



FOOD
STANDARDS
AGENCY

SCOTLAND

Buidheann
Inbhe-Bidhe
an Alba

Framework Agreement on Local Authority Food Law Enforcement

2004 - 2008 Audit Programme Scotland

June 2008

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INTRODUCTION

The Local Authority Food Law Enforcement audit programme in Scotland takes place within the UK Food Standards Agency's audit scheme. The first phase of the programme audited each of the 32 Local Authorities in Scotland, and covered all sections of The Standard in the Framework Agreement on Local Authority Food Law Enforcement. All Local Authorities in Scotland were audited each year between 2001 and 2004, a total of 96 audits during the three-year period. However, due to the limited scope of each of these three individual audits, it was agreed that the programme's second phase would take a cross sectional and more in-depth view of services in order to produce a fuller appreciation of the integration of service management and service delivery within all 32 Local Authorities in Scotland.

The second phase of the programme which was subject to consultation with all 32 Local Authorities took place between 2004 and 2008, and incorporated an audit plan covering a wider scope of enforcement activity to improve on the first audit programme. This programme did not involve any change to the underlying service standards, which are agreed under the Framework Agreement on Local Authority Food Law Enforcement, and covered 12 areas of the Standard. The programme therefore built on the strengths of Local Authorities and on the improvements that they had already made as a result of the first phase of audits.

This report was produced following a request from the Assistant Director, Science, Enforcement and Business, Food Standards Agency Scotland and summarises the findings of the Food Standards Agency Scotland's 2004-2008 Local Authority Food Law Enforcement audit programme. Audits against The Standard¹ were carried out at all 32 Local Authorities in Scotland in the period between June 2004 and March 2008. Once again Local Authority co-operation with the Food Standards Agency Scotland and the audit process has been greatly appreciated.

¹ The *Standard* is detailed in the Framework Agreement on Local Authority Food Law Enforcement available on the FSA website at <http://www.food.gov.uk>.

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BACKGROUND

The Food Standards Agency has the power to audit Local Authorities under the Food Standards Act 1999, and The Official Feed and Food Controls (Scotland) Regulations 2007. Such audits are a key mechanism by which the Agency can contribute to the improvement of national food and feed safety standards by helping to improve the effectiveness and consistency of Local Authority performance.

Local Authority performance is audited against The Standard, which forms part of the Framework Agreement on Local Authority Food Law Enforcement. The full audit examines a Local Authority's food and feed law enforcement service and includes an assessment of the local arrangements in place for inspections of food and feed businesses and food and feed; sampling and analysis; internal management; food safety promotion and educational activities.

It should be noted that in relation to feeding stuffs, this audit programme did not consider the Feeding Stuffs Code of Practice as this was published after the programme had started. A revised Food Law Code of Practice was also issued mid way through the programme.

Local needs and priorities result in considerable diversity in the way and manner in which Local Authorities provide their food and feed enforcement services. This is recognised by the Agency and is taken into account in the audit process.

AUDIT APPROACH

The Food Standards Agency Scotland's Audit Branch delivers the audit of food and feed activities in Scotland and ensures effective linkages between those activities and the audit activities in England, Northern Ireland and Wales.

Local Authorities receive prior notice of the audit, the Chief Executive of the Local Authority and the Chief Officer with food safety responsibility being notified by letter at least three months in advance. This notification letter provides background information on the arrangements for, and the nature of, the audit. Accompanying the notification letter is a Pre-Visit Questionnaire (PVQ).

The PVQ is designed to obtain information about the Local Authority's Service Plan, reviews, policies, procedures, enforcement staff and other service information that would facilitate the audit. Local Authorities are required to complete and return the PVQ to the Agency, enclosing copies of supporting documentation no later than 30 working days prior to the audit.

The on site audits were carried out by a team of qualified Auditors; audit protocols and checklists providing the detailed framework for the consistency of the on-site audit were used and the templates for these are available on the Agency's website.

PVQ information provided by the Local Authority is reviewed against the audit protocols, and a draft on-site audit programme is drawn up. Checklists are completed during the course of the audit, noting any non-conformities against The Standard, the Food Law Code of Practice and other centrally issued guidance.

