

### Midlothian Council Food Law Enforcement

#### Review of Service Performance against the Food Service Plan 2022 - 2023

**Food Standards Scotland (FSS) require each local Food Authority to produce a periodic review of the authority's annual plan showing how it met the duty of the Authority to regulate and enforce food law in its area. The coronavirus pandemic caused the cessation of almost all routine on-site food inspection work from March 2020 onwards. This review covers the period from 1 April 2022 to 31 March 2023, the first year of the food law interventions programme restart post pandemic lockdown.**

#### **1.0 Introduction**

- 1.1 The role of the food service is to ensure that food businesses protect the public of Midlothian from harm that might arise from food – be that food borne infection, lack of labelling of allergens, fraud or contamination. We do this by regular interventions and inspections of businesses, taking samples of food, through providing advice and by investigating complaints and concerns. Food Officers have enforcement powers to compel compliance with the law and to report those committing an offence to the Crown Office Procurator Fiscal Service. The customer base for our inspection, sampling and other regulatory activity is all of the food businesses operating in Midlothian.
- 1.2 The Administration and Service Planning Code of Practice issued by Food Standards Scotland, requires food authorities to report on the performance of their Food Service each year.
- 1.3 This review reports on the activity of the Food Service within the Protective Services, Business Regulation Team during the financial year 2022-23.
- 1.4 During the year of this plan the Business Regulation Food and Safety Team had a vacancy of 1.5 FTE, equalling 25% of our workforce. In addition one member of the team went on long term absence in February 2023.
- 1.5 External contractors were contracted to carry out low risk food law interventions between October 2022 and March 2023 with all inspection work completed by experienced and qualified Environmental Health Officers.
- 1.6 The national shortage of qualified EHOs is currently an issue for all local authorities in Scotland and is of major concern to the profession. To help alleviate this, Midlothian Council adopted a “grow our own” policy and has been supporting a student EHO through the required practical training and final year of their Environmental Health degree. It is anticipated that the candidate is ready to present for their professional qualification exams in September 2023 to gain the REHIS Diploma in Environmental Health and thereafter practice as an EHO. A second graduate EHO was also being supported by Midlothian Council to complete their practical training however they have resigned and will shortly leave Midlothian Council.

## 2.0 Food Business profile

### 2.1 As of 31 March 2023 there were 982 registered food businesses in Midlothian.

The number of food businesses in Midlothian continues to grow although this has slowed since the Coronavirus pandemic (Figure 1). Of note is that for the last 3 years, 26% of the growth in food business numbers has come from domestic based operations – mostly small scale baking. Between April 2022 and March 2023, 77 new food businesses registered and 112 food businesses ceased trading.

