

Food Standards Agency in Scotland

Report on the Audit of Local Authority Assessment of Regulation (EC) No 852/2004 on the Hygiene of Foodstuffs in Food Business Establishments

**Midlothian Council
16-18 November 2010**

Foreword

Audits of Local Authorities food law enforcement services are part of the Food Standards Agency'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. These Local Authority regulatory functions are principally delivered through Environmental Health and Trading Standards Services. The Agency's website contains enforcement activity data for all UK local authorities and can be found at:

www.food.gov.uk/enforcement/auditandmonitoring.

The attached audit report examines the Local Authority's Food Law Enforcement Service. The assessment includes the local arrangements in place for Officer training, competency and authorisation, particularly on Hazard Analysis and Critical Control Point (HACCP) principles, inspections of food businesses and internal monitoring. The audit scope was developed specifically to address Recommendations 9 and 15 of the Public Inquiry Report¹ into the 2005 *E. coli* outbreak at Bridgend, Wales. The audit focused on the Local Authority's training provision to ensure that all Officers who check HACCP and HACCP based plans, including those responsible for overseeing the work of those Officers, have the necessary knowledge and skills. Also, that existing inspection arrangements and processes to assess and enforce HACCP related food safety requirements in food businesses are adequate, risk based, and able to effect any changes necessary to secure improvements.

Agency audits assess Local Authorities' conformance against the Food Law Enforcement Standard ("The Standard"), the 5th revision of which was published in April 2010 by the Agency as part of the Framework Agreement on Official Feed and Food Controls by Local Authorities and is available on the Agency's website at: <http://www.food.gov.uk/multimedia/pdfs/enforcement/frameworkagreementno5.pdf>

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.

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. The scheme also provides the opportunity to identify and disseminate good practice and provide information to inform Agency policy on food safety, standards and feeding stuffs. Parallel Local Authority audit schemes are implemented by the Agency's offices in all of the countries comprising the UK.

For assistance, a glossary of technical terms used within this audit report can be found at Annexe C.

¹ <http://wales.gov.uk/ecolidocs/3008707/reporten.pdf?skip=1&lang=en>

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1.0 Introduction

- 1.1 This report records the results of an audit at Midlothian Council with regard to food hygiene enforcement, under relevant headings of The Standard in The Framework Agreement on Official Feed and Food Controls by Local Authorities. The audit focused on the Authority's arrangements for the management of food premises inspections, enforcement activities and internal monitoring. The report has been made available on the Agency's website at: www.food.gov.uk/enforcement/auditandmonitoring/auditreports

Reason for the Audit

- 1.2 The power to set standards, monitor and audit Local Authority food law enforcement services was conferred on the Food Standards Agency by Section 12 the Food Standards Act 1999 and Regulation 7 of The Official Feed and Food Controls (Scotland) Regulations 2009. This audit of Midlothian Council was undertaken under section 12(4) of the Act, and Regulation 7(4) of the Regulations as part of the Food Standards Agency in Scotland audit programme.
- 1.3 The last audit of Midlothian Council's Food Service took place in May 2007.

Scope of the Audit

- 1.4 The audit covered the Local Authority services for the delivery of official controls in relation to Regulation (EC) No 852/2004 on the hygiene of foodstuffs. In particular:
- The provision and adequacy of Officer training on HACCP principles and the validation and verification of food safety management systems based on HACCP principles;
 - The means by which the Local Authority ensures that Officers are competent to effectively assess food safety management systems based on HACCP principles;
 - The implementation and effectiveness of intervention activities including food safety management systems based on HACCP principles at food business premises;
 - The maintenance and management of appropriate records in relation to enforcement activity at food businesses, including the detailed assessment of food safety management systems based on HACCP principles;
 - Internal monitoring arrangements.
- 1.5 The audit examined Midlothian Council's arrangements for food premises interventions and internal monitoring with regard to food hygiene law

enforcement, with particular emphasis on Officer competence in assessing food safety management systems based on HACCP principles. This included verification visits to food businesses to assess the effectiveness of official controls implemented by the Local Authority at the food business premises and, more specifically, the checks carried out by the Authority's Officers to verify food business operator (FBO) compliance with legislative requirements. The scope of the audit also included an assessment of the Authority's overall organisation and management, and the internal monitoring of other related food hygiene law enforcement activities.

- 1.6 The audit examined key food hygiene law enforcement systems and arrangements to determine that they were effective in supporting business compliance, and that local enforcement was managed and delivered effectively. The on-site element of the audit took place at the Authority's offices at 9 Ironmills Road, Dalkeith, EH22 1JN on 16-18 November 2010.

