

POST IMPLEMENTATION REVIEW OF THE FOOD SAFETY (SAMPLING & QUALIFICATIONS) (ENGLAND) REGULATIONS 2013

SUMMARY OF STAKEHOLDER RESPONSES TO THE FSA CONSULTATION (February 2018)

<i>Q1: Stakeholders were invited to comment on our actual costs of familiarisation and to provide evidence if they believe that the costs incurred were higher or lower than our estimates in the 2013 impact assessment.</i>			
Laboratory of Government Chemist (LGC)	Email	LGC considered that the 2013 estimate for a person already familiar with the subject area was correct. No evidence was provided.	Comment noted.
<i>Queens University Belfast (visiting Professor)</i>	Email	Stakeholder considered that the 2013 estimate of costs were reasonable based on data in the draft report and they did not feel that costs should be the major factor in health and well-being of the public.	Comment noted.
<i>Q2: Stakeholders were asked to comment on whether simplification of the Regulations led to benefits for public and private sector laboratories and enforcement officers? Provide evidence to support your comments.</i>			
Laboratory of Government Chemist (LGC)	Email	LGC consider the simplification and updating of the Regulations in 2013 as beneficial.	Comment noted.
<i>Independent stakeholder working in academia</i>	Email	No comment was submitted in relation to the benefits gained from simplification of the Regulations. Stakeholder remarked on a gap in the regulations to address statutory provision for numbers of samples to be taken in specific risk areas per head of population.	This post implementation review relates to sampling methodologies for analysis /examination; the level of sampling to be undertaken is outside the scope of this review.
<i>Q3: We invite views on whether the legislative approach for qualifications requirements of official control analysts adopted by the UK when compared to approaches in other EU Member States has led to costs to businesses? Provide evidence to support your comments.</i>			
Laboratory of Government Chemist	Email	No substantive comment was submitted by LGC in relation to Q3. However, they did remark that the cost associated with attaining the UK statutory qualification to be a Public Analyst	Comment noted. FSA recognises that the MChemA is funded by several stakeholders in the UK. Evidence as to

		(MChemA) is largely provided by the Royal Society of Chemistry and supported by several stakeholders but welcomed continued support from the FSA and other government depts.	whether the requirement for this qualification has led to costs to businesses when compared to approaches in other EU MS has not been provided.
<i>Independent stakeholder working in academia</i>	Email	No substantive comment was submitted by the stakeholder in relation to Q3. The stakeholder remarked on the UK qualification system and the durability of the UK Food Control Legislation which has been copied into legislation in other European countries ¹ .	Noted.

¹ Deelstra H, Burns DT, Walker MJ (2014) The adulteration of food, lessons from the past, with reference to butter, margarine and fraud. Eur Food Res Technol 239:725-744

SUMMARY OF RESPONSES TO THE FSA TARGETED STAKEHOLDER ENGAGEMENT (September 2017)

General Comments			
<p>Association of Public Analysts (APA)</p>	<p>Email</p>	<p>(1) Objectives are still valid and relevant and ensures that food examiners have sufficient and appropriate qualifications and have acquired appropriate experience. A prescribed format for certificates is also important for consistency during a legal process and duplication of regulation should be avoided to reduce red tape and possible conflicts.</p> <p>This Regulation is necessary and is a very important part of the overall legal framework of food sampling, examination and analysis. Key to this is ensuring that sufficiently qualified, competent, independent, impartial and experienced scientists are in place to make decisions on whether food samples are safe, compositionally satisfactory and correctly labelled. Standardised processes for sampling and reporting also support the legal process ensuring a fair system for both business and enforcers. No unintended consequences have arisen from this regulation.</p> <p>Improvement to Regulation 7(4) - A provision could be made to allow for division of samples into 3 parts at the laboratory for inhomogeneous samples.</p>	<p>Comments noted.</p> <p>It should be noted that the wording '<i>The authorised officer who has procured a sample...shall cause the sample to be divided into three parts</i>' at Regulation 7(1) of the Regulations permits the sampling officer to have the homogenisation and division of the sample to be carried out at the public analyst laboratory in line with the practice relied upon by Contaminants Regulations and is a more equitable means of dealing with inhomogeneity.</p>
<p>Government Chemist (GC)</p>	<p>Email</p>	<p>(2) The regulations have achieved their original objectives which remain valid and relevant. Regulation remains the best option to achieve these objectives as it provides clarity on a topic subject to forensic scrutiny thus assisting businesses, regulators, enforcement authorities and the courts in a highly technical area. The regulations were thoroughly consulted upon before being made and have thrown up no pressing issues that require improvement. There have been no</p>	<p>Comment noted</p>