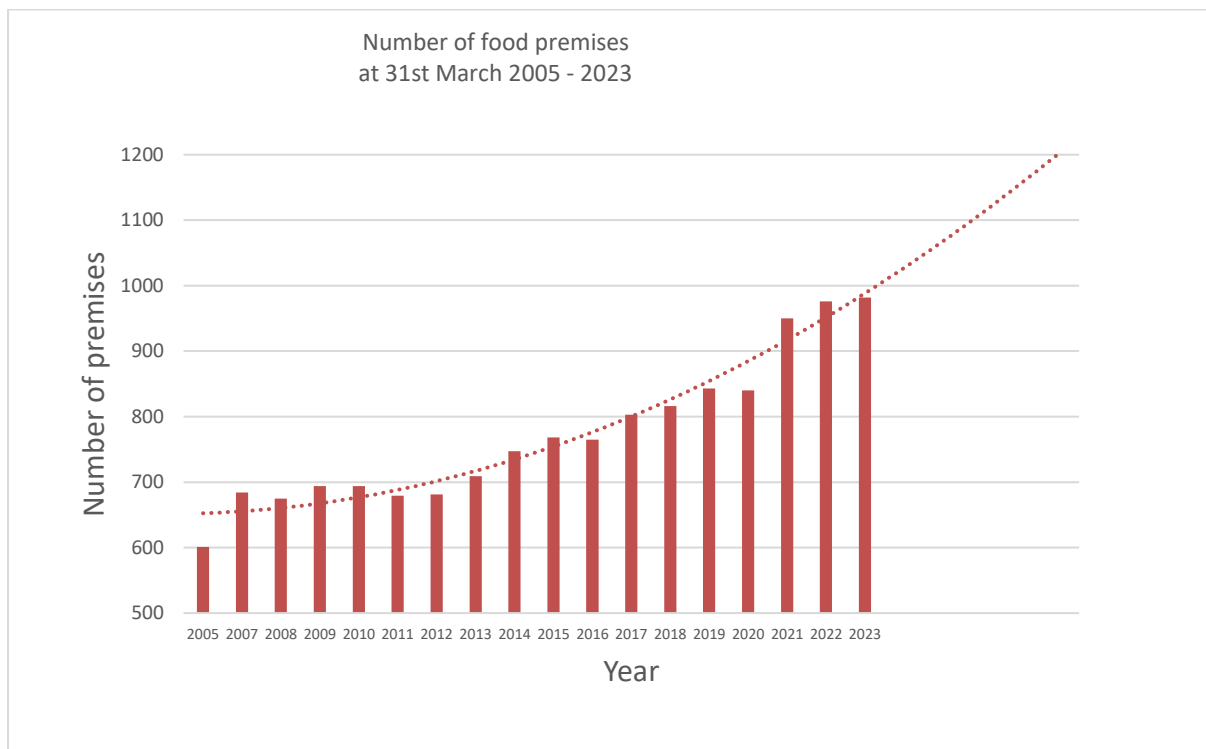


Figure 1 – Number of Food Business Registered in Midlothian by Year

2.2 Although food business operators are supposed to notify the authority when they cease trading few do. Information about changes in ownership is gathered from new registrations of existing premises where the Food Business Operator (FBO) changes or when officers visit.

## 3.0 Performance against service plan objectives

### Objective 1: Complete Programmed Food law Interventions

3.1 In the year 2022- 2023 the Food Service planned to inspect 290 food businesses to assess their compliance with food safety law (hygiene and food standards). The Service completed 100% of the inspections planned at the highest risk premises and 97% of the high risk premises in Priority 2.

## Appendix B

One of those businesses missed in Priority 2 was a seasonal businesses that was not operational and was rescheduled for a more appropriate time.

- 3.2 During the year the Food Service completed 321 food inspections, for a breakdown see table 1. The additional inspections were due to new food businesses, either registering or being identified by officers, or where intensive interventions were required to improve compliance at businesses with serious or significant non-compliances.
- 3.3 Within this first year of the restart programme, 32 food premises were found to have serious or significant non-compliances with 16 enforcement notices being issued for the most serious contraventions. These premises required intensive intervention with 2 or more inspections carried out to support and encourage each business to improve compliance.

The poor standards found in these premises is thought to be due to a decline in standards as a result of the Coronavirus pandemic. Several of these were food businesses taken over or started by persons with little or no knowledge and understanding of food safety. This is also coupled with the negative impact of the increased cost of living.

After Food Officers intensive intervention with these premises, 81% were subsequently risk rated as generally compliant with only minor non-compliances.

- 3.4 During visits Food Officers found 34 food premises had ceased trading.
- 3.5 The increased number of inspections achieved within this year was only possible due to the work of external contractors supporting the Food Service by carrying out low risk food inspections.

Food Interventions April 2022 – March 2023				
Priority Category	Number of planned interventions	Number (%) Achieved Against Plan	Additional Interventions Achieved	Total Number of Interventions completed
Highest Risk Premises - Priority 1	10	10 (100%)	+11	21
High Risk - Priority 2	69	67 (97%)	+21	88
Medium/Low Risk - Priority 3, 4 and 5	211	185 (88%)	/	185
Lowest Risk Premises - Priority 6 (not included in programme)			+27	27
Total	290	262 (90%)	+59	321

Table 1 - Food Interventions April 2022 – March 2023

### **Objective 2: Approved Premises Intervention**

3.6 Year 2022-2023 was the first year, Phase 1, of implementing Food Standards Scotland (FSS) new Official Controls Verification (OCV) interventions at approved premises within Midlothian. During the year the method and recording of these interventions has been developed using the 'OCV Implementation Guide' provided by FSS and Scottish Food Enforcement Liaison Committee (SFELC).

