

Item: 12

Development and Infrastructure Committee: 13 November 2018.

Food Law Enforcement Service.

Report by Executive Director of Development and Infrastructure.

1. Purpose of Report

To advise on the findings of an audit of the food law enforcement service undertaken by Food Standards Scotland.

2. Recommendations

The Committee is invited to note:

2.1.

That audits of local authority food law enforcement services are part of Food Standards Scotland's arrangements to improve consumer protection and confidence in relation to food and feed.

2.2.

That, in June 2018, the Council's food law enforcement service was audited by Food Standards Scotland.

2.3.

The Capacity and Capability Audit Report, attached as Appendix 1 to this report, which contains two recommendations, as detailed in section 4.2 of this report.

3. Background

3.1.

Audits of local authority food law enforcement services are part of Food Standards Scotland's 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.

3.2.

Specifically, the audit aims to establish the following:

- 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.

4. Audit Outcome

4.1.

In June 2018, the Council's food law enforcement service was audited by Food Standards Scotland.

4.2.

The audit report, attached as Appendix 1 to this report, contains two recommendations, as follows:

- The Policies and Procedures were not always current, and some require a review as documented within the Service Plan. The quality of interventions is not being formally monitored; this area of work should reflect the same standards as the quantitative aspects as the evidence available shows that there has been limited recent formal internal monitoring on some areas of the qualitative aspects of official controls. Article 8 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 39 of the Food Law Code of Practice (Scotland) 2015.
- The Authority has a system for providing reports to food business operators, however the letters sent do not always indicate the legislation or the individual timescales for compliance. Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 28 of the Food Law Code of Practice (Scotland) 2015.

4.3.

As detailed in the Audit of Enforcement Authorities Policy Document of May 2016 (reference FSS/ENF/16/007), audits are assigned a level of assurance. Based on Scottish government auditing practice there are four categories:

- Green - Controls are robust and well managed.
- Yellow - Controls are adequate but require improvement.
- Amber - Controls are developing but weak.
- Red - Controls are not acceptable and have notable weaknesses.

The Service has been assigned a yellow category as detailed below:

Reasonable Assurance.	Some improvements are required to enhance the adequacy and effectiveness of procedures. There are weaknesses in the risk, governance and/or control procedures in place but not of a significant nature.
Controls are adequate but require improvement.	

4.4.

At the time of writing, the actions points are being progressed. The audit report is also placed on the Food Standards Scotland website at www.foodstandards.gov.scot/business-and-industry/safety-and-regulation/audit-and-monitoring, one month from the date of issue.

5. Corporate Governance

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

6. Financial Implications

There are no financial implications arising directly from the noting recommendations of this report.

7. Legal Aspects

As a designated competent authority as defined within Schedule 5 of the Official Feed and Food Control (Scotland) Regulations 2009, the Council is required to carry out internal audits or have external audits carried out, as well as to shall take appropriate measures in the light of their results in order to comply with Article 4(6) of Regulation (EC) No 882/2004. The audit of the Council was carried out in compliance with this requirement.

8. Contact Officers

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9. Appendix

Appendix 1: Food Standards Scotland – Orkney Islands Council Food Law Enforcement Services – Capacity and Capability Audit Report, 19 to 21 June 2018.

Food Standards Scotland

Orkney Islands Council Food Law Enforcement Services

Capacity and Capability Audit Report

19-21 June 2018



Foreword

Audits of Local Authorities food law enforcement services are part of Food Standards Scotland arrangements to improve consumer protection and confidence in relation to food and feed. These arrangements recognise that the enforcement of UK food law relating to food safety, hygiene, composition, labelling, imported food and feeding stuffs is largely the responsibility of Local Authorities. These Local Authority regulatory functions are principally delivered through Environmental Health and Trading Standards Services.

UK Local Authority Food Law Enforcement data is collected via the Local Authority Enforcement Monitoring System (LAEMS) and is published on the Food Standards Agency website. FSA continue to collect this data for Food Standards Scotland.

