

Agenda Item	20
Report No	EDI 36/19

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure

Date: 16 May 2019

Report Title: Food Standards Scotland Audit

Report By: Director of Community Services

1. Purpose/Executive Summary

- 1.1 This report provides the findings of a recent external audit of Environmental Health by Food Standards Scotland.

2. Recommendation

- 2.1 Members are invited to
- i. note the audit findings and action plan; and
 - ii. approve the review and re-profiling of Environmental Health Officers and Food Safety Officers to increase resource on statutory food safety duties.

3. Background

- 3.1 As Members are aware, the Environmental Health team within Community Services carries out the statutory role of Food Authority within the Highland Council area.
- 3.2 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. These arrangements recognise that the enforcement of UK food law relating to food safety, hygiene, composition, labelling, and imported food is the responsibility of the Council.
- 3.3 The statutory food safety work supports the Council's programme of making the Highlands a place to thrive that is safe and healthy for all. The work contributes to Food Standards Scotland's strategy for reducing foodborne illness. This estimates the burden of foodborne disease in Scotland annually at 43,000 cases of illness, with 5,800 cases presenting to GPs and 500 cases requiring hospital treatment. Work on composition and labelling also addresses risks on allergens.
- 3.4 Food Safety regulation also supports the Council's programme of making the Highlands a place to prosper by providing support to the food industry. Appropriate enforcement of legislation provides businesses with a level playing field and protects and enhances the local, national and international reputation of the food and drink sector. The food and drink industry is a major contributor to Scotland's economy worth around £14 billion each year and accounts for one in five manufacturing jobs. In Highland around 14,000 people are employed in the sector.

4. The Audit

- 4.1 The full Food Standards Scotland audit report is provided in **Appendix 1**.
- 4.2 In summary, the scope of the audit covered:
- the capacity of the Council to undertake the role of statutory food authority; and
 - the capability of the Council's staff to undertake the duties of statutory food authority.

The audit was carried out over three separate visits in November and December 2018 for a total of seven days. Visits were carried out to the team's offices in Fort William, Portree, Inverness and Wick.

4.3 Summary of audit outcome

- 4.3.1 The detailed review of capability provided very positive feedback on the work being carried out by Council officers. Officers were found to be professional, competent and using good judgement on enforcement decisions.
- 4.3.2 The Council was found to have a satisfactory team service plan, enforcement policy and scheme of delegation and authorisation. This was supported by operational procedures.
- 4.3.3 However, significant concerns were identified on capacity. Although officers were

focusing on high risk premises, the inspection programme was not meeting the requirements of the statutory Food Code of Practice with significant numbers of medium and low risk premises overdue and significant numbers of premises not yet rated.

- 4.3.4 Despite the good feedback on officer competence and capability, the auditors felt Council must be given audit outcome of 'insufficient assurance' given the backlog in medium and low risk, and unrated inspections.
- 4.3.5 Minor issues were noted with training records, internal audit, and reporting to businesses.
- 4.4 A general action plan was agreed with Food Standards Scotland to address the audit findings. This is included within the audit report.

5. Challenges facing the Council as statutory food authority

- 5.1 The team has responsibility for 4,712 food business in the Highland area. This breaks down as follows:

Type of food business	number
Primary producers	344
Manufacturers & packers	310
Importers/Exporters	1
Distributors/Transporters	69
Retailers	812
Restaurants and caterers	3,176
Grand Total	4,712

For comparison, the total number of premises in Scotland are (top five):

	LA Name	Total premises
1	Edinburgh (City of)	*6,197
2	Glasgow City	*6,193
3	Highland	4,172
4	Fife	*4,441
5	North Lanarkshire	*2,615

*2016 data – recent data not available

5.2 Approved establishments

- 5.2.1 The numbers given in 5.1 include 70 premises that have been formally approved. Food Hygiene Legislation requires premises that manufacture and wholesale products of animal origin to be approved by their local Food Authority before they start trading.
- 5.2.2 With 70 Approved establishments, Highland has a significant number of Approved premises when compared to other Scottish authorities (Aberdeenshire have 88, Argyll & Bute 59, Glasgow City 48 and other Authorities have lower numbers) . Approved establishments include cheese producers, milk processors, ice cream

producers, fish processors and smokers, shellfish dispatch centres, and manufacturing butchers.

5.2.3 The approach to interventions at Approved premises and other manufacturers is currently being reviewed in a joint approach by Food Standards Scotland and a Local Authority Officer group. The review is to ensure a risk based approach to these establishments is taken with detailed review of their specialist food safety management systems. Future interventions at these establishments will require greater commitment of staff resources.

5.3 **Current inspection programme**

5.3.1 The table below sets out the total numbers of food businesses in the Highland area categorised by risk in terms of food hygiene (figures 18/4/19). Note the business may be rated high risk due to inherently high risk processes or due to poor standards within the premises.

