

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

This initial report on the post implementation review (PIR) of the 2013 S&Q Regs assesses the continued effectiveness of the Regulations in England since the 2018 PIR, based on preliminary evidence gathered from a number of key stakeholders and assessing the costs and benefits outlined in the associated impact assessment.

This PIR relates to the [consultation on the post implementation review of the 2013 S&Q regulations](#).

Executive summary

1. [The Food Safety \(Sampling and Qualifications\) \(England\) Regulations 2013](#) (“2013 S&Q Regs”) specify the qualifications necessary to be a Public Analyst (referred to as either the Public Analyst or Food Analyst in legislation) or Food Examiner for the purposes of the [Food Safety Act 1990](#). The 2013 S&Q Regs also specify the procedure to be followed when a sample has been procured under the Act for analysis or examination. The Regulations revoked and remade former sampling and qualification regulations into one consolidated SI.
2. This routine Post Implementation Review (PIR) fulfils the statutory review requirements of the legislation, which were made under section 27 of the Food Safety Act 1990 and support the execution of the Official Controls Regulation ([Retained EU Regulations](#)) 2017/625.
3. This initial report on the post implementation review (PIR) of the 2013 S&Q Regs assesses the continued effectiveness of the Regulations in [England since the 2018 PIR](#), based on preliminary evidence gathered from a number of key stakeholders and assessing the costs and benefits outlined in the associated impact assessment. This is a light-touch PIR based on the very low impact cost associated with the Regulations, whose main function is to specify the requirement of qualifications to be a Public Analyst and a Food Examiner. Therefore, the level of evidence sourced is commensurate to the scale of the Regulations and their anticipated impact.
4. This report assesses whether the objectives of the 2013 S&Q Regs continue to be met and whether the requirements of the regulations remain relevant. It also explores whether there have been any unintended effects resulting from the implementation of the 2013 S&Q Regs since the 2018 PIR .
5. 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. In particular:

- Stakeholder evidence continues to support the recommendation made in the 2018 PIR - to update the list of SIs in Schedule 1 at the next substantive update to this regulation.
- No strong evidence has so far been presented to suggest that the Regulation have resulted in any negative or unintended consequences since their introduction in 2013.

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.

1. Introduction and background

1.1. The UK exited the EU on 31 January 2021 and directly applicable EU feed law was converted into retained EU law. The Food Safety (Sampling and Qualifications) (England) Regulations 2013 assessed in this routine post implementation review, continue to provide for the execution of powers and enforcement in England for the retained EU law.

1.2. The 2013 S&Q Regs came into effect on 6 April 2013. They revoke, remake and consolidate the Food Safety (Sampling and Qualifications) Regulations 1990 (as amended) and support the execution of the Official Controls Regulation (Retained EU Regulations) 2017/625. The 2013 S&Q Regs specify the qualifications necessary to be a Public Analyst and Food Examiner for the purposes of the Food Safety Act 1990. They prohibit specified persons from carrying out analyses or examinations, s(6) and also specify the procedure to be followed when a sample has been procured under the Act for analysis or examination, s(7), s(8) and s(9).

1.3. The 2013 S&Q Regs 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. This provides the framework for all food legislation in England, Wales and Scotland.

1.4. 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.

1.5. [The Food Law Code of Practice](#) gives instructions that local authorities must consider when enforcing food law. The Food Law Code of Practice is issued under The Food Safety Act 1990, s40(1), and local authorities need to follow and implement the relevant sections that apply. This includes the requirement for local authorities to appoint one or more Public Analysts who meet the minimum qualifications set out in 2013 S&Q Regs.

1.6. Consideration has been given to ensure that qualification requirements to be a Food Examiner are not too restrictive, and these are outlined in Schedule 2 of the 2013 S&Q Regs. Equivalent qualifications can be considered in accordance with The Food Safety Act 1990, s27(2)(b) for Food Analysts and s30(9) for Food Examiners, where other qualifications may be approved by the Secretary of State. Guidance on a procedure to recognise equivalent qualifications was considered and contained within the Food Law Code of Practice (previously section 4.6 – Equivalency of Other Qualifications, now section 3.4), however this has since been removed and instead contained with the [Food Law Practice Guidance \(England\)](#) (section 3.3.2).