<https://www.food.gov.uk/enforcement/monitoring/laems/mondatabyyear>

The audit scope is detailed in the audit brief and plan issued to all Local Authorities under reference FSS/ENF/16/014 on 12 October 2016. The main aim of the audit scheme is to maintain and improve consumer protection and confidence by ensuring that Local Authorities are providing an effective food law enforcement service. This audit was developed to assess Local Authority capacity and capability to deliver the food service.

The Audit scheme also provides the opportunity to identify and disseminate good practice and provide information to inform Food Standards Scotland policy on food safety, standards and feeding stuffs.

Specifically, this audit aimed to establish:

- An evaluation of the organisational, management and information systems in place to ensure they are effective and suitable to achieve the objectives of the relevant food law;
- Assessment of the capacity and capability of the Local Authority to deliver the food service;
- The provision of a means to identify under performance in Local Authority food law enforcement systems;
- The assistance in the identification and dissemination of good practice to aid consistency;
- The provision of information to aid the formulation of Food Standards Scotland policy.

Food Standards Scotland audits assess Local Authorities' conformance against Regulation (EC) No 882/2004¹ on official controls performed to ensure the verification of compliance with feed or food law and the Food Law Code of Practice (Scotland) 2015'

¹ [\(EC\) No 882/2004](#)

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

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

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1.0 Introduction

- 1.1 This report records the results of the audit at Orkney Islands 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 Orkney Islands 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 Orkney Islands Council Food Service was last audited for Approved Fishery Establishments by the Food Standards Agency (Scotland) in January 2014. The previous audit to that was a desktop Food Standards one in 2013.

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 Orkney Islands 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 Kirkwall.

Local Authority Background

- 1.8 Orkney Islands Council is a unitary authority which provides all local services for the Orkney Islands 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 the Development and Infrastructure Directorate.
- From the 2016-2017 LAEMS return 445 food businesses are located within the Orkney Islands Council area. These categories include 62 primary producers, 52 manufacturers, 0 importers and exporters, 4 distributors, 72 retailers and 255 restaurants and other caterers.
- 1.9 The Planning and Protective Services Committee of Orkney Islands Council resolved on 23 March 2011 to recommend to the Council that the Environmental Health and Trading Standards Enforcement Policy be approved. The general meeting of the full council held on 6 December 2011 approved the recommendation. The policy refers to, and bases the approach to enforcement on the Scottish Regulators Strategic Code of Practice

(SRSCoP). The policy document refers to following the principles of helpfulness, openness, proportionality, consistency, fairness and equality and targeted action. The SRSCoP is referred to in the Food Regulatory Service Plan for 2018/2019.

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 Food Regulatory Service plan for 2018/2019 the organisational structure details that the Environmental Health Manager has the responsibility for the operational delivery and the strategic direction of the food hygiene and standards service within Environmental Health and is also the designated Lead Food officer.
- 1.11 The Organisational structure shows that the Commercial Unit within Environmental Health undertakes food inspections and reactive food investigations. The Unit comprises of one Environmental Health Officer (EHO), an Environmental Health Practitioner (EHP) and a Sampling Officer. Officers are generalists and cover other subjects including health and safety, port health, licencing regulation and private water supplies.
- 1.12 The Service Plan informed the auditors that the financial allocation for Food Service during 2018/2019 was £93,800 with £1,800 being allocated for training and £2,000 for other operating costs.

2.0 Executive Summary

Capacity

- 2.1 The staffing allocation of an Environmental Health Manager (EHM), an Environmental Health Officer (EHO), an Environmental Health Practitioner (EHP) and a Sampling Officer, with administrative support would appear to be sufficient to meet the requirements of the Food Regulatory Service Plan and the Food Law Code of Practice (Scotland) 2015.
- 2.2 The Local Authority’s intervention programme of 182 food hygiene and 107 food standards interventions together with the full time equivalent (FTE) of 1.3 professionally qualified officers informed discussions about the capacity of each officer to complete interventions. The geography of the Authority’s area and the separation of the official controls programmes has resulted in a scheduled programme for all official controls that is being achieved.