	Category	required inspection frequency	Total Number	overdue
Highest risk  lowest risk	A	every 6m	12	0
	B	every 12m	156	0
	C	every 18m	885	477
	D	every 24m	1442	1225
	E	every 36m	1283	1218
	not yet rated	-	929	-

Comments:

- i. Category E premises are low risk businesses.
- ii. Not yet rated – comments below

5.3.2 **Not yet rated**

Highland has had a significant number of premises that have yet to be rated. The premises may have never been inspected or have only received a pre-opening advisory visit. Officers assess any new premises that register with us and assign a priority for inspection based on type of food business. Of those yet to be rated, 9 have been given 'high' priority to be inspected and these will be fitted in with monthly inspection programmes. There are a significant number of low risk businesses within the list such as B&Bs, childminders and deer larders.

5.4 **Inspection performance**

5.4.1 The statutory Food Law Code of Practice issued by Food Standards Scotland requires Local Authorities to carry out interventions in a risk-based approach at the frequencies specified in the Code. As the audit report has highlighted, current resources do not permit full compliance with these requirements. Resources are focussed on premises presenting the highest risk to consumers.

5.4.2 Inspections of Highest risk premises (A & B rated premises) have improved from 85% in 2017/18 to 97% in 2018/19.

Target	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
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high risk food businesses inspected for food hygiene (A & B rated premises)	95%	96%	94%	92%	85%	97%
A due	37	38	32	30	28	15
A done	34	34	31	29	22	15
B due	250	206	172	188	182	148
B done	239	201	160	171	157	143

5.5 There has been a decrease in total food hygiene inspections carried out by officers in the last few years.

Total Food Hygiene inspections carried out in last 6 years:

year	2013	2014	2015	2016	2017	2018
number	1107	965	1096	883	764	652

*Note figures will include multiple inspections of the same business. Does not include data on follow-up, advisory or sampling visits.

5.6 The drop in total inspections is due to a number of reasons. These include:

- increasing workload in other key areas e.g. exports health certificates, responding to incidents, and increasing service requests. Since 2016, the team has had a challenging workload in responding to significant investigations following incidents. These have included significant food safety cases, Health and Safety at work investigations, noise nuisance investigations, licensing investigations and animal welfare cases. These investigations have taken considerable resources to investigate and this has impacted on routine duties such as food hygiene inspections. Further details of the cases are provided in **Appendix 2**;
- following official guidance, the time taken for inspections has increased to ensure detailed assessment of the risks in all establishments particularly on cross-contamination risk and food standards (labelling, composition and allergens); and
- as previously reported to Committee, there has been a reduction in dedicated staff through team re-structure approved by Committee in 2015.

6. Audit action plan - Improvement proposals

6.1 As approved by the Committee on 31 January 2019, the team is implementing a redesign and improvement plan. This is aimed at improving efficiency and reducing workload burdens on staff. The results of the food safety audit will be incorporated into the redesign plan.

6.2 The general action plan, in response to the audit, is covered in paragraph 4.4. The significant challenge will be to improve rates of intervention to achieve required performance in medium and low risk premises and address the unrated premises.

6.3 The Environmental Health Manager is carrying out a detailed review of resource requirements which will consider:

- committing further resource from existing EHOs/FSOs by re-profiling their time from other duties to food safety. This could possibly lead to an additional 1-2 FTE to be committed on food safety duties. The current workload on other duties will need to be transferred to other officers or stopped. Some of this will be addressed through redesign (customer sign-posting, self-serving etc.) but the team may have to reduce or stop some low risk EH activities;
- reviewing demands on the food safety team to identify resource requirements needed to ensure compliance with statutory requirements of the Food Law Code of Practice;
- reviewing the duties of the five Senior EHOs, so that the Senior EHO with lead role on food safety has more capacity to commit to food safety;
- possible recruitment of temporary staff to address backlog of not yet rated premises; and
- possible creation of EHO/FSO posts to ensure compliance with statutory requirements of the Food Law Code of Practice. If appropriate, Committee approval will be sought for further resources.

7. Implications

- 7.1 Resource – As detailed in the report, the Council must increase the resource to undertake the statutory Food Authority duty. The detailed resource requirements are to be reviewed.
- 7.2 Legal – As reported previously to Committee, resources do not permit all statutory responsibilities to be implemented as per statutory guidance. The Audit requires the Council to make improvements in capacity to undertake the statutory Food Authority duty. Failure to implement the Audit Action Plan leaves the Council open to criticism and possible sanction by Food Standards Scotland and the Scottish Government.
- 7.3 Community (Equality, Poverty and Rural) – Further prioritisation of duties and service requests will result in longer response times for the public and businesses for lower priority work. Further prioritisation of proactive inspections will result in fewer inspections of non-high risk activities. Changes to the delivery of some functions will result in the public and businesses being directed to alternative means of resolving their complaints or addressing their service request including the need for them to take their own action.
- 7.4 Climate Change / Carbon Clever – none
- 7.5 Risk – Improvements introduced following the audit will assist in controlling risk associated with item CMS1 in the risk register ‘Consequences of serious food and water borne disease outbreak’.