Auditors ensure that the Local Authority's Audit Liaison Officer is regularly briefed during the audit on any non-conformities that are found during the audit.

At the end of the on-site audit, the Auditors hold a closing meeting with the Head of Service, the Audit Liaison Officer and any other of the Authority's staff and elected members as invited by the Authority, to summarise their initial findings. This closing

meeting also provides an opportunity to confirm that the findings are clear to the Local Authorities at the conclusion of the on-site audit and to resolve any points of misunderstanding. The Auditors' objective is to help ensure that the Local Authority has confidence in the audit process and the audit's findings.

The Auditors produce a draft audit report, based on the closing meeting presentation, which is cleared by the Agency's Assistant Director, Science Enforcement & Business, and then sent to the Local Authority's Chief Officer within the targeted 20 working days of the end of the audit.

The Local Authority then has 20 working days to identify any factual errors and to return the report to the Agency with a draft action plan to address any non-conformities raised. The final report containing the action plans and timescales for addressing the non-conformities are agreed and the report is sent to the Local Authority's Chief Executive within 10 working days of receipt by the Agency.

PUBLICATION OF AUDIT REPORTS

Audit reports and action plans are agreed with each Local Authority, and are then published on the Agency's website one month after the date of posting the final report to the Chief Executive.

ACTIONS ON AUDIT OUTCOMES

Audit non-conformities are addressed through individual Local Authority action plans, which are monitored by the Agency to ensure implementation. Local Authorities are contacted at least six months after publication of the audit report to ascertain their progress with implementation of the action plan. On site verification is also carried out in some cases to determine progress.

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The audit file is closed when the Local Authority has satisfied the Agency that it has completed the implementation of its action plan.

Auditors actively seek feedback from the Authority's staff during the course of the audit on any issues that the Authority wishes to bring to the attention of the Agency, either for action or for future consideration.

Auditors also look for examples of good practice that Local Authorities may wish to share with other Local Authorities. These are then submitted to the Audit Advisory Committee (Scotland) for discussion and then forwarded to the Scottish Food Enforcement Liaison Committee (SFELC) to be placed on their website.

AUDIT FINDINGS

The findings from the 32 audits carried out in the period from June 2004 to March 2008 have been collated and are summarised below under the specific headings of The Framework Agreement on Local Authority Food Law Enforcement that were covered during this phase.

Organisation and Management (The Standard 3)

The Standard requires all Local Authorities to have a Service Plan that is drawn up in accordance with the Service Planning Guidance in the Framework Agreement. They must also carry out a Performance Review of their Service Plans every year, report to their elected members, and address any variations in service delivery during the next year.

Each Local Authority's Service Delivery Plan and Performance Review was examined, and in just over half of the audits (18/32) the Service Plan fully met the requirements; some others only required minor modification in order to fully meet the requirements.

Performance Reviews had also been carried out by a minority (13/32) of Local Authorities, either fully in accordance with the requirements, or with some deviation that did not materially affect the validity outcome of the review.

Some Local Authorities whose Service Plans and/or Performance Reviews did not meet The Standard during this phase of the audit programme had been found to be meeting the requirements during the previous phase, making this a regressive action.

Local Authorities that had non-conformities in this section undertook to produce Service Plans and to conduct Performance Reviews in accordance with The Standard in future.

The low level of adequate performance reviews of the required service plans indicates that Local Authorities are not able to report any variances in service delivery to the attention of elected members.

Review and Updating of Documented Policies and Procedures (The Standard 4)

Local Authorities are required to keep their documented procedures up to date, and to have a control system that ensures their staff have up to date copies of legislation and other documents, and to ensure that out of date documents are removed from circulation.

Many Local Authorities (24/32) had set up a fully effective control system, some others only required minor modification, and all (32/32) had given their staff access to up to date copies of legislation and other documents.

Any failings in this section were generally due to the control system not being fully implemented, leading to out of date documents remaining in use and/or amendments not being carried out in accordance with the Authority's procedures.

