



Food Standards Scotland

West Dunbartonshire Council Food Law Enforcement Services

Capacity and Capability Audit Report

10-12 September 2018



Foreword

Audits of Local Authority (LA) 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.

Scottish Local Authority Food Law Enforcement data is collected via the Scottish National Database from 1st April 2017. The Scottish Food Enforcement Annual Return (SFEAR) is to be published on the Food Standards Scotland website.

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

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

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

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1.0 Introduction

- 1.1 This report records the results of the audit at West Dunbartonshire 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 West Dunbartonshire Council was undertaken under section 25 (1-3) of the Act, and Regulation 7(4) of the Regulations as part of the Food Standards Scotland audit programme.
- 1.4 As a designated competent authority, as defined within Schedule 5 of the Official Feed and Food Control (Scotland) Regulations 2009, Local Authorities are required to comply with Article 4(6) of Regulation (EC) No 882/2004. In order to help Local Authorities fulfil this requirement (as part of its central role under the Food (Scotland) Act 2015 and Official Feed and Food Control (Scotland) Regulations 2009), Food Standards Scotland will continue to deliver external audit arrangements (as done previously under Food Standards Agency). This however, does not preclude Local Authorities from implementing their own audit regimes and in fact, this is encouraged. Food Standards Scotland's audit role therefore fulfils two different requirements.
- 1.5 The last audit of West Dunbartonshire Council's Food Service was undertaken by the Food Standards Agency (Scotland) in August 2014. The previous audit to that was in October 2010.

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 West Dunbartonshire Council's arrangements for official controls in relation to Regulation (EC) No 882/2004 on the verification of compliance with feed and food law. The audit included verification visits to two local food businesses to assess the capacity and capability of the official controls implemented by the Local Authority at the food business premises and, more specifically, the relationship between Regulation (EC) No 882/2004, the Local Authority Policies and Procedures and the Authorised Officers ability to deliver official controls.
- 1.7 The on-site element of the audit took place at the Authority's offices at 16 Church Street, Dumbarton, West Dunbartonshire.

Local Authority Background

- 1.8 West Dunbartonshire Council has stated Service Aims and Objectives for applying and maintaining adequate human, technological and physical resources to ensure that food and drink intended for human consumption, which is produced, stored, distributed, handled, prepared, labelled or consumed within the West Dunbartonshire Council (WDC) area complies with the requirements of the Food Safety Act 1990 and is safe for the consumer.
- 1.9 The Council has a Strategic plan for 2017 - 22 and all Directorates align their service plans to this strategic plan. The priorities sit under an overarching priority of "Reducing inequalities for people of West Dunbartonshire" and the Strategic Plan explains how the Council will work to improve the lives of residents. These priorities are guided and support the delivery of the Community Planning Local Outcome Improvement plan.

The strategic priorities are underpinned by the cross cutting principles of being a council that listens, is accessible, is responsive and is open.

- 1.10 There is an Environmental Service Plan in place for 2018-2019 which was approved by the Strategic Lead – Regulatory on 22 August 2018. The plan is satisfactory as it follows the Framework Agreement Guidance in format and content.
- 1.11 The structure of the Authority has a Manager of Building Standards, Environmental Health and Planning overseeing the Environmental Health Manager (EHM), who in turn is responsible for the management of the 3 Co-ordinators of the service. The EHM is currently also the Food Service Co-ordinator as well as the nominated Lead Food Officer who is responsible for the food law operational delivery work carried out by the group.
- 1.12 The Service Plan Organisation Diagram indicates that there are 5.1 full time equivalent (FTE) Environmental Health Officers (EHOs) in the Group, with 3.255 FTE allocated to food. An additional allocation of 0.05 FTE EHO is provided from the Community Health Pollution Group for on-call work. All Group members are multi-disciplined, covering other duties in addition to food safety. They are suitably authorised under the Food Law Code of Practice (Scotland) commensurate with their training and experience.

2.0 Executive Summary

Capacity

- 2.1 The audit found that the Group is being effectively managed within a supportive and recognised service area. The manager of the Service is aware of the work and supports the methods used.
- 2.2 The authority is fully staffed with no vacancies. Recent recruitment activity resulted in a considerable number of applicants wanting to work for the authority which is not a common finding in relation to EHO recruitment.
- 2.3 The Environmental Health Manager, as Lead Officer for Food, is responsible for day-to-day delivery of food hygiene and food standards enforcement. It was established that work is recorded and quantified to ensure the delivery of the food service, as required by the Service Plan.
- 2.4 Based on the Local Authority's intervention programme and the establishment of allocated staff numbers provided prior to audit, together with discussions and reviews of documentation and records, the capacity to deliver the intervention programme was considered satisfactory at the time of audit.
- 2.5 The Authority has a Food Enforcement Service Plan 2018-2019 that is compliant with the template of the 2010 Framework Agreement on Official Feed and Food Controls by Local Authorities. The demands on the Local Authority are very well documented as are the Service Delivery interventions planned for the year.