7.6 Gaelic – none

Designation: Director of Community Services

Date: 24 April 2019

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APPENDIX 2

Significant incidents since 2016 requiring Environmental Health response

The environmental health team have had considerable workload challenges due to investigations of significant incidents since 2016. These take considerable time to investigate and conclude as often complex issues are involved. These included:

Complex noise investigations

- a) Balblair Sub-station – Currently involved in assessing compliance with an abatement notice served on SSE. Whilst significant mitigation work has been completed there is still a noise issue. Currently in liaison with SSE regarding further works. Case significant as has an impact on Western Isles link at Balblair sub-station.
- b) Dingwall Sawmill – Currently involved in assessing compliance with an abatement notice. Sawmill operator implemented significant mitigation work over past 20 months in response to resident's concerns. Ongoing noise monitoring at residents properties and liaison with sawmill in effort to address continuing concerns.
- c) Anaerobic Digester Plant, Dalcross. Currently involved in assessing compliance with abatement notice. Significant mitigation work over past 12 months in response to a neighbour complaint. On-going compliance monitoring and further mitigation work scheduled for beginning of May 2019
- d) Corpach Sawmill. Significant on-going investigation into noise emanating from large sawmill site in Corpach. Significant industrial site and currently assessing to determine whether a statutory nuisance exists, and to identify suitable mitigation works that could be employed to reduce noise levels.

Significant animal welfare cases

- a) The team carried out a welfare investigation into a farm with support from Government vets. As a result, the team arranged the emergency slaughter of significant numbers of poultry and 42 pigs were seized and eventually sold on. Legal proceedings are underway.
- b) In a separate case, the team also seized 34 cattle as a result of poor welfare. The cattle were sold on.

Health and safety at work cases

- a) Horse Riding fatality where woman was unseated from a horse during a guided trek. Woman later died as a result of head injuries sustained. Procurator Fiscal required a full investigation report from Environmental Health regarding the circumstances of her death in terms of the Health and Safety at Work Etc 1974.
- b) Elderly lady fell on downward escalator within Eastgate Shopping Centre during a programmed fire alarm test. Lady later died as a result of her injuries. Procurator Fiscal required a full investigation report from Environmental Health into the circumstances of her death in terms of the Health and Safety at Work Etc Act 1974.
- c) A male employee was found dead at the foot of a stairwell in a pubic house. Procurator Fiscal required a full investigation report by Environmental Health into the circumstances of his death in terms of the Health and Safety at Work Etc Act 1974.

- d) A significant and complex investigation was conducted by Environmental Health in terms of health and safety following the shattering of a glass panel from an overhead canopy injuring a member of public at Inverness Retail Park. This resulted in the retail park requiring to be closed for 2 days whilst all glass panels were removed. Environmental Health served two H&S Improvement Notices following investigations.
- e) A young male employee sustained serious life changing injuries following an accident at his workplace in Wick. This has required on-going liaison with the Procurator Fiscal regarding an investigation in terms of the Health & Safety at Work Etc Act 1974. A report has been prepared and submitted to the Procurator Fiscal recommending a prosecution.

Complex licensing cases

- a) Following significant number of complaints against the Black Isle Wildlife Park, an investigation identified a significant number of management issues and non-compliance with both zoo licensing and Public Entertainment licensing requirements. Two Committee reports were prepared and both the premises Zoo licence and Public Entertainment licence were revoked.
- b) Following concerns on an outbreak of strangles disease and welfare concerns, officers have carried out investigations into a riding establishment, Highlands Unbridled. This has resulted in reports to the licensing committee.

Food safety investigations

- a) In 2016 the team carried out a detailed investigation of a cheese producer following product testing. The company carried out a voluntary recall of specific products.
- b) Following an investigation in Lochaber a shellfish company was prosecuted in March 2019 for food safety offences and issued a £2400 fine.
- c) Following an investigation and case being submitted to the Procurator Fiscal, a food distributor was fined £300 for distributing high risk foods throughout the Highlands in an unrefrigerated van.

Illegal Houses in Multiple Occupation (HMOs) cases

- a) Environmental Health led a large multi-agency operation involving Police Scotland and Home Office Immigration Enforcement to investigate a block of nine flats in Dingwall suspected of being unlicensed HMOs. The operation identified 7 unlicensed properties and non-functioning fire alarm system. As a result of the operation, the landlord was prosecuted and fined £4000 in March 2019. The landlord has also carried out significant work since the operation to improve housing standards and has three of the properties now licensed as HMOs therefore ensuring the standards are improved for tenants.
- b) Following a H&S accident investigation in Lochaber, a property was identified which was being used as staff accommodation. The property was in a very poor standard of repair throughout and had significant electrical safety issues. After a detailed investigation by Environmental Health, a report was prepared and submitted to the Procurator Fiscal. The landlord was prosecuted and fined £1800 in Feb 2019
- c) Following several complaints of poor standards within two rented properties, an investigation identified that both properties were being occupied as unlicensed HMOs and were owned by the same landlord. A report was prepared by

Environmental Health and submitted to the Procurator Fiscal. The landlord was fined £2000 in Feb 2017

Multi-agency investigations - Operation Hottah

There has been significantly involved in the organisation and implementation of Operation Hottah over the last 18 months. This is a multi-agency operation involving officers from Environmental Health, Police Scotland, Home Office Immigration Enforcement and HMRC sharing intelligence and conducting joint visits to targeted premises. Environmental Health has a significant role within these operations which are aimed at tackling and disrupting serious organised crime in the takeaway industry. Operation Hottah visits have been conducted in Inverness, Dingwall, Nairn, Alness, Dornoch, Thurso and Wick over the last 18months.