2. Purpose and scope of the report

2.1. 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.

2.2. 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.

2.3. 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.

2.4. As a minimum, this PIR seeks to establish:

- whether the 2013 S&Q Regs continue to achieve their objectives and whether the objectives continue to be relevant based on the effectiveness of the last 5 years (including EU Exit, Covid-19, laboratory closures and the recent review of the MChemA qualification);
- if improvements to the 2013 S&Q Regs are necessary;
- if there is any evidence of unintended consequences resulting from the Regulations;
- how the UK's legislative approach compares to other countries, including EU member states

3. Assessment of the objectives of the 2013 S&Q regulations

Objectives

The policy objectives and intended effects of these Regulations are:

- To revoke, remake and consolidate previous amendments that were still in force into one consolidated SI, thus simplifying and facilitating its use for enforcement officers, official control analysts and others that have to refer to the Regulations.
- To provide up to date procedures when taking samples under that Food Safety Act 1990 by excluding those samples taken under Regulations which have their own procedures (Schedule 1).
- To prescribe a suitable list of qualifications and experience required to act as a food examiner which will benefit staff working in this area (Schedule 2).
- To introduce guidance for the recognition of equivalent qualifications.
- To provide a form of Certificate of Analysis (CoA) and/or Examination that is fit for purpose for official control analysts (Schedule 3).

3.1 Overall, evidence provided to-date by key stakeholders supports the FSA view that the 2013 S&Q Regs remain relevant and valid in relation to their objectives. This is predominantly due to there being no changes to the way in which samples have been taken in the last five years. While some stakeholder responses (captured below) do address aspects of effectiveness of specific objectives detailed in this report, stakeholders were not asked to specifically comment on each objective individually. All stakeholders confirmed that there have been no negative or unintended consequences resulting from the Regulations.

Objective 1 - to revoke, remake and consolidate the Food Safety (Sampling and Qualifications) Regulations 1990 (as amended) into one consolidated SI, thus simplifying and facilitating its use for enforcement officers, official control analysts and others that

have to refer to the Regulations.

3.2 Some stakeholders noted that minor amendments should be made to the 2013 S&Q Regs to reflect changes to the way in which consumers purchase food, such as online sales. The FSA has identified that an approach to address these could instead be to incorporate any changes into the Food Law Code of Practice rather than 2013 S&Q Regs.

3.3 No evidence was provided by any stakeholder to suggest that this objective is no longer relevant or that the regulations are not the best option to achieve this objective.

Objective 2 - to prescribe a suitable list of qualifications and experience required to act as a food examiner which will benefit staff working in this area (Schedule 2).

3.4 The 2018 PIR concluded that this objective remains relevant and valid to ensure that Food Examiners have appropriate qualifications and experience to meet this objective. No evidence was provided to challenge this view.

Objective 3 - to provide up to date procedures when taking samples under that Food Safety Act 1990 by excluding those samples taken under Regulations which have their own procedures (Schedule 1).

3.5 No evidence was provided by any stakeholder to suggest that this objective is no longer relevant or that the regulations are not the best option to achieve this objective.

3.6 All stakeholders agreed with the FSA's view to address the recommendation in the 2018 PIR to include any minor updates to the list of SIs in Schedule 1 at the next substantive update of this regulation. One stakeholder also suggested the use of the 'latest available' option, to view these changes online. It was flagged that these updates should be published in advance of them having any impact on front line workers.

Objective 4 - To introduce guidance for the recognition of equivalent qualifications.

3.7 There has been a continued decline in the number of Public Analysts, leading to a concern about the long-term sustainability of the profession. While some stakeholders believed this to be due to a lack of funding in the Public Analyst Official Laboratory system, many agreed that this is a concerning issue which needs to be addressed.

3.8 Public Analysts and some Local Authority Officers did not believe that changes to the 2013 S&Q Regs would be the appropriate way to address the declining number of Public Analysts. The MChemA was the only qualification identified by stakeholders as being suitable to practice as a Public Analyst and noted that any other qualification deemed as equivalent would put the profession at risk.