Background

- 1.7 The planned food hygiene inspections or audits as detailed in the Food Service Plan at 31 March 2010 for the 694 operating food premises were:

Planned Food Hygiene Inspections		
Premises risk rating	Inspection target	Number of planned inspections
A	100%	4
B	100%	68
C	95%	164
D	50%	41
New premises	100%	102
Outstanding missed inspections		47
Total		426

- 1.8 In addition the Service Plan details:

Alternative Intervention at low risk food premises	
Premises risk rating	Number of premises
E	55

- 1.9 The Food Service Plan for 2010-011 details the current number of staff working directly on Food Law Enforcement to equate to approximately 3 full time equivalents.

2.0 Executive Summary

- 2.1 The Authority had developed and implemented a detailed Food Service Plan for 2010-2011, which satisfies the Service Planning Guidance in the Framework Agreement. The Service Plan had been approved by Cabinet in June 2010.
- 2.2 The Authority had developed documented policies and operational procedures relating to their food law enforcement responsibilities, including a detailed Operational Procedure for the Evaluation of HACCP Assessment competency. These documents were available to all Officers in electronic format on a central directory and those evaluated at audit contained up to date references to legislation and official guidance.
- 2.3 Authorisation documents were appropriate, comprehensive and being used by Officers across the food service. Officers were subject to regular reviews of performance which was referenced to their level of authorisation.
- 2.4 Individual Officer training needs were identified as part of their annual performance development plan. Training records contained evidence that each Officer had completed a minimum 10 hours relevant training in the last year, including recent training in HACCP principles and methods for effectively auditing HACCP based food safety management systems.
- 2.5 The procedures and documentation provided for inspections were almost always being appropriately and consistently completed. From the files examined it was evident that Officers were clear on the Authority's procedure for conducting inspections and adhered to the Authority's Enforcement Policy.
- 2.6 File checks of six general food hygiene premises confirmed that in all cases the Authority were completing detailed inspections, including the assessment of HACCP based food safety management systems. Food business operators were provided with clearly worded reports and letters confirming the main findings from inspections. The information retained within the premises files provided sufficient evidence to support the basis for Officers' enforcement decisions.
- 2.7 It was evident from audit checks that Officers were taking a graduated approach to enforcement and actively worked with businesses to achieve compliance. The information reviewed relating to a series of Hygiene Improvement Notices identified that the enforcement decisions reached were generally appropriate to the contraventions identified.
- 2.8 Discussion and review of internal monitoring procedures and practices indicated that the Authority was monitoring many aspects of food law enforcement work, some of which was not included on the operating procedures. Some records of internal monitoring activities were retained on file.

3.0 Audit Findings

3.1 Organisation and Management

Strategic Framework, Policy and Service Planning

- 3.1.1 The Authority had developed and implemented a detailed Food Service Plan for 2010-2011. The Plan, which contained a review against the previous year's Service Plan, had been prepared in accordance with the requirements of the Service Planning Guidance in the Framework Agreement on Official Feed and Food Control by Local Authorities, and had been approved by the Cabinet in June 2010.
- 3.1.2 The Food Service Plan links to the Authority's corporate strategy objective of maintaining Midlothian as a safe place to live, work and visit. The Council has adopted local performance indicators including an outcome measure of the percentage of businesses deemed to be broadly compliant with food legislation.
- 3.1.3 The Food Service Plan states that the primary aim of the Food Service is to carry out the statutory duties required of a Food Authority. In order to do this the Food Service will:
- use an appropriate mix of enforcement and advisory action to ensure that food businesses abide by food safety legislation; and
 - target its resources towards those areas of the food business community which present the greatest risk to consumers.

Documented Policies and Procedures

- 3.1.4 The Authority had developed a portfolio of documented policies and comprehensive and clear procedures, many including helpful flow charts relating to their food law enforcement responsibilities. The procedures are subject to regular review and updating to reflect procedural or legislative changes.
- 3.1.5 Operating procedures are in place for many areas of enforcement eg notices, complaints, authorisation, evaluation of HACCP assessment competency, sampling, seizure and detention of food, voluntary closure and monitoring of food safety enforcement.
- 3.1.6 Food hygiene enforcement aide memoires are in place for Officers to use to record findings at inspection of high and low risk premises, several categories of approved establishments, new food premises, primary and dairy production.

Good Practice

Well designed aide memoires, particularly the Food Premises Hygiene Inspection Record (High Risk), were being appropriately completed by Officers during and after inspections.

- 3.1.7 An electronic document control system is in place and all policies and procedures are managed by the Principal Officer (Food and Safety). Officers have access to the current versions from the shared drive. Procedures are updated to reflect procedural or legislative changes.