Summary

The high level of conformity with this section of the standard and the ready access to current appropriate documentation has ensured that enforcement officers are able to generally apply, record and report on the legislation in force.

Authorised Officers (The Standard 5)

This section covers the appointment of authorised officers and their training, qualifications and experience. Local Authorities must have a documented procedure for the authorisation of officers. They must also appoint lead officers for food hygiene, standards and feeding stuffs, have sufficient officers to deliver the service identified within the Service Plan, have a training programme and records of training, and generally ensure that officers are qualified, trained, and receive a minimum level of in-service training.

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All Local Authorities (32/32) had appointed appropriate lead officers, the majority all had documented procedures for the appointment of authorised officers (26/32), training programmes (20/32), and training records (28/32) that fully met, or would meet, the requirements of The Standard with minor modification. However there was often little evidence that the standards of competence for Food Enforcement officers in relation to procedures based on Hazard Analysis Critical Control Points were being monitored or reached. On no occasion did any Local Authority indicate that an enforcement officer was not considered competent.

Areas of concern to the Agency that were revealed during this phase of the audit programme relate to the inappropriate authorisation of officers, the continuing professional development training of authorised officers, and the duties allocated to and/or carried out by authorised officers whose qualifications restrict the range of duties they can be authorised to perform.

A significantly large proportion (25/32) of Local Authorities did not meet the requirements of this section. Some Local Authorities had not appointed a sufficient number of officers to deliver the service, some officers were not receiving the minimum level of continuing professional development training, and some officers had been authorised to carry out, or were carrying out, enforcement duties that were beyond the scope of their qualifications.

Section Summary

The appropriate authorisation of enforcement officers and the duties carried out by them raised concerns. The lack of appropriate training for food standards and specifically the lack of documented evidence to show that Authorities had assessed their officers' competence in relation to procedures based on HACCP principles were found in many audits. As a result, immediate low cost training was organised and delivered by the Food Standards Agency Scotland to 75 food law enforcement officers.

Facilities and Equipment (The Standard 6)

Local Authorities have a responsibility under this section to provide any equipment, facilities and computer systems that are necessary to enable the food and feeding stuffs enforcement services to function effectively. They must also ensure that equipment is appropriately maintained and calibrated, that records are kept, and ensure that data is backed-up securely.

All Local Authorities (32/32) were judged to have provided all the equipment that is necessary to deliver an effective service, and all had maintained adequate records of checks, calibration and maintenance, although there were some minor recording and procedural errors. The majority had set up an effective documented procedure (22/32), had computer systems that were capable of supplying accurate data to the Agency (28/32), and appeared to have effective arrangements for data backup (31/32).

The non-conformities that were raised in this section related mainly to documented procedures not being complete and/or not fully implemented, and incomplete records.

Section Summary

A high level of compliance by Local Authorities for these requirements was found. Investigation of the data being stored frequently established that if the Local Authority was effectively reviewing the information it was aware of any gap between planned inspections programmes and actual performance.

Food and Feeding Stuffs Premises Inspections (The Standard 7)

Food hygiene, standards and feeding stuffs premises inspections must be carried out at the appropriate risk-based frequency. Inspections, approvals, registrations and licensing must be carried out according to legal requirements, the Food Law Code of Practice, centrally-issued guidance, and the Local Authority's own policies, procedures and programme. Businesses must be assessed for compliance with appropriate legal standards. Inspection results must be recorded, and Local Authorities must have documented inspection procedures for each type of inspection, and post-inspection follow-up.

The audit results in this section were again an area of concern to the Agency. It was evident that only a small proportion of Local Authorities had been able to satisfactorily achieve their planned food hygiene and/or food standards inspection programmes (8/32), or to fully meet the required standard when carrying out inspections etc. (11/32). In most cases this situation had persisted for some time. This is despite the annual service plan performance review that should have ensured this was both identified and addressed.

It was also evident that the quality and/or scope of the inspections themselves were not up to standard in many cases, generally because officers had not followed the requirements of the Code of Practice. In a small minority of cases (6/32), Local Authorities had either not assessed businesses to legally prescribed standards, or not taken appropriate action to address non-compliance.

