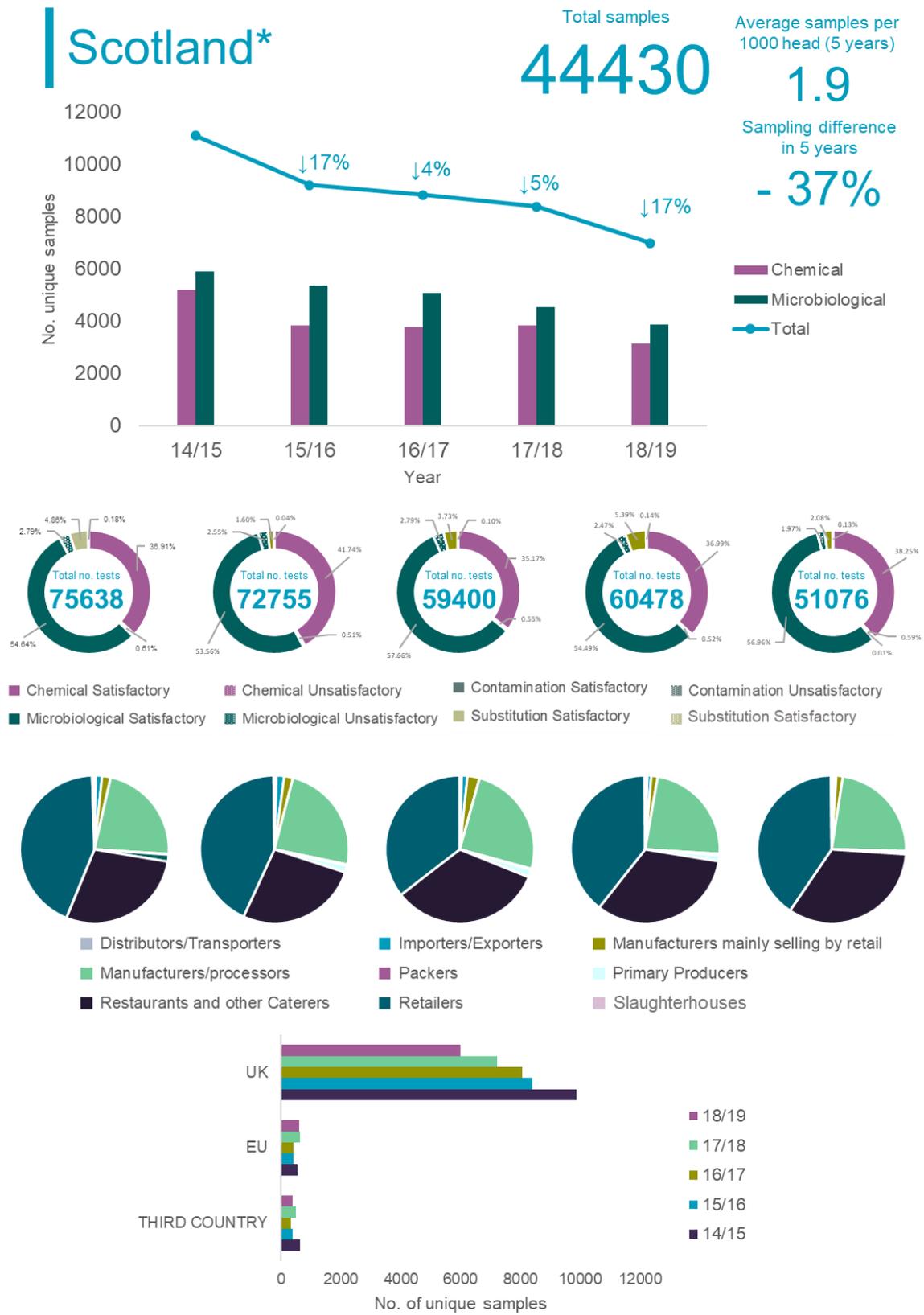
In order to address the issues in this Audit Report and to ensure capacity and capability post EU Exit, a national strategy for food sampling and testing, including enhanced intelligence and data sharing should be considered, to verify the safety and standards of our food import and export markets and address current and emerging challenges in food protection.

**Recommendation 14 - Local Authorities and FSS**

Annex 1 (All Scotland)



**Annex 2** (Scotland without information from two Local Authorities, as 5 years data not held)



\*Without North & South Lanarkshire

### Annex 3 Local Authority Sampling Data April – December 2019

The undernoted figures relate to data obtained from SFSD and they show the samples taken by Local Authorities from 1 April 2019 to 31 December 2019. However, it should be noted that some Local Authorities were late adopters of SFSD and one Local Authority is not yet fully set up on the SFSD system, as a consequence of moving to another laboratory.

Local Authority	Chemical	Microbiological	Grand Total
1	467	527	994
2	156	149	305
3	122	143	265
4	121	136	257
5	116	126	242
6	110	103	213
7	91	110	201
8	41	116	157
9	58	93	151
10	88	58	146
11	38	90	128
12	59	57	116
13	9	94	103
14	47	55	102
15	59	42	101
16	23	62	85
17	13	65	78
18	32	43	75
19	37	30	67
20	20	34	54
21	4	46	50
22	18	32	50
23	18	26	44
24	1	36	37
25	23	11	34
26	17	13	30
27	7	22	29
28	16	7	23
29	7	13	20
30	2	5	7
31	4	2	6
<b>Grand Total</b>	1824	2346	4170