

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Communities, Housing and Public Protection Committee
<b>DATE</b>	5 September 2023
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Food Standards Scotland Audit of Local Authority implementation of interventions Food Law Code of Practice (Scotland) Action Plan Update
<b>REPORT NUMBER</b>	RES/23/248
<b>DIRECTOR</b>	Steven Whyte
<b>CHIEF OFFICER</b>	Mark Reilly
<b>REPORT AUTHOR</b>	Andrea Carson
<b>TERMS OF REFERENCE</b>	2.3

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### 1. PURPOSE OF REPORT

- 1.1 This report presents an update on the Action Plan that resulted from findings of the Food Standards Scotland's Audit, at Aberdeen City Council (ACC), of the Local Authority implementation of Interventions Food Law Code of Practice (Scotland) Food Law Enforcement Services undertaken on 6<sup>th</sup> and 7<sup>th</sup> December 2022. The outcome of the Audit was initially presented to this Committee on 16th May 2023 and this report provides a further update on progress as instructed at that Committee.

### 2. RECOMMENDATION(S)

That the Committee: -

- 2.1 Notes the update on current progress with the Audit Action Plan contained in Appendix B

### 3. CURRENT SITUATION

#### Food Standards Scotland Audits

- 3.1 Audits of Local Authorities food law enforcement services are part of Food Standards Scotland's (FSS) arrangements to maintain and improve consumer protection and confidence in relation to food by ensuring that Local Authorities are providing an effective food law enforcement service. Provision of this service is a statutory duty. These arrangements recognise that the enforcement of UK food law relating to food safety, hygiene, composition, and labelling, is largely the responsibility of Local Authorities. These Local Authority regulatory functions are principally delivered through the Environmental Health Commercial Team in Protective Services.

- 3.2 Local Authorities are chosen at random for audit and are only given a few weeks' notice. The Environmental Health Commercial Team in Protective Services was advised on the 8<sup>th</sup> November 2022 that the audit would take place on the 6<sup>th</sup> and 7<sup>th</sup> December 2022.
- 3.3 The purpose of the Audit was to verify and validate the implementation by ACC of the following planned arrangement "The Interventions – Food Law Code of Practice (Scotland) 2019" (hereafter referred to as the Interventions Code 2019). The resulting Audit Report is contained in Appendix A. The Audit scheme also provides the opportunity to identify and disseminate good practice and provide information, between Local Authorities and Food Standards Scotland and to inform Food Standards Scotland policy on food safety, standards and feeding stuffs.

### **Outcome of Audit**

- 3.4 The overall outcome of the Audit determined that there was "Insufficient Assurance and that there are significant weaknesses in the current risk, governance, and control procedures to the extent that the delivery of objectives is at risk. Exposure to the weaknesses is sizeable and requires urgent mitigating action."
- 3.5 This means that the Audit determined service delivery levels were not as should be expected. An inadequate number of inspections are being undertaken, meaning that assurance cannot be provided that a robust control of food safety law is in place.
- 3.6 Eleven recommended points of action were highlighted. An update on progress with these can be found in Appendix B. The two main areas of concern were that staffing levels to meet the required number of inspections were not adequate, and therefore, the required number of inspections were not being allocated and completed in line with the "Local Authority Recovery Project" (refer to section 3.2) and within the frequencies outlined in "the Interventions Code 2019".
- 3.7 The Compliance Officer has commenced work addressing the 3A low risk premises detailed in point three of the Audit Action Plan leaving the only outstanding matters relating to data transfer and management. These are covered by points four and nine of the Audit Action Plan and work is continuing to rectify the issues; progress has been made and there are still significant issues being addressed.
- 3.8 Positive points raised at audit included the standard of inspection letters which auditors found to be well formatted and very easy for food businesses to follow and understand. In addition, two reality check visits were carried out during the audit where officers from the Service were accompanied by FSS Auditors. It was determined that these verification checks were carried out professionally and in accordance with the Interventions Code 2019 and Food Law Code of Practice (Scotland) 2019.