3.7 A fact finding visit was made to the Food Service at East Lothian Council, who were part of the FSS pilot project, to understand how they had implemented this new approach. It was clear that a considerable amount of time was required to get this new approach started.

3.8 All of our highest risk approved premises; manufacturing meat products and dairy products, were inspected or audited at least twice within the year. Food safety management systems were requested from business, including Hazard Analysis Critical Controls (HACCP) to begin research and assessment of the complex processes involved. As an example, Food Officers carried out 3 interventions at a milk processing plant and 5 interventions at a meat products manufacturer, each of these visits requires 2 officers.

The majority of the lower risk, cold stores and an egg packing centre, received at least 1 intervention and documentation was requested to allow assessment to begin for Phase 2.

3.9 Due to the additional intensive food law interventions and other conflicting work activities, which took priority and required enforcement resources to be diverted, not all the planned OCV interventions were achieved in full. For example a serious health and safety accident required investigation and resulting in a report to the COPFS.

3.10 The new method for Approved Premises Intervention will continue to be developed within the coming year, 2023-2024, and priority will be given to delivering the planned OCV interventions. It is predicted that additional time will need to be allocated to these high risk premises in future years as we continue to implement this.

### **Objectives 3 and 4: Complete Sampling from Manufacturing Premises in Midlothian and National Sampling Plans**

3.11 During the year 86 food samples were taken, see figure 2. A total of 71 official control samples were taken from manufacturing premises and for Food Standards Scotland Sampling Survey.

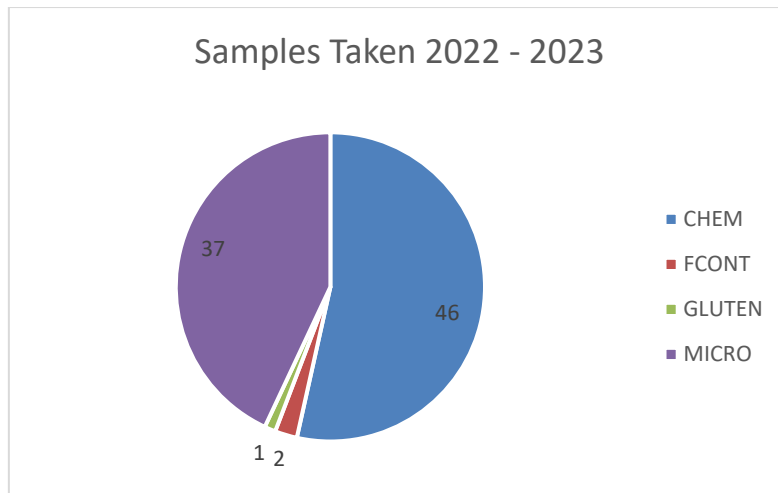


Figure 2 – Number and Types of samples taken 2022- 2023

3.12 About 15% of the samples taken have been reported as “failures”, see table 2 for examples.

<b>Labelling/Compositional Contraventions</b>	
Rapeseed Oil	Nutritional labelling values/units incorrect
Pickled vegetable products	Not marked with name of the food. Abbreviation of ‘GF’ used for gluten free.
Meat Products	Ingredients not labelled correctly, allergen not emphasised in ingredients list, nutritional information not correct, high levels of salt, sulphur dioxide above permitted levels.
Prepacked Filled Roll	Produce defined as pre-packed for direct sale not labelled with complete ingredients list in descending weight, ingredients containing allergens not highlighted.
<b>Contamination Complaints</b>	
Foreign object in chicken fillet	Metal contamination similar to a pin that links a watch strap or conveyor belt.
<b>Microbiological Contamination</b>	
Boiled rice from a takeaway	High aerobic colony count indicating poor quality and / or lack of temperature control.
Wheat flour	Presence of shiga toxin gene. Indication of possible presence of STEC organisms in the food. Note it is anticipated this organism would be killed during normal cooking processes

Table 2 - Examples of sample ‘failures’ April 2022 – March 2023

3.13 At the time of review, the results of 8 composition and labelling samples had not yet been received from Edinburgh Scientific Services.