- 2.6 The budget information available in the Environment & Neighbourhood Delivery Plan 2018-19 at the Strategic Assessment indicates the financial challenge of funding gaps of £7.64 million in 2019-20 and £13.806 million in 2020-21 and the challenge is recognised on how, what, and where work is done and with the number of people employed in the service.
- 2.7 The Food Enforcement Service Plan follows the suggested template from Food Standards Scotland and so contains details on financial resources associated with the service. These show the following:

	Gross expenditure	Income	Net expenditure
2018-19	£221,201	£67,029	£154,172
2017-18	£226,910	£21,004	£205,906

The income is raised mainly from Food Export Certification, predominantly from the areas distillers.

- 2.8 Savings have resulted from the recent restructure of the Environmental Health Service from April 2018 when the post of Service Manager was deleted from the LA Establishment and functions previously attached to that post were redistributed.
- 2.9 The Regulatory Delivery Plan 2017-18 stated that a Capacity and Capability Audit by Food Standards Scotland was likely and that for WDC, maintaining the capacity and resilience of the service is critical to the protection of food safety and standards.

Capability

- 2.10 The Scheme of Delegation from April 2016 delegates authority from the Chief Executive to the Strategic Directors and Strategic Leads, who then can authorise individual officers. Each Authorised Officer is named and is shown to have clear, concise and appropriate Authorisation under the group of legislation appropriate to Food Safety. The system used is clear, simple and considered as effective.
- 2.11 Monitoring of the quantity and quality of work allocated or completed is carried out regularly by the Environmental Health Manager (EHM) and there is a variety of different reports produced to ensure consistency and quality are monitored and reported.
- 2.12 The capability to deliver the Authority's statutory duties under Food Law was considered satisfactory subject to the existing establishment being maintained.
- 2.13 The responsibilities placed on the EHM are diverse, from daily operational involvement in food law enforcement, monitoring and quality control/assurance, to the management of key functions of EH such as Public Health, Health & Safety, Contaminated Land and Pollution Control. The role is also combined with adherence to the finance and strategic functions of the Authority and as such are very likely to compete with each other for the EHOs time and resource.

This has been recognised in the Regulatory Delivery Plan 2017-18 under the “Summary of key priorities / Issues” within the Regulatory Section resource or Skill implication section.

- 2.14 Effective discussions and co-operation takes place by officers working together within a single office. The Authority also promotes the exchange of information by participation in national working groups.
- 2.15 For the Approved Establishments within the Authority, Officers are required to have particular knowledge of the processes within these establishments as well as knowledge of Hazard Analysis Critical Control Point Systems. Evidence of the completion of specific training in associated specialist or complex processing was available.
- 2.16 To assist in the appropriate delivery of enforcement, there is a series of documented procedures available to all Officers in electronic format on a central directory. These documents are appropriate and suitably detailed.
- 2.17 Officers were clear on the Authority’s procedure for conducting inspections and adhered to the Authority’s Enforcement Policy and inspection procedures. The procedures and documentation provided for inspections were being appropriately and consistently followed and completed.

Level of Assurance

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

Substantial Assurance
Controls are robust and well managed

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

3.0 Audit Findings

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

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

- 3.2 The Authority has a satisfactory Food Enforcement Service Plan for 2018-2019 which has been approved by the Strategic Lead – Regulatory on 22 August 2018.
- 3.3 The internal management changes at Environmental Service Manager level in April 2018 has ensured continuity of the process of developing service plans and provided a management structure for the Environmental Health Service. The Environmental Health Manager is the designated Lead Officer for Food and was effectively managing the regular workload of the Authorised Officers.
- 3.4 The scope of the work of the EHM is so wide that there are serious time and resource pressures on the post holder to be successful at every aspect of the work. Staff development and succession planning to ensure continued compliance with the Food Law Code of Practice and other centrally issued guidance will be required.
- 3.5 The Food Enforcement Service Plan is well detailed in the Food Premises section with the numbers of expected inspections in each risk band and the associated number of programmed inspections.
- 3.6 West Dunbartonshire Council has a Regulatory Services Enforcement Policy from early 2016 which very clearly and simply sets out how the regulatory activities of the Environmental Health Service will be undertaken. The Enforcement Policy sets out the key principles followed to achieve compliance with the legislation enforced by the service.
- 3.7 A live data report for all food businesses with scores and intervention dates was requested from the food business database at the start of the audit and this was promptly provided. This created a substantial amount of discussion before the implications and outcomes were fully understood by the auditors.
- 3.8 As early adopters of the Annex 5 review / Food Law Performance Rating Scheme (FLPRS), food hygiene and food standards interventions are carried out at the same time and referred to as food law interventions. In order to allow a deviation from the current Code of Practice, West Dunbartonshire Council has received a letter of comfort from FSS dated April 2018.
- 3.9 The system for producing the next due date was patiently explained and it is based on the Scottish National Database date allocation which is manually entered on the Flare database, the risk scores on which are not relevant to this

audit due to the letter of comfort. As a result of this the database was not considered as being within the scope of the audit.