Summary

The enforcement of food law is a principal requirement for Local Authorities. All too often the quantity and the quality of the enforcement records were not sufficiently detailed to demonstrate that the requirements of the Food Law Code of Practice were being achieved. This was particularly noticeable for food standards inspection programmes.

Food, Feeding Stuffs and Food Premises Complaints (The Standard 8)

Complaints about food, feeding stuffs, and about food premises must be investigated and appropriate action taken in accordance with the Code of Practice, centrally issued guidance, and the Local Authority's own documented procedures.

Audit results in this section demonstrated that (15/32) Local Authorities had a non conformity raised against this area of The Standard; the majority of these were minor deviations that did not materially affect the overall effectiveness of the service.

Section Summary

In general there was sufficient investigation of any complaints brought to the attention of Local Authorities; however generally these complaints were dealt with in isolation outside the inspection programme.

Food Feeding Stuffs and Food Premises Database (The Standard 11)

Local Authorities are required to have databases on which to record details of food and feeding stuffs businesses in their areas, and to have documented procedures to ensure that the databases are accurate, up to date, and secure against unauthorised access.

Every Local Authority (32/32) had an appropriate database, although in a number of cases (18/32) the database was inaccurate for a variety of reasons, including data input or system configuration errors, failure to update records, and manual alteration of data.

Section Summary

The keeping of accurate records was poor at many Local Authorities. The nature and degree of the database inaccuracies caused concern due to the lack of consistency in data entry and the failure of the Local Authority to identify and action either the errors being recorded or data not being recorded.

Food and Feeding Stuffs Inspection and Sampling (The Standard 12)

This section requires Local Authorities to inspect food and feeding stuffs to determine compliance with the law, the Food Law Code of Practice and centrally issued guidance, and to take appropriate action in case of non-compliance.

The section also covers food and feeding stuffs sampling, and requires Local Authorities to set up, maintain and implement their documented sampling policies, procedures and programmes, to take appropriate action where sample results or reports are not satisfactory, to ensure continuity of evidence, to prevent deterioration to samples and to appoint Public and Agricultural Analysts.

This is a section where audit results demonstrated in most cases that Local Authorities were generally performing in accordance with The Standard, or with minor deviations that did not materially affect overall effectiveness.

However, in a small number of cases (9/32), the Local Authority's documented sampling policy, programme or procedure did not fully meet the requirements of The Standard.

Section Summary

The performance of Local Authorities on sampling is a priority in enforcement, whether it is complaint follow up, local or national surveys, or intelligence gathering prior to programmed inspections. However, little use is made of the UK Food Surveillance System to determine trends or standards. Local Authorities were found to rely heavily on reports produced by Public Analysts for work that should be able to be done satisfactorily by enforcement officers.

Food Safety Incidents (The Standard 14)

The Standard requires Local Authorities to set up a documented system for dealing with Food Hazard Warnings (now Food Alerts), to set up a computer (e-mail) system for receiving Food Alerts from the Agency, and to document their response to Food Alerts. They must also set up and follow a documented system for dealing with Food Incidents,

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and to notify the Agency of serious localised incidents and incidents that have a wider significance.

In general, Local Authorities were found to have documented systems that met the requirements of The Standard, and to have followed their documented systems when dealing with Food Alerts and Incidents.

A small number of cases (8/32) received a non-conformity under this section. However, the majority of these were minor deviations that did not materially affect the overall effectiveness of the service.

Section Summary

Generally Local Authorities have successfully integrated Food Alerts into their routine activity; however sometimes the action in the food alert is likely to be ineffective due to the length of time that will have passed before the next inspection.

Enforcement (The Standard 15)

This section requires Local Authorities to establish a documented enforcement system that is approved by the Authority's elected members, to carry out enforcement in accordance with the Code of Practice and centrally-issued guidance, and to decide on enforcement action according to the enforcement policy.

Most Local Authorities (27/32) had a documented enforcement policy which had been approved by elected members. In a small number of cases the enforcement policy had been updated but not re-approved.