Officer Authorisations

- 3.1.8 The Authority had developed and implemented a documented procedure for the Authorisation of Officers. Authorisation documents in the form of either an "Instrument of Appointment" or a "Document of Authority and Appointment" are carried by Officers; these show the authorisation levels and legislation enforced by the Officer. The Principal Officer is responsible for the review of performance and ensuring that each Officer has the appropriate level of authorisation based on their competence.

Good Practice

The Authorisation documents (Instrument of Appointment) carried by Officers were detailed and relevant to the officers level of competency.

- 3.1.9 Audit checks confirmed that all Officers' qualifications were available, that copies of relevant qualification certificates had been retained by the Authority and were current.
- 3.1.10 Individual Officer training needs were identified annually as part of the annual performance development plan. All training records examined contained evidence of a minimum 10 hours relevant training in the last year based on the principles of continuing professional development.

Training in HACCP

- 3.1.11 Officers have completed HACCP training, with many Officers having attended the FSA five day Assessment of HACCP Systems Course. The Authority had a particularly well developed operating procedure in place for the evaluation of HACCP assessment competency. One Officer had been given the responsibility of assessing all other Officers; this was in progress at the time of audit.

Good Practice

The Operating Procedure for the evaluation of HACCP assessment competence is well developed and satisfies the requirements of the HACCP Evaluation Competencies in the Food Law Code of Practice.

3.2 Food Premises Inspections

- 3.2.1 The Authority was implementing an effective risk based food premises intervention programme and had taken the decision to continue to carry out inspections as their preferred choice of intervention. Revisits were being carried out where appropriate and were being done on target. It was evident from audit checks that officers were taking a graduated approach to enforcement and actively worked with businesses to achieve compliance

Inspection Reports and Records

- 3.2.2 File checks of six general food hygiene premises confirmed that in all cases the Authority were completing detailed inspections including the assessment and recording of HACCP based food safety management systems. The aide memoire specifically directed towards the recording of matters requiring attention from previous visits/letters, inspections or complaints since the last visit, the qualification of person(s) working in a supervisory capacity, the risks of cross contamination from structure, layout or practices (with a section for the layout/flow plan or photos taken.
- 3.2.3 Food business operators were provided with reports left at the time of inspection, and where necessary a subsequent letter, confirming the main findings from inspections with appropriate timescales for the required works to be completed. Reports and letters were clearly worded and consistently differentiated between legal requirements and recommendations of good practice, and contained all of the details required by the Food Law Code of Practice. Revisits were made to premises where necessary to ensure that required works had been completed.
- 3.2.4 The information retained on file provided sufficient evidence to support the basis for Officers' enforcement decisions. Examples of electronic database files with digital photographs or film clips attached were demonstrated to show conditions witnessed during inspections. These were then able to be monitored to verify enforcement action decisions.
- 3.2.5 Officers were provided with and regularly used specifically designed numbered notebooks to record significant information that could be required in a formal setting.
- 3.2.6 In the files checked, risk rating of the premises was complete, accurate and in accordance with the Food Law Code of Practice requirements.

Good Practice

Operational procedures were in many cases in flow chart format, making them simple to follow and understand. These had been made available through the Lothian and Borders Food Liaison Group and had been adapted for local use.

Good Practice

Officers are provided with, and regularly use, dedicated official notebooks for recording formal action and other items considered to be of significance.

Officers are provided with individual digital cameras and are actively encouraged to take pictures and videos and store them on the computer system.

Verification Visits to Food Premises

- 3.2.7 During the audit, verification visits were undertaken to two higher risk premises. In this Authority these were to two caterers, one of which served vulnerable groups. The Authorised Officers who had carried out the recent programmed inspection accompanied the auditors on the verification visits. The main objective of each visit was to assess the effectiveness of the Authority's assessment of the food business operators' compliance with the food law requirements of Regulation (EC) No 852/2004.
- 3.2.8 Interviews were held with the individual Officers before the verification visits took place to confirm the contents of the file records and to explain the format and objectives of the visit. It also gave the Officers the opportunity to explain the inspection process, i.e. the preparatory work carried out prior to an inspection and the general process while on site, which included a preliminary interview with the Food Business Operator (FBO), the general hygiene checks to verify compliance with the structure and hygiene practice requirements and checks carried out to verify compliance with HACCP based procedures.
- 3.2.9 Both visits confirmed that checks carried out by Officers were detailed, thorough and had adequately assessed business compliance with structure and hygiene practice. Officers had assessed HACCP compliance during the inspection and had commented where appropriate; however documents or records to verify a system based on HACCP were recorded as not being examined at one inspection. The inspection aide-memoire used at the caterer detailed that the CookSafe system was being used and that temperature control documents/records had been examined by the Officer.
- 3.2.10 At the recent programmed inspection of the takeaway premises, the FSMS was not seen by the Officer as attention to improving and achieving the pre-requisites to hygiene had taken priority. No aide memoire had been used to record conditions or outcomes as the letter from the previous inspection, requiring a comprehensive list of improvements to be completed, had been copied and annotated during the inspection. A number of contraventions were clearly identified within the subsequent letter and Hygiene Improvement Notices were served on the business. Revisits were subsequently made by the Officer to check progress. From the records checked it was evident at the time of the verification visit that conditions