### Objective 5: Commence Investigation of Food Related Requests for Service within Target Working Days

- 3.14 The Food and Safety Team received 515 service requests during the year, of which 445 (86%) related to food related matters. Table 2 shows the breakdown of the types of request received. These are received from Midlothian residents, businesses and other council departments.
- 3.15 The Food Service was able to respond to 84% of food related service requests from Midlothian residents and businesses within the target response time of 5 working days.
- 3.16 An average year – over the last 10 years, generates approximately 430 service requests received by the team. This year was a significant increase with almost 20% more requests received. In addition, team numbers were reduced due to vacancies and consequently the work was spread across fewer FTE staff. The restart of the planned interventions took priority and has shown that standards in food premises have reduced, requiring increased numbers of interventions by officers to get businesses back into a state of compliance.

Table 2: Service Requests dealt with by Food and Safety Team 2022-23

Type of Service Request	Number received
alcohol Food certificate s50	5
alcohol licence occasional	1
alleged food fraud	1
alleged food poisoning	24
Building Standards Consultation	4
Caravan/Camping Sites	4
contact from other LA about our premises	2
Dog Fouling	2
employee workplace complaint	2
Engineers inspection defects report	2
Export certification	31
Food Alert for ACTION	1
Food Alert for info PRIN AA	2
food business registration	13
food complaint other	37
foreign body contamination	6
Freedom of Info Request	2
Health and safety advice	22
labelling/composition	12
pests present/infestation	6
Planning consultation	14
Poor hygiene/practices	16
Private Rented Housing	2
public building water quality	1

## Appendix B

public complaint about workplace	6
public enquiry	1
Public Entertainments Licence	57
Request for food law advice	71
Safety Advisory Group	104
Skin piercing licence	17
Smoking on premises	1
street trader food certificate s39	15
Street Traders Licence	5
temp public entertainment licence	1
Temporary Market Operators Licence	7
Use by/best before	2
waste storage arrangements	14
Zoo licence	2
<b>Total</b>	<b>515</b>

- 3.17 The statistics demonstrate that there has been an increase in workload associated with the Safety Advisory Group (SAG). This multidisciplinary group considers applications from event organisers and offers advice on public safety at events. The aim is to help organisers with the planning and management of an event and to ensure cooperation and coordination between all relevant agencies.

In addition the service also received 17 reports of accidents in workplaces. The majority could be dealt with by a single intervention, but others required visits and further investigation. A serious incident resulting in a significant injury, required a report to the Crown Office Procurator Fiscal Service and a second serious accident investigation remains ongoing at present.

### **Objective 6: Investigate Food and Water Borne Disease in Co-ordination with Health Authorities**

- 3.18 Between April 2022 and March 2023, 30 notifications of food related illness were received from the Health Protection Team at NHS Lothian, see figure 3. This is above the average for Midlothian Food Service who on average receive approximately 22 reported cases of infectious disease per year. Despite the 30% increase in reported cases there were no identified food related outbreaks.