## **Staffing Challenges**

- 3.9 Following Covid, during which inspections were paused, the “Local Authority Recovery Process Guidance” (“the guidance”) was issued by FSS to assist authorities to restart their food premises inspection programmes. This detailed the risk priorities for scheduling inspections and subsequently “the guidance” increased the number of high priority inspections required to be undertaken. The Service followed the guidance and prioritised planned inspections. However, “the guidance” did not take into account individual local authorities’ staffing resources.
- 3.10 During the pandemic several Environmental Health Officers left the authority, and the Service has been unable to recruit due to the national shortage of qualified staff. Due to these reduced staffing levels it was and is not possible to allocate and undertake the number of inspections that are required by “the guidance” each month.
- 3.11 There is presently a national shortage of qualified enforcement staff who can be authorised to carry out food related work. This has been raised at a FSS Board Meeting in June 2022 and was also highlighted to the Public Protection Committee (OPE/ 22/154) when the Protective Services Food Law Service Plan was presented on 5<sup>th</sup> October 2022.

## **Addressing Staffing Issues**

- 3.12 There is ongoing work both locally and nationally to address the staffing shortfall.
- 3.13 Recommendations one and two of the Audit Report Action Plan detail ongoing work towards addressing the current staff resource deficit. In the short to medium term this will not completely resolve the issue and there will continue to be more inspections required than resources available. The action points associated with these recommendations are actions that the Service had commenced prior to the Audit, and it’s the Service’s intention to continue with this strategy.
- 3.14 A Compliance Officer was appointed and commenced work on 3<sup>rd</sup> of April 2023. This officer will focus on low-risk premises allowing the fully qualified officers to focus on higher risk premises.
- 3.15 Recruitment in January 2023 for a Trainee Authorised Officer was unsuccessful. However two trainee Authorised Officer preferred candidates have been selected following a second recruitment drive in May 2023. They will commence employment in early September 2023; with the intention they will sit their professional exams in September 2024. Other recruitment strategies are also currently being explored; The Royal Environmental Health Institute of Scotland acknowledges the lack of availability of qualified staff and recruitment issues across the sector in Scotland and have recently introduced updated access routes to the profession. This will assist in recruiting appropriate individuals who can undertake inspections. An Environmental Officer vacancy

was also advertised in July 2023 however no qualified applicants applied for the position.

### **Service Challenges**

- 3.16 The issues facing the Service are challenging and inspections will continue to be prioritised on a risk basis. The way in which the Service will be delivered in 2023-24 is set out in the annual Food Regulatory Service Plan which is presented to this Committee in report RES/23/225 and has been drafted to address Recommendation two of the Audit Action Plan .

## **4. FINANCIAL IMPLICATIONS**

- 4.1 The proposed action plan can be achieved within the existing service budget.

## **5. LEGAL IMPLICATIONS**

- 5.1 The power to set standards, monitor and audit the performance of enforcement authorities was conferred on FSS by Sections 3 and 25 of the Food (Scotland) Act 2015 and Regulation 7 of the Official Feed and Food Controls (Scotland) Regulations 2009. FSS has established external audit arrangements intended to ensure competent authorities are providing an effective and consistent service for the delivery of official controls and are meeting the general criteria laid out in retained EU Regulation (EC) 2017/625.

- 5.2 Food Authorities are required to have regard to the Codes of Practice when discharging duties and comply with any direction which is given and to take any specified steps in order to comply with such a code. (Food Safety Act 1990, s. 40 (2).

- 5.3 FSS has powers, following consultation with Ministers, to issue a Direction to a local authority requiring it to take specified steps to comply with the Code of Practice issued. Directions are enforceable through Court of Session Orders. Although there is the potential for FSS to issue a Direction, and this is the ultimate sanction, this power has never been used and it would be unlikely to be applied. It is however an important legal implication. If a Direction were issued requiring the Service to employ more qualified staff to ensure inspection targets could be met this would currently be impossible to fulfil – of which colleagues in FSS are acutely aware.

## **6. ENVIRONMENTAL IMPLICATIONS**

- 6.1 There are no direct environmental implications arising from the recommendations of this report.

## 7. RISK

7.1 The assessment of risk contained in the table below is considered to be consistent with the Councils Risk Appetite Statement for Place

<b>Category</b>	<b>Risks</b>	<b>Primary Controls/Control Actions to achieve Target Risk Level</b>	<b>*Target Risk Level (L, M or H)</b>  <small>*taking into account controls/control actions</small>	<b>*Does Target Risk Level Match Appetite Set?</b>
<b>Strategic Risk</b>	Unable to achieve intervention programme (recommendation 1 & 2 of audit report) due to FTE deficit	Reduce FTE deficit through recruitment strategies. (ref: planned action, Recommendations 1&2)	M	<b>Yes</b>
<b>Compliance</b>	ACC is bound by statute to deliver a food law enforcement service. FSS may, after consulting with Scottish Ministers, direct a Food Authority requiring it to take any specified steps to comply with the requirements of food law or Food Law Code of Practice (Scotland).  Reduced confidence in public health regulatory controls related to enforcement and assurance of business operations meeting food safety standards.	Action plan to address audit recommendations	M	<b>Yes</b>