- 2.3 There is a very comprehensive Review of Performance of the Food Regulatory Service for 2017/2018 which details inspections, complaints, promotional work, staffing allocation, quality assessment and targets achieved from the plan.
- 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 reference the Review of the Food Service Plan to indicate that recording and monitoring was taking place.
- 2.5 The detailed budget information for the current year for food related work is clearly detailed in the Food Regulatory Service Plan for 2018/2019. It shows that staffing, training, sampling and other operating costs are allocated.

Capability

- 2.6 The audit found that the Environmental Health Manager (EHM) is authorised as the Lead Officer for food as detailed in the Food Law Code of Practice. The EHO was authorised to act as the Commercial Unit lead officer for food safety and could only modify working instructions or procedures with the EHM's consent.
- 2.7 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.
- 2.8 The Authority has a Food Regulatory Service Plan for 2018-2019 which suitably follows the format of the guidance in the Framework Agreement.
- 2.9 Evidence of the authorisation process and relevant documentation were available for the officers requested, a central document is maintained though some reference to current legislation was out of date.
- 2.10 The EHM is responsible for the quantitative allocation of official control work. There appeared to be little formal qualitative monitoring of work across the two authorised officers, though informal discussions were said to happen continuously.
- 2.11 For the Approved Establishments within the Authority the 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 an approved establishment was demonstrated by an Officer and there was evidence that relevant knowledge was being used effectively within the team for official control work.
- 2.12 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. Some of these documents require to be updated as they contain inaccurate references.

Level of Assurance

- 2.13 As detailed in the Audit of Enforcement Authorities Policy Document of May 2016 (reference FSS/ENF/16/007) the audit has been assigned as below:
- 2.14 The Recommendations within this report detail the weaknesses in the controls that Orkney Islands Council should address.

Reasonable Assurance	Some improvements are required to enhance the adequacy and effectiveness of procedures. There are weaknesses in the risk, governance and/or control procedures in place but not of a significant nature.
Controls are adequate but require improvement	

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 Regulatory Service Plan in place for 2018/2019 which was approved by the Director of Development and Infrastructure in May 2018. The plan is satisfactory as it follows the former Framework Agreement Guidance in format and content.
- 3.3 The review against the 2017/2018 Regulatory Service Plan is in a comprehensive document and it identifies that the requirements of the Food Law Code of Practice (FLCoP) were broadly achieved, with only 5 food hygiene and 3 food standards interventions missed (outstanding) and 192 and 147 interventions achieved for hygiene and standards respectively.
- 3.4 The Food Regulatory Service Delivery Plan 2018-2019 links to the Council's Community Plan "Orkney 2020: Our vision - Orkney's Community Plan 2007-2020"
- 3.5 The Food Law Enforcement Service Delivery plan is accurate in its references to the Food Law Code of Practice (Scotland) 2015 and the Scottish Regulators Strategic Code of Practice which requires regulatory functions to be exercised in accordance with the principles of better regulation. Regulatory functions include advice, guidance, licensing, permissions and consent, inspections, monitoring and enforcement. The Regulators Code is predicated on existing good practice and supports the outcome-based approach which is integral to the Scottish Government's National Performance Framework. The Code also promotes an approach whereby regulators seek to understand those they regulate, including taking into account economic and business factors appropriately (for example, in terms of costs, processes and timescales).
- 3.6 There have been no recent management changes at Environmental Health Manager level and this has allowed continuity in developing service plans and providing a management structure for the service. There was some discussion during the audit about the designation of Lead Officer for Food, the practice appears not to be a reflection of the Service planning documentation reviewed. The Environmental Health Officer is authorised as the lead officer for the Commercial Unit however, has no management control of other authorised officers or responsibility for the introduction of new systems of work.
- 3.7 The Local Authority Intelligence Gathering Questionnaire (June 2017) return to Food Standards Scotland for the Authority indicated that there were 0.7 Food Hygiene FTE's required with 0.7 FTE's in post, for food standards the numbers

are 0.5 in each category. The Authority considers that as the officers are generalist this is sufficient.