within the business were slowly improving, though some of the pre-requisites were still absent.

- 3.2.11 At the catering premises, the Officer had also served Hygiene Improvement Notices which had been fully complied with and had brought about a major improvement in the structural conditions. Again from the records checked it was evident at the time of the verification visit that conditions within the business had improved.

3.3 Enforcement

- 3.3.1 The Authority operates to a Food Safety Enforcement Policy which was approved by the Midlothian Council Cabinet on 8 January 2008.

- 3.3.2 The policy sets out a “General Statement of Intention” which lists ten policy items. A summary of these are as follows:

- To strive to ensure that food and drink which is produced, stored, distributed, handled or consumed in Midlothian is without risks to the consumer
- To apply a level of enforcement action which is based on an assessment of the risk to public health
- To appoint sufficient suitably qualified and experienced Authorised Officers to discharge the authority’s functions
- To implement the contents of the Food Law Code of Practice
- To ensure Authorised Officers abide to the Food Enforcement Policy when making enforcement decisions
- To ensure that all Authorised Officers are kept acquainted with the requirements of the Food Enforcement Policy
- To have and review the Food Enforcement Policy
- To make the Food Enforcement Policy available
- To improve the availability of information and outcomes of enforcement
- To be mindful of the costs of compliance to food business operators when taking enforcement action

- 3.3.3 It was evident from audit checks that Officers were taking a graduated approach to enforcement and actively worked with businesses to achieve compliance.

- 3.3.4 Hygiene Improvement Notices were being used appropriately, were correctly drafted and had evidence of service recorded. One premises had been subject to twelve Hygiene Improvement Notices over a four month period, seven of them requiring equipment to be cleaned or repaired.

- 3.3.5 At the time of audit, the Authority had regularly served Hygiene Improvement Notices specifically for contraventions of Article 5 of Regulation (EC) No 852/2004.

3.4 Internal Monitoring

- 3.4.1 An Operating Procedure for Monitoring Food Safety Enforcement is in place and has the scope of covering any work undertaken by the Food Service, however inspection related activity is given priority.
- 3.4.2 The procedure is not being completely followed, however, alternative monitoring arrangements including regular office discussions, team meetings, database scrutiny, approval of Notices, review of any reduced risk ratings and discussions with Officers on their particular objectives is taking place. This additional and “informal” monitoring appears to be effective.

Recommendation

3.4.3 The Authority should:

Expand and fully implement its internal monitoring procedure to reflect the qualitative internal monitoring activity that is being undertaken in practice.

[The Standard – 19.1]

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ANNEXE A

Updated Action Plan for Midlothian Council

Date of Audit : 16-18 November 2010

TO ADDRESS (RECOMMENDATION INCLUDING STANDARD PARAGRAPH)	BY (DATE)	PLANNED IMPROVEMENTS	PROGRESS	ACTION TAKEN
The Authority should expand and fully implement its internal monitoring procedure to reflect the qualitative internal monitoring activity that is being undertaken in practice, [The Standard – 19.1]	31 Dec 2010	Revision of existing procedure.	Completed	Existing operational procedure revised

Accepted by auditors : Audit file closed 31 March 2011

ANNEXE B

Audit Approach/Methodology

The audit was conducted using a variety of approaches and methodologies as follows:

(1) Examination of Local Authority policies and procedures.