	Due to resource shortages it is not possible to fulfil all the requirements of the Code of Practice	Interventions are planned in accordance with available staffing resource. Those higher priority/risk groups will be addressed first, along with those where valid complaints have been received by the Service		
<b>Operational</b>	Qualified officers not available to carry out interventions.	Only qualified officers undertake regulatory duties. Risk prioritisation of interventions when insufficient offices available.	M	<b>Yes</b>
<b>Financial</b>	<p>Failure to produce and deliver a service plan could contribute to default powers being exercised and the associated costs.</p> <p>FSS may, after consulting with Scottish Ministers, direct a Food Authority requiring it to take any specified steps to comply with the requirements of food law or Food Law Code of Practice (Scotland). FSS may recover any reasonable expenses incurred by them from the</p>	Action plan to address audit recommendations	M	<b>Yes</b>

	defaulting local authority.			
<b>Reputational</b>	Failure to address audit report recommendations and continued assignment of insufficient assurance audit level	Action plan to address audit recommendations	M	<b>Yes</b>
<b>Environment / Climate</b>	No significant risks identified			

## 8. OUTCOMES

8.1 The proposals in this report have a positive impact on the Council's Delivery Plan.

<b><u>COUNCIL DELIVERY PLAN 2022-2023</u></b>	
	<b>Impact of Report</b>
<b>Aberdeen City Council Policy Statement</b>  <b><u>Working in Partnership for Aberdeen</u></b>	<i>The proposals within this report support the delivery of the following aspects of the policy statement:-</i>  A Prosperous City, delivering a interventions programme that assists stimulate sustainable economic development in the food business sector
<b><u>Aberdeen City Local Outcome Improvement Plan 2016-26</u></b>	
Prosperous Economy Stretch Outcomes	The proposals in this report support the delivery of LOIP Stretch Outcome 2 – 400 unemployed Aberdeen City residents supported into Fair work by 2026.  Conducting an interventions programme that reduces the risk to food business and individuals to criminal proceedings and/or litigation and secures public protection.
<b>Regional and City Strategies</b>	The proposals within this report support the Regional Economic Strategy by assisting local businesses to thrive and prosper by providing advice to ensure compliance with relevant legislation.

## 9. IMPACT ASSESSMENTS

Assessment	Outcome
<b>Integrated Impact Assessment</b>	Full impact assessment not required
<b>Data Protection Impact Assessment</b>	Not required
<b>Other</b>	None

## 10. BACKGROUND PAPERS

- 10.1 [Interventions Food Law Code of Practice \(Scotland\) 2019 1.pdf \(foodstandards.gov.scot\)](https://www.foodstandards.gov.scot/Interventions_Food_Law_Code_of_Practice_(Scotland)_2019_1.pdf)
- 10.2 Protective Services Food Regulatory Service Plan 2022/2023 presented to Committee October 2022  
[\(Public Pack\)Agenda Document for Public Protection Committee, 05/10/2022 10:00 \(aberdeencity.gov.uk\)](#)
- 10.3 Local Authority Recovery Process Guidance  
[FSS-ENF-20-011 - LA Recovery Process Guidance.pdf \(foodstandards.gov.scot\)](https://www.foodstandards.gov.scot/FSS-ENF-20-011_-_LA_Recovery_Process_Guidance.pdf)
- 10.4 FSS Board Paper 15 June 2022: Local Authority Delivery Current Situation  
[09 - Board Meeting - 2022 June 15 - Local Authority Delivery Paper - 220609.pdf \(foodstandards.gov.scot\)](https://www.foodstandards.gov.scot/09_-_Board_Meeting_-_2022_June_15_-_Local_Authority_Delivery_Paper_-_220609.pdf)

## 11. APPENDICES

- 11.1 Appendix A- Food Standards Scotland Audit of Local Authority Implementation of Interventions Food Law Code of Practice (Scotland) – Aberdeen City Council
- 11.2 Appendix B- Update on current progress with Action Plan.

## 12. REPORT AUTHOR CONTACT DETAILS

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