- 3.8 The 2016 – 2017 LAEMS Report return shows that for Orkney Islands Council Food Hygiene there were 445 establishments in total, with only 2 that were recorded on the database as having not yet been rated for an intervention.

The breakdown of premises indicated 1 category A, 16 B's, 74 C's, 110 D's and 242 E's. The return indicates that all high risk (A & B) hygiene interventions were achieved with 192 lower risk interventions similarly achieved. There were only 5 low risk interventions missed in that year. This would indicate that the food hygiene intervention programme was generally achieving its objectives of interventions being effectively completed as required by the Food Law Code of Practice.

- 3.9 For **Food Hygiene**, there were 192 inspections with no other type of official controls achieved at 186 different premises. For enforcement Actions there were 29 written warnings with no other formal enforcement actions. Proportionally this is a low set of figures, which reflect the enforcement policy of the Authority.
- 3.10 The same LAEMS return for **Food Standards**, showed that 147 inspections and audits were achieved at 139 premises. Enforcement actions that were taken consisted solely of 18 written warnings.
- 3.11 More recently the Authority's "Review of performance of the Food Regulatory Service for 2017/2018" records only 5 lower risk hygiene, and 3 lower risk standards interventions missed. All high risk interventions were completed. It shows that 192 hygiene interventions and 147 standards interventions were carried out.
- 3.12 A live data report for the previous 12 months was requested from the food premises database and this was promptly provided. On analysis this showed for food hygiene:
- 12 category C (low risk) and below interventions overdue.
 - There were 514 premises subject to official controls.
 - There are no category A rated (high risk) premises, with 20 B's (also high risk) and only 4 unrated.
- 3.13 The Authority advised that food hygiene and food standards interventions were generally not carried out at the same time, and that two inspection programmes were operating. However where circumstances dictate (travel / timing) joint inspections do take place. The Authority has an Alternative Enforcement Strategy (in the form of a questionnaire) which is not being used.
- 3.14 From the Food Regulatory Services Plan for 2018/2019 the financial allocation for the Food Service budget for that period is £93,800 with a break down for staffing, training, sampling and other operating costs.

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

- 3.15 The Environmental Health and Trading Standards Enforcement Policy was recommended for approval by the planning and protective services committee to the Full Council on 23 March 2011 and they resolved to approve that recommendation on 6 December 2011.
- 3.16 The Environmental Health Enforcement policy is suitably detailed to enable the required enforcement action to be taken effectively.
- 3.17 The Authority has a scheme of delegation from July 2017 and which was scheduled for a full review by the Policy and Resources committee in February 2018. The Scheme is clear and concise. The Executive Director of Development and Infrastructure is a Chief Officer and can further delegate responsibilities and authorise any member of staff for Environmental Health in terms of all current and relevant legislation relating to Environmental Health. The scheme has been approved, however, it unusually does not specifically refer to individual powers under the Food Hygiene (Scotland) Regulations 2006, but rather refers generally to all legislative provisions including these regulations which are listed in a schedule to the Environmental Health Authorisations. This is a different way from the process most other Local Authorities use to determine the powers available but it would appear to be satisfactory.
- 3.18 The authorisation document is simple yet effective, with a series of schedules demonstrating a reducing cascade of powers. Officers carry a card establishing their authority and identity, any matters regarding authorisation can be resolved at the LA offices.
- 3.19 The Authority is maintaining their database using an experienced and competent member of staff within the department who is able to produce a variety of reports for management. The EH Manager has used the reports to assess the work priorities and to ensure that there is a reasonable allocation of work to the team.
- 3.20 With 2 of the 3 Authorised Officers within the team having been in post for a considerable period of time and an experienced EHO joining in January 2017, there is now a suitably balanced and resourced team. The recruitment difficulties between March 2015 and January 2017 would have affected the performance of the Authority.