- 3.10 The Authority reports on food law differentiating between requirements and recommendations, and a generic system of timescales or the phrases 'structural matters detailed in this report must be attended to within four weeks' and 'must be attended to without delay (unless otherwise specified)' are given for compliance, together with a variable date for any follow up visits.
- 3.11 The LA considers that the work involved in combining hygiene and standards inspections as a food law intervention has been successfully introduced. The Lead Food Officer sits on the National Implementation Group for this new way of working.

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

- 3.12 The Authority has a satisfactory scheme of delegation from April 2016 in which delegated powers are given from the Chief Executive to Strategic Directors and Strategic Leads, who then can authorise individual officers to carry out certain functions, including food safety.
- 3.13 The scheme of authorisation and the documented Certificate of Authorisation of Enforcement Officers were examined and it was found that the system used for authorisation documents are appropriately detailed for the Food Safety Act and the Food Hygiene (Scotland) Regulations, however the Trade in Animals and Related Products (Scotland) Regulations 2012 should be added.
- 3.14 The Enforcement Policy was reviewed and updated by the strategic lead in August 2018, having earlier been reported to the Corporate Services Committee on 10 February 2016 as part of the compliance with the Scottish Regulators Strategic Code of Practice. The original Regulatory Services Enforcement Policy had been suitably approved in January 2010.
- 3.15 The 2018 Enforcement Policy that this audit reviewed complied with the SRSCoP which is made under section 5 of the Regulatory Reform (Scotland) Act 2014 which contains provisions for a Code of Practice in relation to the exercise of regulatory functions by a regulator. The Code will apply to the (devolved) regulatory functions of regulators which includes Local Authorities (excluding planning authority functions). Regulators to whom the Code applies must have regard to the Code in exercising any such regulatory functions. This duty to "have regard to" the Code means that the regulator must take into account the Code's provisions, so any references in documentation relevant to enforcement has to follow this Code.
- 3.16 The Enforcement Policy sets out how the regulatory activities of the Environmental Health Service will be undertaken, prescribing how the work is carried out to achieve the stated aims of good enforcement. This aligns with the Scottish Regulators' Strategic Code of Practice and is designed to help businesses and individuals understand the Service's objectives and methods

for achieving compliance, as well as the criteria considered when deciding what the most appropriate response is to a breach of legislation.

- 3.17 The Authority is maintaining their electronic database and was able to produce reports for the auditors. The Group Manager uses the database to assess the work priorities and to ensure that there is a reasonable allocation of work to all members of the Group. Monitoring of the work achieved and entered on the database carried out at different times and the scope of the work is fully understood.
- 3.18 The Group is formed solely of EHOs and many have been in post for a considerable time, which has led to a settled and stable team who work well together and share the responsibilities for service improvements.

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

- 3.19 Officers have the appropriate qualifications and copies are retained electronically on file. Documentary evidence was available to demonstrate that officers have completed the required 10 hours of continuing professional development as required by the Food Law Code of Practice.
- 3.20 Detailed training records are available and some were seen on the corporate HR system. Some evidence of formal training in Hazard Analysis and Critical Control Points (HACCP) principles and Validation and Verification of Food Safety Management Systems was available to ensure that robust challenge of documentation provided by food business operators. The previous Validation & Verification courses provided by Food Standards Agency (Scotland) are no longer available
- 3.21 When undertaking interventions in any of the 7 category “A” food standards businesses, if they are engaged in the manufacture and processing of foodstuffs with documented quality assurance systems, the Food Law Code of Practice requires an Officer to have been appropriately trained and be able to demonstrate that they are competent to assess quality assurance systems. Several Officers have received suitable training and only these Officers are to carry out the food standards official controls at these category A rated food businesses.
- 3.22 Officers have responsibility for a variety of food business operators, including those approved under Regulation (EC) No 853/2004 - laying down specific hygiene rules for food of animal origin. For Officers carrying out interventions in these approved establishments, the Food Law Code of Practice requires competence in the inspection of specialist or complex manufacturing processes. Officers who have conducted Official Controls at approved establishments have received a variety of appropriate training in specialist/complex processes.
- 3.23 The auditors found that the officers had recorded some details of appropriate time spent acquiring knowledge of the processes involved within these establishments.

