

ITEM No ...2.....

REPORT TO: COMMUNITY SAFETY AND PUBLIC PROTECTION COMMITTEE – 9 MAY 2016

REPORT ON: FOOD STANDARDS SCOTLAND – DELIVERY OF OFFICIAL CONTROLS

REPORT BY: EXECUTIVE DIRECTOR OF NEIGHBOURHOOD SERVICES

REPORT NO: 172-2016

1.0 PURPOSE OF REPORT

1.1 To advise Committee of Food Standards Scotland (FSS) proposed measures to assist all Local Authorities in improving their effectiveness in the Delivery of Official Controls.

2.0 RECOMMENDATIONS

2.1 It is recommended that Committee note the contents of the letter contained in Appendix 1 and remits the Executive Director of Neighbourhood Services to work towards meeting compliance with the proposed measures.

3.0 FINANCIAL IMPLICATIONS

3.1 The Executive Director of Corporate Services advises that there are no direct financial implications with this report

4.0 MAIN TEXT

4.1 Food Standards Scotland provides Local Authorities with the legal framework for delivering the official controls for the Food Safety Service, however also recognises the increasing budgetary pressures that local authorities are facing.

4.2 The FSS letter outlines their proposals for a more structured approach for official controls and the key points are as follows:

- A review, in conjunction with Local Authorities (LA), of the Food Law Code of Practice intervention/inspection programmes, with a higher emphasis on the risk-based approach.
- Further audits of all LAs over the next 3 years for their compliance with the statutory Codes of Practice.
- The introduction of a Scottish National Database for food enforcement which will assist LAs with their inspection programmes by reducing their administrative burdens.
- Exercising the option of escalation, where necessary, to issuing 'a Direction' to any LA that is poorly performing.
- In addition to delivery of official food controls, consideration is being given for Environmental Health's future involvement in working with food businesses to improve nutritional outcomes.

4.3 The Food Standard Agency Scotland (now Food Standards Scotland) most recently carried out an audit of the Dundee City Council's Environment Department's Food Law Enforcement Service on 20-22 January 2015. The resulting report was very positive and there were no formal actions. Article III of the Minute of Meeting of the Environment Committee of 18th May 2015, (Report No. 194-2015 refers).

5.0 POLICY IMPLICATIONS

This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-poverty, Equality Impact Assessment and Risk Management. There are no major issues

6.0 CONSULTATIONS

6.1 The Chief Executive, Executive Director of Corporate Services and Head of Democratic and Legal Services have all been consulted in relation to this report.

7.0 BACKGROUND PAPERS

7.1 None.

Elaine Zwirlein
Executive Director of Neighbourhood Services

Tom Stirling
Head of Community Safety and Protection

14th April 2016

Local Authorities Chief Executives
CC: Local Authority Lead Food Officers
Local Authority Lead Feed Officers

14 March 2016

Dear Chief Executive

Letter to LA Chief Executives: Delivery of Official Controls

Food Standards Scotland (FSS) and local authority environmental health representatives met last August to discuss areas of mutual concern and interest around the delivery of food law enforcement. Sustainable delivery of official controls against increasing budgetary pressures was a key consideration throughout the day. A number of delegates approached me during the event to suggest that it might be helpful to highlight the existing legal framework within which local authorities deliver official controls. We are of course conscious of the pressures on LAs and the balance between various statutory obligations, but clearly from our perspective as the Competent Authority for Scotland, we need to be in a position to provide assurance to the Food and Veterinary Office (FVO) of the EU Commission and the EU Commission itself with regards to the delivery of controls in Scotland. The purpose of this note therefore is to bring to your attention the FSS's proposals for a more structured escalation of performance issues with local authorities. You are of course free to bring this to the attention of your elected representatives.

FSS is keen to maintain strong partnership working with local authorities and the intention of this letter is to assist chief executives by setting out the general framework of statutory powers and obligations relating to official controls. It also explains how FSS proposes to handle any escalation of concerns it may have about delivery of these local authority services.

