

# Consultation pack: the post implementation review of the 2013 S&Q regulations

As part of the Government's commitment to review provisions in secondary legislation that regulate businesses, the 2013 S&Q Regs require the Food Standards Agency (FSA) to undertake a review of the Regulations in England and set out the conclusions in a report within five years of the measure coming into force and every five years subsequently.

## Details of consultation

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[2023 Post implementation review: the food safety \(sampling and qualifications\) \(England\) regulations 2013](#)

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### Acronyms/Definitions

PIR = Post Implementation Review

2013 S&Q Regs = Food Safety (Sampling and Qualifications) (England) 2013

CoA = Certificate of Analysis

## Introduction

The 2013 S&Q Regs came into effect on 6 April 2013 and support the Food Safety Act 1990 which details how authorised officers of local authorities should submit samples for chemical analysis to Public Analysts or for microbiological examinations to Food Examiners.

The 2013 S&Q Regs also support the Official Controls Regulation (Retained EU Regulations) 2017/625 which provides a legislative framework on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

This report assesses the effect of the 2013 S&Q Regs since the 2018 PIR, by collating evidence of the views of key stakeholders and assessing the costs and benefits outlined in the associated impact assessment. This is a light-touch review based on the low impact identified by the impact assessment carried out by the FSA when the regulations were introduced, the finding of the 2018 PIR and FSA routine implementation monitoring, which includes routine engagement with key

stakeholders such as enforcement officers, public analysts and food businesses.

Therefore, the level of evidence sourced for this PIR is proportionate to the impact of these Regulations. The statutory requirement to undertake and report on the findings of post implementation reviews relates to England only and therefore this review is focused on the England regulations. The findings of this review however, are not anticipated to be unique to England as there are similar regulations in place for Wales, Scotland, and Northern Ireland.

## **Main proposals**

The 2013 S&Q Regs continue to meet its objectives, remains relevant and valid.

No significant changes are required to the 2013 S&Q Regs and where minor amendments may be recommended, all stakeholders agreed with the FSA's view to address this by including the updates in the list of SIs in Schedule 1 at the next substantive update of this regulation. This supports the recommendation in the 2018 PIR of the 2013 S&Q Regs.

The CoA does not always provide all of the testing information that is sometimes required by the competent authority, however as this could be provided by Public Analysts via a non-legislative alternative and making changes to the 2013 S&Q Regs would add further pressures to Public Analysts, the CoA remains fit for purpose. Considering the number of Public Analysts now working remotely since the Covid-19 pandemic, it has become apparent that changing the wording on the CoA to 'laboratory of employment rather than 'place' may be required.

The MChemA is the only known qualification deemed appropriate to be a Public Analyst and there are no suitable equivalents. No stakeholder provided any evidence to suggest that the qualifications to be a Food Examiner were not fit for purpose, however it was raised that there is a discrepancy between the Public Analyst and Food Examiner qualification requirements. Further clarification of the process for recognising equivalent qualifications in the 2013 S&Q Regs or Food Law code of Practice could address this in line with the Food Safety Act 1990.

## **Impacts**

The 2013 S&Q Regs have not brought about any negative or unintended consequences that impact on stakeholders. The FSA is not aware of any EU Member States or third countries introducing legislative requirements on qualifications/experience for analysts carrying out official control work. While a unique approach to the UK, this approach does not present any disadvantages to UK businesses.

## **Engagement and Consultation Process**

The initial FSA assessment has been based on evidence obtained from targeted engagement with key stakeholders including Enforcement Authorities, Official Laboratories, the Government Chemist, Royal Society of Chemistry and other identified key stakeholders. Stakeholder views have been analysed in contrast to the routine FSA monitoring of the effectiveness of regulations, to inform and provide supporting evidence to the PIR. The findings of this engagement support the FSA view that the Regulation continues to fulfil its intended objectives and remains fit for purpose following the 2018 PIR. This view will now be tested through wider FSA public consultation and the final report.

## **Questions asked in this consultation**

We welcome stakeholder's views on this PIR report, in particular we would like to invite stakeholder views and, where supporting evidence possible, in relation to:

1. Specifying the process of local authorities appointing Food Examiners and Public Analysts, whether it be in the 2013 S&Q Regs, the Food Law Code of Practice, or another named alternative.
2. The process for recognising the equivalent qualifications referred to in the Food Safety Act 1990 (The Food Safety Act 1990 prescribes that the Secretary of State may approve other qualifications to be appointed as a Public Analyst). The Food Law Code of Practice previously provided guidance on how to recognise such equivalent qualifications, however this was removed and instead added to the Food Law Practice Guidance (England).
3. Identifying any specific challenges with the CoA and views on addressing some of these challenges via a non-legislative approach such as the Food Law Code of Practice<sup>5</sup> or alternative format such as a separate testing report to be provided on request of the competent authority.
4. Our analysis of the impact of the 2013 S&Q Regs in this Report (Section 4).
5. How the UK legislative approach on sampling and qualifications in England for Public Analysts and Food Examiners, compares to approaches in other countries and EU Member States. Specifically, whether this, has led to costs to businesses. Please provide evidence to support your comments.