Private Water supplies

In summer of 2018, significant numbers of private water supplies dried up resulting in emergency plans being implemented by environmental health in liaison with Scottish Government and Scottish Water.

Food
Standards
Scotland

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Food Standards Scotland

Highland Council
Food Law Enforcement Services

Capacity and Capability Audit
Report

31 Oct – 01 Nov 2018

3 – 5 Dec 2018

11 Dec 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.

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 Highland 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 Highland 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 is encouraged. Food Standards Scotland's audit role therefore fulfils two different requirements.
- 1.5 The last audit of Highland Council's Food Service undertaken by the Food Standards Agency (Scotland) was for Shellfish Sampling in July 2013. Previous audits on Approved Establishments and Regulation EC No. 853/2004 took place in 2011 and 2009.

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 Highland 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 three verification visits to three 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 on three occasions at the Authority's offices in Fort William, Portree, Inverness and Wick over an accumulated period of seven days.

Local Authority Background

- 1.8 Highland Council, as an authority, covers in geographical terms the largest area of any council in Scotland, spanning an area of 26,000 square kilometres – one third of the landmass of Scotland, one eighth of landward Britain. The population of the area is 232,950 (2013 data). Detailed profile information on the Highland area is available [here](#)

The Council discharges its operational responsibilities through four directorates:

- Care and Learning
- Community Services, which includes Environmental Health
- Corporate Resources
- Development and Infrastructure

Further details on these are available [here](#)

The Food Authority operates food hygiene and food standards enforcement through the Environmental Health department. There are offices in Inverness, Wick, Golspie, Dingwall, Fort William, Portree and Kingussie.

From the Statutory Performance Indicator Report 2016-17 and Local Government Benchmark Report 2016-17, the cost of Environmental Health per 1,000 population decreased from £18,914.00 in Financial Year 2015-16 to £14,878.39 in Financial Year 2016-17.

- 1.9 The Highland Council has a 2018-19 Environmental Health Operational Plan which was formally approved by the Environment, Development and Infrastructure Committee on 8th November 2018. It describes, at a high level, the background and context as well as the priorities and objectives. This part of the plan outlines the entire Environmental Health remit, including reference to proactive (planned) and re-active (service requests) work.

Detailed within the priorities and objectives is a statement to take forward the continued review of policies and operational procedures to improve effectiveness and efficiency, maintenance of key food safety performance indicators and the development of improved methods of monitoring performance.

Since the 2016 re-structure, the Environmental Health management team have been reviewing the changes. These were discussed at length by the auditors during the time in each office visited and have contributed to the content of this report. The Authority is developing an Environmental Health – Redesign and Improvement Plan and this is to be implemented in 2019 and as such, it may help the Authority to use that plan and this audit report to ensure the Action Plan at the end of this report is both realistic and achievable.

Within the Environmental Health Operational Plan at Appendix 3, there is a Food Safety Team plan 2018-19 which suitably details the service aims and objectives, service delivery, resources and quality assessment.

- 1.10 There is clear integration of how Environmental Health contributes directly towards the single outcome agreement & statutory priorities, via the Community Services Service Plan and the Highland Council's Corporate plan.
- 1.11 Within the wider Environmental Health section, there are currently 61 posts, with a full time equivalent of 54.78 spread across three operational areas and the 7 offices. Of these, there are 25.5 Authorised Officers, 15.3 of whom are Environmental Health Officers (EHOs) who are multi-disciplined, covering all environmental health duties including food safety, 6 are EHOs in management positions with varying levels of operational food safety duties and 3.2 are Food Safety Officers specialising in that area, and one trainee Food Safety Officer.
- 1.12 The Environmental Health Operational Plan 2018-19 states that the Service had a revenue budget of £2.229m for 2018-19, which was an increase from the figure of £2.05m for 2016-17 referred to in the Operational Plan 2017-18.
- 1.13 During 2016, Highland Council went through a restructuring process. Voluntary Early Redundancies' were accepted from other non-statutory areas within Environmental Health in order to protect the Food Service.