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

- 3.24 The Authority has policies and procedures for the range of official controls and compliance with the Food Law Code of Practice. Examples of these clear and relatively short documents were produced for the audit and are generally fit for purpose. The last audit of this Authority identified a number of good practices, these were still applicable and are available [here](#)
- 3.25 The Authority has a detailed and comprehensive internal monitoring procedure for many aspects of the work of the Group and these facilitate the production of a variety of reports that allow the managers to be aware of the status of the work planning process.
- 3.26 The electronic database is being used to provide on-going intervention programmes which are monitored by the provision of a variety of reports to determine the delivery of the programme. The Authority is, like many others, working to introduce an 'app' on new tablets to enhance Officers flexibility to record and report intervention outcomes.
- 3.27 Qualitative assessments such as paired inspections are taking place when required in accordance with the monitoring procedure. These accompanied inspections are routinely taking place for approved establishments and where notices require to be served or where it is expected that there could be potential complications arising from the intervention.

Article 9 Regulation EC No 882/2004 - Reports

- 3.28 Inspection documentation is created as either a report or a letter which is provided or sent to food business operators (FBOs) following interventions. These records were available electronically.
- 3.29 Forms and letters are developed, trialled and evaluated by officers. They are then authorised by the Lead Food Officer (Environmental Health Manager) who is responsible for also ensuring quality control / assurance and suitable evidence for the decision taken is recorded.
- 3.30 Food standards items on inspection reports were being given a timescale for achieving compliance to the FBO and the guidance on whether the item is a recommendation or a requirement was sufficiently precise.
- 3.31 From the records checked, those relating to food hygiene matters generally comply with the requirements of the Food Law Code of Practice. A standardised timescale of 4 weeks or the phrase "without delay (unless otherwise specified)" for achieving compliance is provided to the FBO on these reports. Food Business Operators may additionally benefit from being provided with a tailored timescale for achieving compliance on each legal requirement and the Food Authority plans to introduce this on all reports and included on regular monitoring activities.

- 3.32 From the reports seen, the elements of food standards are less detailed in both quantity and nature to that of hygiene following the Food Law Intervention that combines these two elements.
- 3.33 The carbonated reports refer to Food Information (Scotland) Regulations 2014 which is not specifically mentioned in letters. Only the Food Safety Act is referenced but for consistency and transparency, it may be more appropriate to make reference to this in the letter.
- 3.34 Two different versions of recently used inspection summary forms and three different versions of the standard letter format were found to be in use across the Group. Some standard paragraphs used were not applicable and it was not always consistent usage of the legislation for the matters being reported, as a result the Food Business operator will receive unclear information.

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

- 3.35 Based on the reports supplied by the Authority from their database, two real time un-announced verification checks were carried out at high risk caterers during a programmed inspection. The officers responsible for the food businesses prepared for the inspection by reviewing the file and records.
- 3.36 For the first business, the officer had recently carried out an intervention as part of a wider requirement. At that time, a serious matter had been identified and reported to the FBO. The Officer was therefore familiar with the business and its methods of operation.
- 3.37 At the reality check, the Officer found that the FBO had not fully complied with these requirements. Many other additional non-compliant matters were highlighted to the Food Business Operator in a confident and satisfactory manner. The Food Business Operator was advised throughout the inspection of the conditions and practices found and that, as a result, enforcement action and a second visit the following day was required. This was carried out and a Remedial Action Notice was served as the FBO had continued to practice the unsatisfactory preparation of food in an area that did not comply with legislation.
- 3.38 At the second reality check the officer was well prepared, the rapport was good and the inspection was carried out competently and professionally. Food standards was a large and appropriate part of this intervention, due to the nature of the business.

Articles 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 Glasgow Scientific Services.
- 3.40 A comprehensive sampling policy and programme were in place, were being followed and well managed by the Environmental Health Manager in the role of Food & Business Group Service Co-ordinator.

- 3.41 The audit reviewed one *E. coli* sample failure and found that the Authority had followed this up appropriately with the service of a Remedial Action Notice.

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

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

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

- 3.43 The Authority has an Enforcement Policy in place supported by procedures and guidance notes, which all are subject to regular review and updating.
- 3.44 The Authority actively moves to formal enforcement action where there is a risk to public health. The 2016-17 return for LAEMS indicated that for food hygiene, there had been 6 food businesses subject to HIN's, 4 subject to a RAN and 361 written warnings.
- 3.45 Analysis of the notices requested during the audit indicated that the permitted flexibilities around format were in use and that these do fully comply with the requirement of the notice templates in the FLCoP.
- 3.46 The Officers would appear to be following the Enforcement Policy by primarily being helpful followed by the application of the other principles of proportionality, consistency, fairness and equality targeting, transparency and accountability.
- 3.47 The Authority does not use any Alternative Enforcement Strategies for Food Hygiene, Food Standards or food law interventions as official controls.

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Annex 1

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
There is no required Action Plan for West Dunbartonshire Council following the Capacity and Capability Audit of September 2018			