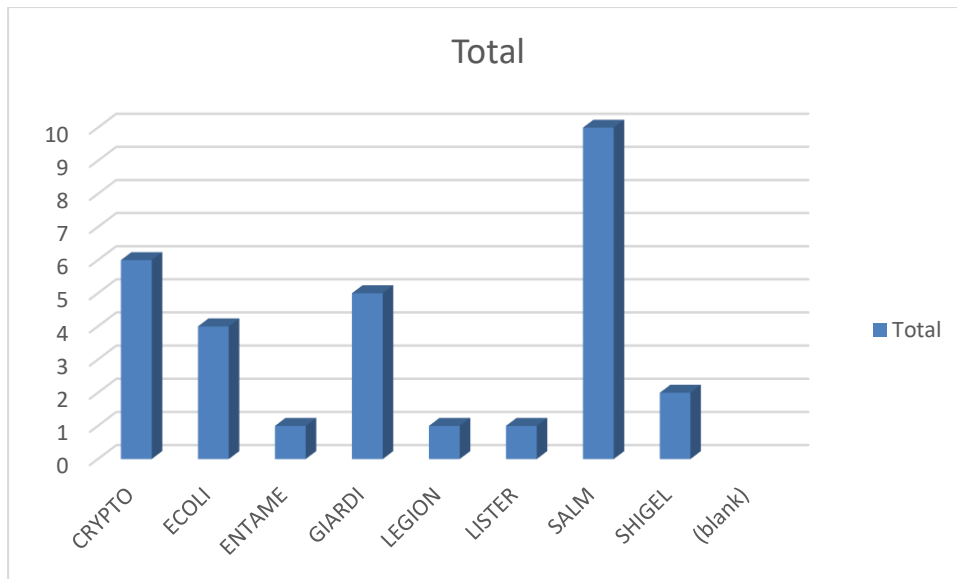


Figure 3 – Number of Infectious Disease Notifications between April 2022 – March 2023

**Objective 7: Respond to Food Alerts by Food Standard Scotland**

3.19 A number of Food Alerts for Action and Food Alert for Information were received throughout the year. These varied in terms of significance and included;

- In April 2022 the Food Service were advised by FSS that there had been shortages in the sunflower oil supply chain due to the situation in Ukraine. This required contact to be made with one of our largest food manufacturers to discuss the options available and reduce the impact on them and their consumers due to labelling and composition issues.
- In May 2022 Midlothian Council Food Service were alerted of a product recall due to the possible presence of salmonella in chocolate products. FSS request the assistance of the Food Service to raise awareness of this in small retail businesses within the area. Correspondence was sent to 92 identified businesses with information and a customer notice to display at their premises. Follow up visits were made at 21 premises, 5 of which had already removed the product from sale and 1 removed the product on the instruction of the Food Officer at the time of the visit.
- An Allergy Alert, due to an undeclared allergen on the label of a product manufactured in Midlothian, was initiated by Midlothian Council Food Service, in conjunction with Food Standards Scotland. This matter was, identified during a routine inspection. In conjunction the food business initiated a product recall and made contact with allergy organisations to raise awareness of the issue.



**Objective 8: Ensure all Authorised Officers Receive a Minimum of 10 hours Food Related Competency Training**

3.20 All Food Officers has been given the opportunity to gain 10 hours of food related training. This includes for example, research on new emerging topics or complex processes and new learning at food liaison groups.

**4.0 Enforcement Activity**

4.1 The enforcement activity required during 2022 - 2023 is summarised in Table 3. The previously reported increase in intensive interventions, due to poor and unsatisfactory standards found at food premises, has seen an increase in enforcement activity required.