2.0 Executive Summary

Capacity

- 2.1 The audit found that the Environmental Health staffing resources for conducting Official Controls was insufficient as the inspection programme failed to comply with the Food Law Code of Practice. Therefore the capacity to deliver the intervention programme was considered unsatisfactory at the time of audit.
- 2.2 The Lead Officer for Food post is filled by a Senior EHO, who jointly acts as a Team Leader and as a Food Enforcement Officer, authorised to carry out all official controls and enforcement activities.
- 2.3 Much discussion took place on the numbers of full time equivalent staff (FTE's), the recent restructuring exercise in 2016 and the variety of unfilled posts. References were made to the Environmental Health – Redesign and Improvement plan which is a positive measure.
- 2.4 A review of the database carried out during the audit indicated that at the end of November 2018, there were 4684 premises listed on the Food Premises database, of which 2816 Food Hygiene interventions were overdue and 902 unrated (amounting to 3718 premises in total) which is 79% of the premises on the database.
- 2.5 Food hygiene at 21 high risk category A & B, 449 category C, 1201 category D and 1145 category E food premises were overdue for an official control.
- 2.6 Food Standards at almost 2200 premises of the 4684 premises on the database were unrated so not on any programme for an official control, and 1248 were considered as being overdue, with 2 being a high risk A rated business.
- 2.7 Quantitative monitoring of caseloads was being effectively monitored and reported, with a variety of regular reports informing managers and officers of the status of the intervention programme. However, monitoring of the quality of work allocated or completed was insufficient to ensure compliance with the requirements of the Food Law Code of Practice.
- 2.8 The budget information produced by the Authority indicated that there had been a slight increase together with a re-organisation of responsibilities, making comparisons with previous figures almost impossible.

Capability

- 2.9 Officers were generally 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 had recently been refreshed and were generally being appropriately and consistently followed and completed. These documents are available for all Officers in electronic format on a central directory.

- 2.10 Food Service plans are satisfactory in content, are current and appropriately approved. Service plans are seen as an important part of the process to ensure that national priorities and standards are addressed and delivered locally and help local authorities to follow the principles of good regulation, focus on key delivery issues and outcomes, provide an essential link with corporate and financial planning, set objectives for the future, identify major issues that cross service boundaries, provide a means of managing performance and making performance comparisons and provide information on an Authority's service delivery to stakeholders, including businesses and consumers.
- 2.11 Evidence of the authorisation process, the scheme of delegation and relevant associated documentation was satisfactory and was available for review. The Authorised officer documents reviewed were suitable for the functions being carried out.

Level of Assurance

- 2.12 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:
- 2.13 The Recommendations within this report detail the weaknesses in the controls that Highland Council should address.

Insufficient Assurance

Controls are not acceptable and have notable weaknesses

There are significant weaknesses in the current risk, governance and/or control procedures, to the extent that the delivery of objectives is at risk. Exposure to the weaknesses identified is sizeable and requires urgent mitigating action.

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 (Establishment intervention procedures)

- 3.2 The Authority has a satisfactory Environmental Health Operational Plan for 2018-2019 which had been formally approved by the Environment, Development and Infrastructure Committee on 8th November 2018.
- 3.3 The Authority has an Environmental Health - Redesign and Improvement Plan designed to provide a sustainable, efficient and effective Environmental Health team. This was reviewed and appears to be comprehensive in content and scope as the Authority has considered workloads, staffing, finances and other factors. As part of this plan, there was a significant workforce planning exercise in 2015 which was implemented in 2016, resulting in 5.6 posts being removed and a restructured team installed. The EH team is multidisciplinary and covers the full range of Environmental Health functions.

The post of Food Team Leader is the designated Lead Officer for Food and is managing the regular workload of Authorised Officers based in the same geographical office, and is also doing a proportion of the required food control work across the remainder of the geographic area, in addition to other general environmental health duties.

- 3.4 The Food Standards Scotland Local Authority Information Gathering Questionnaire (July 2018) return for this Authority indicated that for food hygiene there were 8.2 full time equivalents (FTE) in post against 9.4 required and for food standards were 1.5 FTEs and 1.6 respectively. Based on intervention programmes, database, documentary and record reviews, together with management discussions it is concluded that the Authority does not have an appropriate number of suitable staff to achieve the required compliance with the Food Law Code of Practice.
- 3.5 The last and final LAEMS Report for Scotland, covering 2016-17, shows this:

	Food Hygiene	Food Standards
Total premises	4478	4279
Unrated	762 (17%)	2039 (48%)
A	16	16
B	194	915
C	878	1303
D	1376	n/a
E	1245	n/a

Type of intervention	Food Hygiene	Food Standards
Inspection / audit	666	469
verification and surveillance	317	72
Sampling	41	81
Advice	48	13
Written warnings	486	91
Total premises subject to control	752 (17%)	541 (13%)

- 3.6 The authority provided a database report on 15 October 2018 which showed that there are some 4669 food businesses located within the Highland Council area. These comprise:

Type	Number
primary producers	343
manufacturers	313
Importers/exporters	1
distributors	68
Supermarkets,	63
small retailers	280
retailers (others),	451
restaurants / cafes,	442
hotels / guest houses,	448
pub /clubs,	46
takeaways	91
caring establishments	310
schools / colleges	215
mobile food units	134
restaurants / caterers	1464

- 3.7 At the beginning of the onsite audit, a database report was requested on the risk rating and inspection dates for all food premises, this was promptly provided. On analysis this showed the following had been missed and were unrated:

	Food Hygiene		Food Standards	
	Total	Overdue	Total	Overdue
A	18	4	14	2
B	169	17	977	556
C	878	449	1416	690
D	1429	1201	--	--
E	1275	1145	--	--
Unrated	902 (19%)		2190 (47%)	
Outside programme	7		6	
No information	6		81	
Total	4684	2816 (60%)	4684	1248 (27%)

- 3.8 The Authority's data management system correctly generates separate inspection dates for food hygiene and food standards interventions. The Authority

advises that where practical these different interventions are carried out at the same time. The majority of the premises are considered low risk for food standards, with 14 being rated as A.