However, in an unsatisfactorily large number of cases (25/32), Local Authorities were not fully following and implementing procedures in the Code of Practice, and/or centrally-issued guidance, and/or their own documented procedures when taking enforcement action.

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Non-conformities under this heading included the drafting and administration of improvement and hygiene improvement notices, voluntary surrenders of food for destruction, voluntary closures of food businesses, appropriate prohibitions on food businesses, and seizures and detentions of food.

Section Summary

Serious concerns about the quality of enforcement have to be raised from these findings as inappropriate actions and poor documentation raise questions about the competence and monitoring of enforcement officers. Failures to follow the Code of Practice and internal procedures were found in many cases.

Records and Inspection Reports (The Standard 16)

The Standard requires a Local Authority to maintain up to date records of all food and feeding stuffs premises in its area, including records of inspections, other visits, details of action taken in case of non-compliance, enforcement action, samples, complaints, registrations, approvals and licensing. These records should generally be kept for a minimum of six years.

However, in almost all cases (27/32), Local Authorities were found to be failing to meet the requirements of The Standard in this section.

Non-conformities generally related either to insufficient detail being recorded on inspection and other records, or records that demonstrated an inspection or other activity had insufficient scope or content.

In some cases the minimum amount of information required for an inspection report as set out in Annex 6 of the Food Law Code of Practice had not been recorded, and in other cases the relevant inspection form for the business concerned had either not been fully completed or had not been used at all.

Section Summary

Those few Local Authorities that were compliant have to be commended; however the majority failed to follow simple, clear and agreed documents during routine enforcement

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activities. In many cases the enforcement officers simply failed to complete a form; and/or the failings were administrative not technical. Effective management and monitoring should have internally identified these failings.

Internal Monitoring (The Standard 19)

The final section of The Standard relates to setting up, maintaining and implementing procedures for the monitoring of the food and feeding stuffs enforcement in order to verify conformance with The Standard, relevant legislation, the Code of Practice, centrally-issued guidance, and the Local Authority's own documented policies and procedures.

Most Local Authorities (28/32) had documented monitoring procedures, but (16/32) were not effectively implementing their procedures, and therefore not verifying conformance with relevant standards.

It was evident that a Local Authority that had failed to effectively monitor its food and feeding stuffs enforcement generally received a higher number of non-conformities than those that followed their monitoring procedures.

Section Summary

The level of non compliance with this requirement is of serious concern as it underpins effective enforcement. The implementation of internal monitoring in accordance with the Code of Practice is a practical and effective means of ensuring consistent, proportionate and fair enforcement activities by officers.

FSA AUDIT BEYOND 2008

At the end of January 2008 the Agency consulted with all Local Authorities in the UK to seek their views and comments on proposed revisions to the Agency's Local Authority food and feeding stuffs law enforcement audit activities.

The key changes detailed in the consultation were:

- to take more account of, and to build upon, Local Authorities own audit activity of their feed and food law enforcement services, where these local audit arrangements can be verified as sufficiently robust to meet EU audit criteria;
- to be more risk-based in their approach and in the selection of Local Authorities to be audited;

and

- to have a greater focus on Local Authority feed and food law enforcement service outcomes.

The proposals take into account the wider government agenda on a performance management framework for the public sector, and EU requirements on Competent Authorities relating to the audit of Official Controls of feed and food law.

The proposed revision to the audit arrangements leaves the option open for different levels of Agency audit depending on the level of assessment carried out by each Local Authority; this will mean that within the different countries that make up the UK, the audit programmes will be developed to meet the requirements of individual countries.

Although the delivery may therefore be different within the 4 countries, all will be working within the same audit scheme and requirements of the Framework Agreement.

At the time of writing, the consultation has closed and responses collated. This will be considered in due course.

CONCLUSIONS

It was evident during this audit programme that Local Authorities in Scotland have a generally positive view of the Agency's audit process and, having already participated in at least three audits during the previous phase, are generally well-prepared for the audit itself.

This made it more straightforward for the audit team to conduct the more intensive audits that were a feature of this phase of the programme, since Local Authorities were already familiar with the audit processes and procedures, and did not need so much time for introductions and explanations etc.