## Relevant documents

- [2023 Post implementation review: the food safety \(sampling and qualifications\) \(England\) regulations 2013](#)
- [The Food Safety \(Sampling and Qualifications\) \(England\) Regulations 2013](#)
- [The Food Safety Act 1990](#)
- [Regulation \(EU\) 2017/625 of the European Parliament and of the Council](#)
- [2018 Post Implementation Review of the 2013 S&Q Regs](#)
- [Food Law Code of Practice \(England\) 2021](#)
- [Food Practice Guidance \(England\)](#)
- [Local government structure and elections, GOV.UK](#)
- [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14, ONS](#)
- [RPC Short Guidance Note: Implementation costs August 2019 \(PDF\)](#)

## Responses

Responses are required by close 23 June 2023. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

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Science Evidence and Research Division

## Annex A: Standard Consultation Information

## **Disclosure of the information you provide**

Information provided in response to this consultation may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

Any automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

The Food Standards Agency will be what is known as the 'Controller' of the personal data provided to us.

## **Why we are collecting your personal data**

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

The Data Protection Act 2018 states that, as a government department, the Food Standards Agency may process personal data as necessary for the effective performance of a task carried out in the public interest, for example a consultation.

## **What we do with it**

All the personal data we process is located on servers within the European Union. Our cloud based services have been procured through the government framework agreements and these services have been assessed against the national cyber security centre cloud security principles.

No third parties have access to your personal data unless the law allows them to do so. The Food Standards Agency will sometimes share data with other government departments, public bodies, and organisations which perform public functions to assist them in the performance of their statutory duties or when it is in the public interest.

## **What are your rights?**

You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter.

If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the [Information Commissioner's Office \(ICO\)](#), telephone 0303 123 1113.

Our Data Protection Officer in the FSA is the Information Management and Security Team Leader who can be contacted at the following email address: [kims@food.gov.uk](mailto:kims@food.gov.uk)

## Further information

If you require a more accessible format of this document please send details to the named contact for responses to this consultation and your request will be considered.

This consultation has been prepared in accordance with [HM Government consultation principles](#).

## Annex B: Impact Assessment

The 2013 S&Q Regs simplified the Food Safety (Sampling and Qualifications) (England) Regulations 1990, benefitting public laboratories, private laboratories and local authorities. Private laboratories and public laboratories were expected to benefit from reduced recruitment time for managers by approximately 30 minutes per hire. Local authorities were expected to benefit from simplification of the 2013 S&Q Regs by saving 30 minutes per local authority per annum. Additionally, the new guidance on equivalent qualifications was expected to save a day's work (7 hours) for two local authorities in England in the process of appointing Food Examiners and Public Analysts.

Public laboratories, private laboratories and local authorities were also expected to incur one-off familiarisation costs from the 2013 S&Q Regs. The previously identified changes between the 2013 impact assessment (IA) and the 2018 PIR included a fall in the average number of recruits for private labs from two to zero, and a reduction in the number of Food Examiners and Public Analysts employed. It was reported that local authorities would continue to realise the benefits estimated in the IA.

However, between 2018-2022, the average rate for appointing new Food Examiners and Public Analysts in England per annum remains at zero. Two laboratories have also closed over this period, but not as a result of the policy. Overall, the costs and benefits remain the same as those reviewed in the 2018 PIR. It is worth noting, however, that the number of local authorities in England has decreased from 354 to 333 .

Using the ASHE (2022) hourly wage rate for an EHO of £21.04 (£25.67 including a 22% uplift to account for overheads); resulting in a total recurring benefit to local authorities of £4,612 per annum over the 2018-2022 period.

The original impact assessment identified benefits to businesses in terms of simplification of the hiring process, these remain the same. In the 2018 PIR, stakeholders suggested a minor improvement for references to the instruments in Schedule 1. However, since 2018, there have been no updates to Schedule 1. This is a minor change but may provide more clarity to businesses. No further opportunities for reducing the burden on businesses were identified.