The following Local Authority policies, procedures and linked documents were examined before and during the audit:

- Food Service Plan 2010-2011, including appendices
- Food Service Plan report of 22nd June 2010
- Minutes of meeting of Midlothian Cabinet, 22nd June 2010
- Food Safety Enforcement Policy (Issue 2 rev.1 of 06.11.07)
- Standard letter for self-assessment questionnaire for low risk business
- Alternative inspection self assessment form
- Food Premises Hygiene Inspection record High risk
- Food Premises Hygiene Inspection record Low risk
- Dairy products establishment inspection form
- Egg products establishment inspection form
- Fishery products establishment inspection form
- Meat products establishments inspection form
- Minced meat, meat preparation and MSM establishment inspection form
- New food premises inspection record
- Primary production inspection record
- Dairy production holdings inspection checklist
- Report following Food Hygiene inspection template
- Hygiene Improvement Notice Procedure (OP01)
- Hygiene Emergency Prohibition Notice procedure (OP02)
- Seizure and detention of food procedure (OP03)
- Use of Remedial Action Notice procedure (OP06)
- Suspension of approval procedure (OP07)
- Voluntary Closure procedure (OP10)
- Food Premises Inspection (OP21)
- Food Premises Record of Inspections
- Approval of premises procedure (OP23)
- Document control procedure (OP71)
- Procedure for the Authorisation of Officers (OP72)
- Procedure for the evaluation of HACCP assessment competency (OP73)
- Monitoring Procedure for Food Safety Enforcement (OP74)
- Inspection consistency checklist
- Photographs on file
- Database records
- Documents of Authority and Appointment
- Food Hygiene Information Scheme documents

(2) File reviews

The following Local Authority file records were reviewed during the audit:

- Training Files & Qualifications
- Food Premises Inspections and Inspection Reports
- Hygiene Improvement Notices

(3) Officer interviews

The following Officers were interviewed:

- Audit Liaison Officer
- Authorised Officers who carried out the most recent inspection at the two premises selected for a verification visit.

Opinions and views raised during Officer interviews remain confidential and are not referred to directly within the report.

(4) On-site verification check

A verification visit was made with the Authority's Officers to two local food businesses. The purpose of the visit was to verify the outcome of the last inspection carried out by the Local Authority and to assess the extent to which enforcement activities and decisions met the requirements of relevant legislation, the Food Law Code of Practice (Scotland) and other official guidance, having particular specific regard to Local Authority checks on FBO compliance with HACCP based food safety management systems.

ANNEXE C

Glossary

Audit	Audit means a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.
Authorised Officer	A suitably qualified Officer who is authorised by the Local Authority to act on its behalf in, for example, the enforcement of legislation.
E. coli	<i>Escherichia coli</i> microorganism, the presence of which is used as an indicator of faecal contamination of food or water. <i>E. coli</i> 0157:H7 is a serious food borne pathogen.
Food Law Code of Practice (Scotland)	Government Codes of Practice issued under Section 40 of the Food Safety Act 1990, Regulation 24 of the Food Hygiene (Scotland) Regulations 2006 and Regulation 6 of the Official Feed and Food Controls (Scotland) Regulations 2009, as guidance to Local Authorities on the enforcement of food legislation.
Food hygiene	The legal requirements covering the safety and wholesomeness of food.
Food Standards Agency	<p>The Food Standards Agency is an independent Government department set up by an Act of Parliament in 2000 to protect the public's health and consumer interests in relation to food.</p> <p>Everything we do reflects our vision of Safe Food and Healthy Eating for all.</p>
Framework Agreement	<p>The Framework Agreement consists of:</p> <ul style="list-style-type: none">• Chapter One Service Planning Guidance• Chapter Two The Standard• Chapter Three Monitoring of Local Authorities• Chapter Four Audit Scheme for Local Authorities <p>The Standard sets out the Agency's expectations on the planning and delivery of food law enforcement.</p> <p>The Monitoring Scheme requires Local Authorities to submit an annual return to the Agency on their food enforcement activities i.e. numbers of inspections, samples and prosecutions.</p>

Under the **Audit Scheme** the Food Standards Agency will be conducting audits of the food law enforcement services of Local Authorities against the criteria set out in The Standard.

Full Time Equivalents (FTE)	A figure which represents that part of an individual Officer's time available to a particular role or set of duties. It reflects the fact that individuals may work part-time, or may have other responsibilities within the organisation not related to food enforcement.
HACCP / FSMS	Hazard Analysis and Critical Control Point – a food safety management system (FSMS) used within food businesses to identify points in the production process where it is critical for food safety that the control measure is carried out correctly, thereby eliminating or reducing the hazard to a safe level.
LAEMS	Local Authority Enforcement Monitoring System is an electronic system used by local authorities to report their food law enforcement activities to the Food Standards Agency.
Member forum	A local authority forum at which Council Members discuss and make decisions on food law enforcement services.
Risk rating	A system that rates food premises according to risk and determines how frequently those premises should be inspected. For example, high risk premises should be inspected at least every 6 months.
Service Plan	A document produced by a Local Authority setting out their plans on providing and delivering a food service to the local community.