It was also evident that many Local Authorities in Scotland are providing a food and feeding stuffs official control service that broadly meets The Standard in the Framework Agreement. These Local Authorities are generally carrying out their duties and responsibilities to ensure the safety of the food chain and the protection of consumers' interests effectively. Some Local Authorities had exemplary services that could act as models for others.

Whilst none of the Local Authorities in Scotland received an audit report that did not contain any non-conformities, some non-conformities are viewed by the Agency as technicalities that would not in themselves adversely impact on the safety of the food chain or the interests of consumers. The Local Authorities agreed the final Audit Report and the associated Action Plan, and are in the process of meeting the agreed targets included in the action plans.

However, there are areas in which some non-conformities are viewed by the Agency as having the potential to impact adversely on food chain safety. These non-conformities relate principally to food safety and standards, in the areas of The Standard covering the following:

- **Authorised Officers**

A large proportion of Local Authorities did not meet the requirements of this section of the standard. Some Local Authorities had not appointed a sufficient number of officers to deliver the service. Local Authorities frequently identified the available resource instead of the required resource within the Service Plan to deliver the service. This resulted in the shortfall in required resource not being identified or reported to the appropriate forum. In addition some officers were not receiving the minimum level of continuing professional development training, and some officers had been authorised to carry out, or were carrying out, enforcement duties that were beyond the scope of their qualifications.

- **Premises Inspections**

It was evident that only a small proportion of Local Authorities had been able to achieve their planned food hygiene and/or food standards inspection programmes for all categories of premises. It was also evident that the quality and/or scope of the inspections themselves were not up to standard in many cases; generally there was insufficient evidence to demonstrate that officers had followed the requirements of the Code of Practice.

- **Enforcement**

In a relatively large number of cases, Local Authorities were not fully following and implementing procedures in the Code of Practice, and/or centrally-issued guidance, and/or their own documented procedures when taking enforcement action. For example, Hygiene Improvement Notices were incorrectly drafted, served, extended (if appropriate) or followed up in some cases.

- **Records and Reports**

Non-conformities generally related either to insufficient detail being recorded on inspection and other records, or records that demonstrated an inspection or other activity had insufficient scope or content. In general, records were insufficient to demonstrate that official controls were being carried out in accordance with the Code of Practice and the Framework Agreement.

- **Internal Monitoring.**

It was evident that a Local Authority that had failed to effectively monitor its food and feeding stuffs enforcement generally received a higher number of non-conformities than those that had followed their monitoring procedures.

In a small number of cases, the Agency is concerned that the number of non-conformities and repeat non-conformities from earlier audit reports may indicate that a Local Authority is not providing the resources necessary to provide a food control service that has the capacity to meet the requirements of The Standard.

Local Authorities receiving audit reports containing either a relatively high number of non-conformities or potentially more serious non-conformities may require increased internal monitoring of their Service to ensure that they are providing an official food control service that is sufficiently well-resourced year-on-year to meet the requirements of The Standard.

RECOMMENDATIONS

1. Future audits should focus on those Local Authorities that had either a relatively high number of non-conformities in this phase of the programme or a smaller number of potentially more serious non-conformities.
2. Future audits should focus on those identified areas of The Standard where documented records and results indicated that the majority of Local Authorities were not providing an effective official food control service in that area.
3. Future audits should reflect the changing government agenda on ensuring that services are provided and delivered effectively. The audit content, format and report should be based on achieving these objectives whilst still ensuring public health is protected.
4. Future audits should have a wider scope to include “reality checks” particularly in approved establishments, to verify that the Local Authority controls meet the requirements of Regulation (EC) 882/2004.
5. The Agency should conduct both focussed and ad hoc audits on particular enforcement areas, returns to the Agency or other work carried out by Local Authorities to ensure that the enforcement framework is effective and meets the guidelines for the conduct of audits.
6. The Agency should review the low-cost training that it provides for Local Authority enforcement officers and managers and consult with Local Authorities to establish whether the Agency’s programme is sufficient to support training needs.