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

- 3.21 Officers have the appropriate qualifications and copies are retained by the Authority. Officers have completed the required 10 hours of continuing professional development per year as required by the Food Law Code of Practice.
- 3.22 Annual appraisals followed by a 6 monthly optional update have been carried out. There is not a formal training programme, any training requests or

employee development needs are raised and addressed as they arise. These are then linked with the budget availability. The FLCoP requires that where an assessment of the officer's competency identifies training needs, appropriate additional training shall be provided, the Authority is recommended to have regard to this when deciding upon training provision.

- 3.23 Evidence of formal training in Hazard Analysis and Critical Control Points (HACCP) principles was provided and was discussed with the EH Manager / Lead Food Officer during the audit. The 2 day validation and verification course which was a bolt-on to FSA / FSS 5 day HACCP level 2 course has also been attended by one of the officers.
- 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. Officers who have conducted Official Controls at approved establishments have received a variety of appropriate training in specialist/complex processes etc.
- 3.25 There was sufficient 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 had been completed.
- 3.26 Officers delivering Official Food Controls are generalist Officers and from the Food Service Plan figures indicate that between the 2 officers there were 192 food hygiene interventions achieved during 2017-2018. Significant areas of work include the issuing of Food Export Certificates where 187 were issued during the year, and responding to Service Requests, which in this period were recorded under 7 major headings with 346 received.
- 3.27 To undertake 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. Evidence of appropriate training was provided to the auditors.

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

- 3.28 The Authority has a set of procedures in place containing information and instructions for the official controls and food law that it carries out and compliance with the Food law Code of Practice. Examples of these documents were produced for the audit and whilst some do require to be updated; generally they are fit for purpose.

Specific points found include that;

- many of these procedures refer to a hyperlinked version of FSS Guidance documents.

- the approved Establishment procedure has not been updated to include the Official Control Verification Guidance from February 2017.
 - the imported food procedure was discussed in detail as it was out of date and used revoked legislation.
 - the associated notices for the Imported food enforcement were also using revoked legislation.
 - formal internal monitoring is not detailed and this was discussed at length during the first day.
 - the database is monitored by running a variety of reports.
 - there are regular documented Commercial Team and the wider Environmental Health meetings.
 - Officers are discussing enforcement issues and are communicating with each other to ensure some informal monitoring is taking place between themselves and the Environmental Health Manager.
- 3.29 The Authority has a documented flow chart type procedure for the “Quality monitoring of food Safety inspections” which covers many aspects of the work of the team, including intervention performance, enforcement actions and audit files. However, the evidence available shows that there has been limited recent formal internal monitoring on some areas of the qualitative aspects of the official control.
- 3.30 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>
- 3.31 The electronic database is being used by the Environmental Health Manager on a regular basis to prepare update reports to provide monitoring of the progress of the planned intervention programme.

Recommended Point for Action: Monitoring

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

The quality of interventions is not being formally monitored; this area of work should reflect the same standards as the quantitative aspects as the evidence available shows that there has been limited recent formal internal monitoring on some areas of the qualitative aspects of official controls.

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 paperwork is presented as a letter which is generally sent promptly to food business operators following interventions. From the records checked these do not sufficiently appear to follow the Food Law Code of Practice as the legislation is not always clearly defined and some letters were inappropriately referencing a mixture of hygiene and standards. These records were available in hard copy.
- 3.33 The timescale for achieving compliance is not consistently provided to the FBO as some are on a general long term basis with some others stating individual specific timescales for contraventions as required by the Food Law code of Practice (Scotland) 2015.

Recommended Point for Action: reports

The Authority has a system for providing reports to food business operators, however the letters sent do not always indicate the legislation or the individual timescales for compliance.