3.9 It was also raised by stakeholders that the modernisation of the MChemA has only come into effect very recently, arguing that the 2013 S&Q Regs should remain unchanged so that the impact of implementing the changes to the MChemA can be established first.

3.10 In the 2023 initial consultation, one stakeholder referred to the discrepancy between the qualifications required to be a Public Analyst which requires the MChemA, compared to a Food Examiner which carries out a similar role but does not require the MChemA. This same discrepancy exists between the Public Analyst and a Suitably Qualified Person (SQP) from outside of the UK as defined in the Official Controls Regulations (Retained EU Regulations) 2017/625. It was suggested that the definition of SQP should be reconsidered to allow more development and progression within the Official Laboratory analyst staff and to allow qualifications for certain aspects, e.g. chemical analysis, microscopy or physical testing without the need for the whole MChemA to be a Public Analyst.

Objective 5 - To provide a form of CoA and/or Examination that is fit for purpose for official control analysts (Schedule 3).

3.11 In the 2023 initial consultation, the FSA identified that the CoA can at times not capture all the available information required and would like to include a provision for additional information on the results of the analysis to be provided upon request of the competent authority in the 2013 S&Q Regs. Some local authority officers agreed that the CoA can sometimes be restrictive.

3.12 Many stakeholders outlined the purpose of the CoA, highlighting how including more information such as testing information would be inappropriate when considering the primary purpose of the CoA. These stakeholders firmly believed that the regulations should remain the same to prevent additional resourcing pressure on Public Analysts, including during court proceedings, and that any further information required by the competent authority should be via an alternative format which could be included in the Food Law Code of Practice or similar guidance.

3.13 Some stakeholders mentioned the changes to the way in which people work since the covid-19 pandemic. The CoA requires the signatory to specify the place in which the CoA was signed rather than the laboratory they work for. Considering the number of people now working remotely, it was suggested that the wording on the CoA as shown in Schedule 3 of the 2013 S&Q Regs is changed to 'laboratory of employment' rather than 'place'.

4. Costs and benefits

4.1 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.

4.2 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.

4.3 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.

5. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements.

5.1. Although the 2013 S&Q Regs give effect to certain requirements of Official Controls Regulations (Retained EU Regulations) 2017/625, such as ensuring there are sufficient numbers of suitably qualified and experienced staff to carry out official control work, the legislation is made under section 27 of the UK Food Safety Act 1990. 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. The approach adopted by the UK, which pre-dates the introduction of harmonised EU food law, may be unique amongst EU Member States and is recognised as providing a robust legal framework for qualifications of official food analysts/examiners and a standardised legal process for sampling and reporting of official control samples that ensures a fair and consistent system for both businesses and enforcers. Key stakeholders made clear in their 2018 responses that the UK approach is the preferred option as it provides clarity during legal scrutiny thus assisting businesses, regulators, enforcement authorities and the courts in a highly technical area and does not present any disadvantages to businesses in the UK.

6. Conclusions

6.1. The 2013 S&Q Regs continue to meet its objectives, remains relevant and valid and have not brought about any negative or unintended consequences that impact on stakeholders.

6.2. 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.

6.3. The MChemA is the only known qualification deemed appropriate to be a Public Analyst and there are no suitable equivalents. Stakeholders share the FSA's concern with regards to the declining number of Public Analysts, however it was expressed that addressing this via changes to the 2013 S&Q Regs would not be appropriate and put the profession at risk. Some stakeholders suggested that the decline in the number of Public Analysts is a result of lack of funding in this sector. The FSA is currently delivering the Official Laboratory Capability workstream which is building resilience and sustainability in the Public Analyst Official Laboratory system.

6.4. 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.

6.5. 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.

6.6. 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. This is the only identified opportunity to reduce burden on UK business and all other costs and benefits remain the same as the 2018 PIR.

7. Consultation questions

7.1. 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 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.

Please provide your responses to SSLP@food.gov.uk by 23rd June 2023.