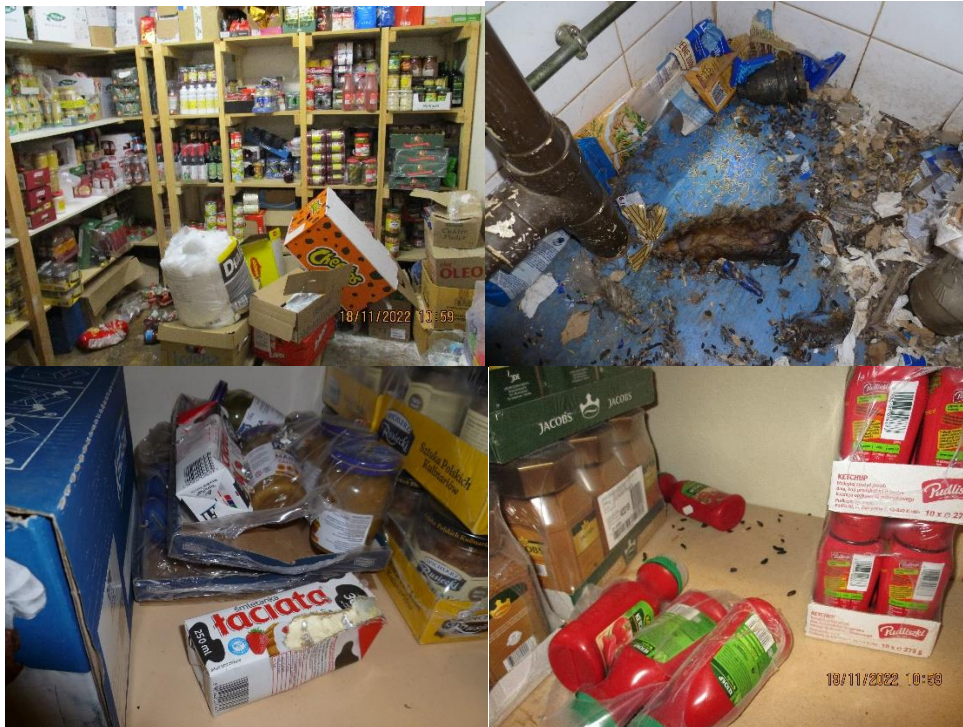
<b>Enforcement Activity</b>	<b>19-20</b>	<b>20-21</b>	<b>21-22</b>	<b>22-23</b>
Remedial Action Notices	2	1	2	8
Food Detention Notices	0	0	0	0
Hygiene Improvement Notices	1	2	5	8
Emergency Hygiene Prohibition Notices	0	0	0	0
Voluntary Closures	0	0	0	1
Written Warnings re hygiene or standards contraventions	109	1	50	92
Reports to the Procurator Fiscal Service	0	0	0	1
Food surrenders or seizures	0	0	1	1

Table 3 - Type and Number of Enforcement Actions taken April 2022 – March 2023

4.2 Remedial Action Notices were served on businesses for serious cross contamination issues, lack of hot water and significant pest issues. These notices were for serious issues that required to be resolved immediately. Hygiene Improvement Notices requiring improvement within defined timescales were generally served on structural issues, e.g. damaged flooring or lack of adequate hand wash facilities, or for failure to have adequate systems in place to ensure food safety.

4.3 Significant enforcement action was required when a resident alerted Environmental Health to a serious infestation of rats affecting their property. On investigation it was discovered that the operator of the food business below had not contracted any professional pest control services and was unable to cope with the infestation. They had closed the premises with the

remaining food left inside, allowing the rats to continue to enter the premises and feast on the foodstuff with no disturbance. The state of the premises was shocking, see photographs below. Animal carcasses, rat droppings, and gnawed/contaminated food were found, requiring immediate action to prevent potentially contaminated food and food packaging leaving the premises. A large amount of contaminated food and food packaging was removed from the premises, with the help of Midlothian Waste Services, in agreement with the Food Business Operator. The required improvements were made to the premises. It no longer operates as a food business.



- 4.4 A prosecution report was finalised after thorough investigation and communication with the Procurator Fiscal Service over several years. A member of the public had had a severe anaphylactic reaction to a meal prepared by a Midlothian food business, which had been specifically requested to contain 'no nuts' and was found to contain peanuts. Unfortunately despite best efforts in gathering evidence and preparing the case it was dismissed from court when the injured party failed to appear as a witness.

## 5 The Food Hygiene Information Scheme (FHIS)

- 5.1 The Food Hygiene Information Scheme (FHIS) remains in operation across Scotland. This Scheme allows consumers to view the outcome of the assessment made of any business in the scheme, when it was last inspected by the Food Service. Businesses can choose to display a certificate at the premises and consumers can check the rating for any premises covered by the scheme on the Food Standards Agency website at <http://www.food.gov.uk/scotland/>. Businesses are awarded either a "Pass" certificate or an "Improvement Required" rating.

5.2 In previous years Midlothian has had an overall PASS rate of around 88%. The ratings for all the 601 relevant, Midlothian food business, at the end of March 2023, show a 73% PASS rate, illustrated in Figure 4. At present due to the 'missed' inspections some data contributing to this calculation is historic. For comparison, the FHIS ratings for this year alone are also presented in Figure 4, again showing the significant reduction in standards, with only 64% of Midlothian food businesses achieving a PASS rating. The number of food businesses Awaiting Inspection has increased.

Figure 4 – Food Hygiene Information Scheme Ratings 2023