Recommendation 1

Action point: Food Service Plan & Food Hygiene Enforcement Policy

The current intervention programme must comply with the Food Law Code of Practice or Regulation (EC) No 882/2004.

Article 3 Regulation EC No 882/2004

Articles 4(2) to 4(6) Regulation EC No 882/2004 – Designation of Competent Authorities (Establishment Intervention Procedures, Facilities and equipment)

- 3.9 The Authority has an approved "[Environmental Health Operational Plan 2018/19](#)" (Item 23) which contains a structure diagram showing that there is one manager, 5 Senior EHOs, 16.3 EHOs and 3.2 FSOs. As the EHOs are generalists, they each contribute a variable amount of time on food related activities. The FSOs are however full time on food law interventions.
- 3.10 The Enforcement Policy covers all of Environmental Health and Amenity Services and was issued on 8 October 2018 and has a 2 year review date. It correctly refers to the Legislative and Regulatory Reform Act 2006, the Regulatory Reform (Scotland) Act 2014, the UK Regulators Code and the Scottish Regulators' Strategic Code of Practice (SRSCoP), the latter of which requires that Local Authorities recognise, in their policies and practice, a commitment to the five principles of better regulation which should be transparent, accountable, consistent, proportionate and targeted only where needed.
- 3.11 The SRSCoP 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 must follow this Code.
- 3.12 The Authority has a Scheme of Delegation and Administration which is successfully updated annually, the most recent document dated December 2017. Delegated powers to officers within Environmental Health are suitably detailed with the proviso that under the Principles of Delegation, the Directors have the authority to act in all operational matters including those that may not be specifically identified in the scheme.

- 3.13 The Authority supports the above with a scheme of authorisation which is designed to ensure that officers are appropriately authorised for specific legislation it takes the pragmatic approach of defining the legislation where powers are available by designating groups of legislation to Officer levels. The letter of authorisation is issued by the relevant line manager and effectively determines the 4 levels of authorised activities in a simple cascade of powers.
- 3.14 The designated Lead Officer for Food is filled by an experienced Environmental Health Officer holding the title of Senior EHO. Many of the Authorised Officers enforcing food law have been in post for a considerable time, however the restructuring exercise has shifted responsibilities considerably. Staffing changes and the geographical nature of the authority have had a detrimental impact on one particular team, although capacity shortfall and the ramifications of this can be found across all of the Highland Council area.
- 3.15 The Authority is maintaining its database which was able to produce reports for the auditors when requested. The Lead Food Officer is however not solely responsible for the production or monitoring of work programmes or activities which are shared with other Senior EHOs. The database reports are used to assess the work priorities and to ensure that there is a reasonable allocation of work to all members of the team. In some area teams, officers are responsible for allocating food inspections amongst themselves.

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

- 3.16 Officers have appropriate qualifications and the copies of qualifications provided were satisfactory. Documentary evidence was requested to verify completed training and, on examination, it was found that the required internal recording procedure had not been suitably updated by many Officers. However after discussions, it was verified that most Officers had sufficient evidence of completion of the required 10 hours of food based continuing professional development as required by the Food Law Code of Practice.

The Authority has a corporate “Employee Review and Development Planning” system that is in place and suitably includes skills and development as well as Performance. This should enable those carrying out the review to produce suitable documentation, whether Corporate or Service specific and identifying the current and future requirements and aspirations of all employees.

The FLCoP requires that where an assessment of the officer’s competency identifies training needs, appropriate additional training shall be provided or the officer’s responsibility appropriately restricted.

- 3.17 Evidence of satisfactory training in Hazard Analysis and Critical Control Points (HACCP) principles was available as a very large number of Officers had successfully completed HACCP training to level 4. Officers carrying out official controls at approved premises will now be able to examine Food Safety Management Systems based on HACCP thoroughly.
- 3.18 When undertaking interventions in the 14 category A food standards establishments or those which are engaged in the manufacture and processing

of foodstuffs with documented quality assurance systems, Officers should be appropriately trained and able to demonstrate that they are competent to assess quality assurance systems. Suitable Lead Auditor qualifications are held by several Officers.

- 3.19 Officers have responsibility for a variety of food business operators, including 68 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. Appropriate training in dairy and cheese making has been completed in the past. Multiple online training modules relevant to effective food law enforcement have also been completed.
- 3.20 Officers delivering Official Food Controls are generalist Officers and the Authority have recently assessed the work times of all officers in relation to Service Requests and have produced a report on the findings.

Service Requests - 4th December 2017 – 3rd December 2018	No.
Food Premises Registration	306
Food Safety Enquiry/Consultation	346
Fish/Shellfish Export Certificates	706
Food (Non Fish/Shellfish) Export Health Certificates	3
Approval/Lic/Auth application FH	2
Shellfish Registration Documents	18
FSS Food Alert	4
FSS Shellfish samples failure/alert notification	15
Request for classification / fast track (shellfish)	2
Complaint - Food (Unfit, Microbiological, foreign body)	123
Complaint - Hygiene of Premises	87
Complaint - Food Standards (composition, labelling, presentation etc.)	25
Total	1637

Recommendation 2
Action point: Training

The Authority should ensure that suitable evidence of appropriate training able to demonstrate Officer competence is maintained.