The bulk of food and feed regulation comes from Europe. This includes directly applicable legislation on member states, setting out obligations on the way in which official controls are carried out¹. As you are probably aware, the vast majority of official food and feed controls are carried out by local authorities. The obligations under European Law that apply to delivery of official controls by local authorities include ensuring:

- a. The effectiveness and appropriateness of official controls
- b. That controls are applied at an appropriate risk-based frequency
- c. That they have a sufficient number of suitably qualified and experienced competent staff and adequate facilities and equipment to carry out their duties properly
- d. That staff are free from conflicts of interest
- e. That they have access to an adequate laboratory capacity and capability for testing

The European Commission has powers to apply significant financial sanctions to the UK where the delivery of official controls is found to be inappropriate or inadequate and these sanctions would apply proportionately to the Scottish Government. FSS is responsible for ensuring that appropriate and adequate arrangements are in place to meet EU obligations in Scotland. This role includes the production of statutory Codes of Practice approved by Ministers setting standards for the delivery of

¹ Regulation (EC) No 882/2004

official controls by local authorities and the monitoring of service delivery through annual returns and audit of relevant local authority services^{2,3}.

Notwithstanding all of the above, we are not standing still. FSS, in partnership with Local Authority colleagues, is currently undertaking a major review of how Local Authority interventions are undertaken and set out in the Food Law Code of Practice. This review is aimed at further integration of inspection programmes, and a greater risk-based approach that gives greater recognition of sustained compliance and increased focus on non-compliant businesses. Linked to this review is the intention to introduce a Scottish National Database, which will serve to harmonise the existing IT platforms that Local Authorities currently use to report enforcement activity. We expect this to be a significant improvement on the current Local Authority Enforcement Monitoring system and will support LAs in making timely decisions on interventions. This project should significantly reduce the administrative burden placed on Local Authorities, by collecting the data directly from source and should also greatly improve the way this data is stored and analysed. A pilot exercise involving Local Authorities is proposed in the near future to take both of these projects forward.

As the Code of Practice is reviewed, an area of work that FSS is progressing in partnership with Local Authorities, FSS will ensure that there is a clear link between the specific European requirements and standards set. We will also be reviewing our local authority audit programme to provide a more direct link to meeting these requirements. We will of course continue to work with local authorities to remedy any issues identified during audits but, where these issues cannot be resolved, the relevant food and feed legislation allows for FSS, following consultation with Ministers, to issue a *Direction* to a local authority requiring it to take specified steps to comply with a Code issued under this regulation.

FSS has not, to date, considered it necessary to pursue the use of Direction powers with any local authority on any matter of food controls delivery. However, given the continuing pressure on LA budgets, we will develop a set of procedures for the escalation of any concerns that could in due course lead FSS to consider a formal Direction. Directions are enforceable through Court of Session Orders and it is crucial that all practicable steps for informal resolution are taken before considering the use of formal powers. My preference is to ensure that issues be resolved at the lowest possible organisational level and only escalated where this has not been effective. I propose that the final stage of any such escalation, would involve formal communication from myself as chief executive of FSS, to a local authority chief executive and that this communication would include a summary of all preceding stages.

In addition to delivery of official food controls, environmental health colleagues were keen to explore the possibility of their potential future involvement in working with food businesses to improve nutritional outcomes for consumers. An important part of FSS's statutory remit is to improve the extent to which members of the public have healthy diets. Any additional contribution that local authorities can make in tackling the major challenges associated with diet related disease in Scotland would certainly be welcome. However, before embarking on additional work in the field of nutrition advice, I would ask that chief executives satisfy themselves that their environmental health services are in a position to do so without adverse impact on the delivery of statutory food controls (see Appendix 1).

As I mentioned earlier in this letter, I am keen to maintain strong partnership working with local authorities. With that in mind I hope that you find this letter helpful as a framework for setting resourcing priorities for delivery of food official controls and for effective management of communications, where performance concerns arise. I would also be happy to take any suggestions you may have on how FSS might further assist local authorities in improving performance management and reporting arrangements.

Yours sincerely



² Food Law Code of Practice 2015: <http://www.foodstandards.gov.scot/sites/default/files/CoPFood-FSS-final.pdf>

³ Feed Law Enforcement Code of Practice (2015): <http://www.foodstandards.gov.scot/sites/default/files/Feed%20Law%20Code%20of%20Practice%20Scotland%202015.pdf>

Geoff Ogle
Chief Executive,
Food Standards Scotland