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

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

- 3.34 Two real time unannounced verification checks were carried out during the audit. The first was of a recently approved establishment, which had been actioned by another officer. The officer's preparation was thorough, and questions were prepared in advance based on the file contents. The intervention followed the procedural requirements. The visit demonstrated a good depth of product specific knowledge.
- 3.35 The Officer involved had no previous recent knowledge of the business however demonstrated an excellent working relationship with the representative of the FBO and was both professional and competent in the 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.

The issues that arose were wide ranging and required a further visit which was comprehensively explained during the intervention. As a result the intervention was effective.

- 3.36 The premises subject to the second reality check had been inspected for food hygiene by the same officer 7 months earlier and subsequently for a food

standards inspection by another officer some 4 months ago. For the reality visit the officer prepared thoroughly by reading through the file and the documents required by the inspection procedure. The intervention started with a review of previous Food Safety Management System records as required by the Authority's procedure and then moved onto discussions and verification of the systems used by the FBO. The premises details were updated then the officer moved onto a practical and competent inspection conducted without requiring notes. This intervention was also effective. As the Officer involved had some previous recent knowledge of the business, a demonstration of an excellent working relationship with the representative of the FBO which was both professional and competent in the handling of the inspection, was observed.

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

- 3.37 The Authority use Edinburgh Scientific Services as their Public Analyst and Food Examiner, however sampling is not a regular technique due to the logistical difficulties of distance and being an island. The potential legal complications of appropriate follow up of any unsatisfactory sample results have been considered. Any sampling done is of local production and is exclusively informal in approach.
- 3.38 There is no detailed sampling programme in place. All sampling is carried out by an officer who does not have formal authorisation to follow up any failures. The sole sample failure in 12 months was for a compositional failure and was dealt with educationally and informally.

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

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

- 3.40 The Authority has a Food Enforcement Policy in place supported by procedures and guidance notes; these contain references to the 2015 Food Law Code of Practice (Scotland).
- 3.41 The Authority does not encourage rapid escalation to formal enforcement action preferring to adopt an educative and supportive approach. The 2016 - 17 return for LAEMS indicated that for the LA's number of establishments, there had been no seizures, Hygiene Improvement Notices, Remedial Action Notices and only 29 written warnings.
- 3.42 The Authority's procedure on Alternative Enforcement Strategies (in the form of a questionnaire) for both Food Hygiene and Food Standards is not being

enforced. The Authority is currently capable to conduct effective intervention programmes for both food hygiene and food safety.

- 3.43 The Officers would appear to be following the Food Safety Enforcement Policy of primarily using education followed by the application of the principles of helpfulness, openness proportionality, consistency, fairness and equality and finally targeted action.

Auditors: Graham Forbes
Kevin McMunn

Food Standards Scotland
Audit Branch

4.0 Annex A**Action Plan for Orkney Islands Council: Capacity and Capability Audit, June 2018**

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
<p>The Policies and Procedures were not always current and some require a review as documented within the Service Plan.</p> <p>The quality of interventions is not being formally monitored; this area of work should reflect the same standards as the quantitative aspects as the evidence available shows that there has been limited recent formal internal monitoring on some areas of the qualitative aspects of official controls.</p> <p>Article 8 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 39 of the Food Law Code of Practice (Scotland) 2015</p>	<p>Monitoring of Food Procedures to be revised and routine formal internal monitoring to recommence.</p>	<p>31 October 2018</p>	<p>Environmental Health Manager</p>
<p>The Authority have a system for providing reports to food business operators, however the letters sent do not always indicate the legislation or the individual timescales for compliance.</p> <p>Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls) Section 28 of the Food Law Code of Practice (Scotland) 2015.</p>	<p>Approval and Monitoring of Food Inspections procedures to be revised and associated documentation updated.</p>	<p>31 October 2108</p>	<p>Environmental Health Manager</p>