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

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

- 3.21 The Authority has Procedures containing information and instructions for the official controls and food law that it carries out in place for both food hygiene and food standards. Examples of these procedures provided for the audit were simple, short and are generally fit for purpose.
- 3.22 The formal monitoring procedure requirements have not been followed since April 2016 as the Authority has implemented very little qualitative internal monitoring of official controls for risk ratings, letters and reports. There has been an effort by Senior EHOs and Officers to ensure some informal monitoring is taking place with regard to Notices and letters through verification of documentation by a second Officer and the discussing of enforcement issues and email communication with each other.
- 3.23 Quantitative monitoring is evidenced primarily by the database being used to provide status reports on the intervention programmes. Data for managers and officers is produced on an annual, then quarterly, monthly and weekly basis. The intervention programme is allocated to the area offices, with each office then deciding on how to allocate their programme. This leads to inconsistency in approach which was reported by officers to the Auditors, who discussed with senior managers.
- 3.24 Sufficient evidence of qualitative assessments to verify compliance with the Food Law Code of Practice requirements by, for example shadowed inspections, are not taking place. It is recommended that the Authority follows the guidance issued by Food Standards Scotland in [FSS/ENF/17/010](#) of 27 March 2017.
- 3.25 The Authority generally undertakes food hygiene and food standards interventions at the same time. For food standards the majority of premises are considered low risk. An alternative enforcement strategy is available for these very low risk premises. This consists of questionnaires and verification visits for these businesses but it is not being used. The procedure is dated 12 August 2011 but was not subject to audit at this visit.

Recommendation 3
Action point: Monitoring

The Authority must fully implement the internal monitoring procedure which is in place.

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

- 3.26 Inspection documentation is created as either a carbonised report or a letter which is provided to food business operators (FBOs) following interventions and, where considered appropriate, a letter may follow.

A review of inspection documentation revealed inconsistency in the forms of reporting used. In some cases, this was in the form of a handwritten report which may be left with the food business operator following an inspection, then an appropriate letter is sent at a later date. A handwritten report (for both minor and several significant issues) may be the only form of report. Aide memoirs seen are often incomplete and in some cases missing. It is therefore not clear how the letter and in some cases notices, are supported by the evidence noted.

- 3.27 From the records checked, the reports or letters written by officers do not fully follow the requirements of the Food Law Code of Practice, as a timescale for achieving compliance is not always provided to the FBO and differentiation between contraventions and recommendations are not always clear. The Highland Council "Inspection reports guidance" of 09-01-08 indicates that timescales should be made clear.

Recommendation 4

Action point: Reports

The Authority has a system for providing reports to food business operators, however the documents are required to comply with the Food Law Code of Practice:

- timescales must be indicated for the FBO to achieve compliance.
- The contemporaneous records must provide sufficient evidence to support the actions taken. The quality of these should be improved or another method found to record evidence of actions required by FBO's.

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 (examination, inspection, checks on hygiene or GMP)

- 3.28 Three real time un-announced verification checks were carried out during the audit. In all cases, the officer selected had carried out the previous intervention and so was familiar with the business and its documentary systems.
- 3.29 The first was at a high risk caterer at a hospital during a programmed inspection. The Officer had prepared for the inspection by reviewing the file and records. The Officer involved had carried out the previous intervention at the premises and believed that there was a familiarity with the business, its documentation and systems.

- 3.30 The various matters that arose during the inspection were related to a complete change of catering methods and these were satisfactorily handled by the Officer in delivering the intervention. The main findings related to an inadequate Food Safety Management System and the lack of allergen information.
- 3.31 The second verification check was to a large bakery facility producing meat preparations (sausage rolls and pies). Again, the appropriate procedural steps for preparing were followed by the Officer. A number of issues that were found were dealt with both during and after the intervention. The Officer focused on identified cross contamination issues, Food Safety Management Systems and structural items throughout the intervention.
- 3.32 The third verification check was to a smaller meat products business that was being operated by a butcher in a dedicated production facility completely separated from any other business. The appropriate preparation was completed and the Officer displayed a thorough knowledge of the processes involved, as well as identifying several issues that required attention to improve the safety of the products.
- 3.33 Following the three interventions, copies of the documentation completed during the reality check and the information subsequently provided to the food business operator were provided to FSS. The records for two of the three interventions did not fully comply with the requirements of the Food Law Code of Practice.

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

- 3.34 The Authority sends samples for examination and analysis to Edinburgh Scientific Services (ESS).
- 3.35 There is a sampling policy and programme in place and these were considered as satisfactory.

Using the Food Surveillance System for Scotland, records for results of unsatisfactory microbiological samples taken and reported in the previous 6 months were reviewed as part of the audit. Examples of follow up action on sample result non-compliance reports were requested and this was later provided, with the review of the records showing good awareness and capability by the officers involved.

Article 31 Regulation EC No 882/2004 – registration / approval of Feed and Food businesses Establishments (Database)

- 3.36 The Authority has an electronic database of the food premises within their area. At the time of audit, the database shows many overdue interventions, mainly in the lower C and the D and E categories for hygiene and the B and C for Standards, as detailed above. There were 2816 Hygiene and 1248 Standards interventions overdue when the data was provided. This is broadly similar to the internal report statistics provided, which is validation of the internal monitoring system.

There is also a large number of unrated premises with 902 Hygiene and 2190 Standards premises not on the inspection programme. This has been recognised by the Authority and an action plan is in place to ensure, as far as possible, those that are identified as a risk to public health are being fast tracked towards an official control that will result in them becoming risk assessed and on to the programme for interventions.

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

- 3.37 The Authority has a single Food Enforcement Policy for hygiene and standards in place supported by Procedures many of which had been recently refreshed.

The Officers would appear to be following the Enforcement Policy, the principles of good enforcement and an assessment of risk to public health, while recognising the importance of achieving consistent, balanced and fair enforcement

Auditors: Graham Forbes
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Food Standards Scotland
Audit Branch

4.0 Annex A

Action Plan for Highland Council: Capacity and Capability Audit, November - December 2018

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
<p><u>Recommendation 1</u> <u>Action point: Food Service Plan & Food Hygiene Enforcement Policy</u></p> <p>The current intervention programme must comply with the Food Law Code of Practice or Regulation (EC) No 882/2004.</p> <p><i>Article 3 Regulation EC No 882/2004</i></p>	<p>The Council recognises that current resources are prioritised at High Risk activities and that there are insufficient resources to allow compliance with the FLCOP.</p> <p>Action point 1a. The Environmental Health Redesign and Improvement plan will be implemented. This will include a root cause analysis on capacity and consider further prioritisation of existing resources to food safety as part of the overall review of current resources. A copy of the Environmental Health Redesign and Improvement plan will be provided to FSS.</p>	28/6/19	Environmental Health Manager

	Action point 1b. The outcomes of the review and any recommendations will be implemented. If appropriate, Committee approval will be sought for further resources.	27/9/19	Environmental Health Manager
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Action Plan for Highland Council: Capacity and Capability Audit, November - December 2018

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
<p><u>Recommendation 2</u> <u>Action point: Training</u></p> <p>The Authority should ensure that suitable evidence of appropriate training able to demonstrate Officer competence is maintained.</p> <p><i>Article 6 of Regulation (EC) No 882/2004</i> <i>Section 4 of the Food Law Code of Practice (Scotland) 2015.</i></p>	<p><u>Action point 2a</u></p> <p>The system of recording training has been updated to provide easily accessible individual records that specifically record training on food safety. Officers have been reminded of the need to complete and record CPD.</p> <p>Action point 2b The new records will be reviewed by their Senior EHO at regular one to one meetings and at annual Employee Review and Development meetings.</p>	<p>In place</p> <p>31/7/19</p>	<p>Senior EHOs</p> <p>Senior EHOs</p>

Action Plan for Highland Council: Capacity and Capability Audit, November - December 2018

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
<p><u>Recommendation 3</u> <u>Action point: Monitoring</u></p> <p>The Authority must fully implement the internal monitoring procedure which is in place</p> <p><i>Article 8 of Regulation (EC) 882/2004 (Official Feed and Food Controls)</i> <i>Section 39 of the Food Law Code of Practice (Scotland) 2015</i></p>	<p><u>Action point 3a:</u> The internal monitoring procedure will be reviewed taking into account the FSS Internal Monitoring Advice for Local Authority Food and Feed Law Services March 2017 document.</p> <p>Action point 3b Further use of the Civica information management system for internal monitoring will be considered as part of the review.</p> <p>Action point 3c Capacity to implement the procedure will be considered as part of Action 1b.</p>	<p>31/7/19</p> <p>31/7/19</p> <p>n/a</p>	<p>Environmental Health Manager and Senior EHO (food safety)</p> <p>Environmental Health Manager and Senior EHO (food safety)</p> <p>n/a</p>

Action Plan for Highland Council: Capacity and Capability Audit, November - December 2018

Recommended Point for Action	Planned actions	Target date for completion	Responsible Officer(s)
<p><u>Recommendation 4</u> <u>Action point: Reports</u></p> <p>The Authority has a system for providing reports to food business operators, however the documents are required to comply with the Food Law Code of Practice:</p> <ul style="list-style-type: none"> - timescales must be indicated for the FBO to achieve compliance. - The contemporaneous records must provide sufficient evidence to support the actions taken. The quality of these should be improved or another method found to record evidence of actions required by FBO's. <p><i>Article 9 of Regulation (EC) 882/2004 (Official Feed and Food Controls)</i> <i>Section 28 of the Food Law Code of Practice (Scotland) 2015.</i></p>	<p><u>Action point 4</u></p> <p>The procedure for inspection reports and recording inspections will be updated in consultation with officers.</p>	<p>28/6/19</p>	<p>Environmental Health Manager and Senior EHO (food safety)</p>