		unintended consequences that I am aware of brought about by the Regulations.	
East of England Trading Standards Association (EETSA)	Email	(3) We rely on the skills of PA to produce results and evidence on which we can rely in our work advising businesses, protecting consumers, detecting fraud and prosecuting offenders. Improvement to Reg 7 on sampling provisions to provide for online sampling provisions in particular the division of a sample.	See response to comment (1)
Q1. To prescribe a suitable list of qualifications and experience required to act as a Food Examiner (Schedule 2)			
The Royal Society of Chemistry (RSC) - MChemA Examination Board	Email	(4) The regulations have achieved their original objectives. The MChemA qualification provides the knowledge necessary to act as a Food Examiner. The syllabus is regularly reviewed by the MChemA Examinations Board to ensure that the qualification remains up-to-date with legislative requirements and current needs.	Comment noted.
Staffordshire County Council	Email	(5) This objective has been achieved. The list updated the 1990 Regulations significantly. We consider the objectives are still valid/relevant, and believe that deregulation for these requirements would not be appropriate. We cannot recommend any improvements at this time. We are unaware of any unintended consequences.	Comment noted.
Q2. To provide up to date provision when taking samples under that Food Safety Act 1990 by excluding those samples taken under Regulations which have their own procedures (Schedule 1)			
Government Chemist	Email	(6) The regulations remain valid and relevant and best option to achieve its objectives. Improvement to the ambulatory references to the instruments in Schedule 1 as new versions are made. For example, at least one of the Schedule 1 regulations has been altered in its reference to the Government Chemist in this regard, see for example Regulation 31 of The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015. There have been no unintended consequences brought about by these Regulations.	This PIR relates to the English SI. Any necessary updates to instruments listed in Schedule 1 will be taken into consideration.

East of England Trading Standards Association (EETSA)	Email	(7) Schedule 1 needs updating with Contaminants in Food (England) Regs 2013	See response to comment (6)
Staffordshire County Council	Email	(8) We consider that this objective has been achieved. We note that the 2013 Regulations reduced the list of exclude samples contained in the 1990 Regulations significantly. We consider the objectives are still valid/relevant, and believe that deregulation for these requirements would not be appropriate. We cannot recommend any improvements at this time. We are unaware of any unintended consequences.	Comments noted.
Q3. To provide a form of the Certificate of Analysis and/or Examination that is fit for purpose for official control analysts (Schedule 3)			
The Royal Society of Chemistry (RSC) - MChemA Examination Board	Email	(9) The regulations have achieved their original objectives which remain valid and relevant. The MChemA qualification ensures that the candidates are aware of the Formal Certificate format in the S & Q regulations, and how and when to implement it to meet the legal requirements.	Comments noted.
Government Chemist	Email	(10) The regulations have achieved their original objectives which remain valid and relevant. Regulation remains best option to achieve objectives. A prescribed uniform reporting format ensures the required information for a recipient (enforcement, courts, business) to reach an equitable conclusion on subject matter. The phrase in regulation 10(2) governing the form of certificate "subject to such adaptations as circumstances may reasonably require" gives sufficient flexibility. There have been no unintended consequences from these regulations.	Comments noted.
East of England Trading Standards Association (EETSA)	Email	(11) Agree.	Comments noted
Staffordshire County Council	Email	(12) We consider that this objective has been achieved. We note that the revised form in the 2013 Regulations improved upon the 1990 Regulations and introduced scope for variation where this was necessary. We consider the form is still valid/relevant and believe that deregulation for these requirements would not be appropriate. We	Comments noted.

		cannot recommend any improvements at this time. We are unaware of any unintended consequences.	
Q4. To revoke, remake and consolidate previous amendments into one S.I.			
Government Chemist	Email	(13) Given the statutory nature of the material referred to, this regulation is the best means and has achieved the original objectives bringing this aspect to a conclusion save for the need for ambulatory references as noted in (2) above. No unintended consequences.	Comments noted
East of England Trading Standards Association (EETSA)	Email	(14) Agree.	Comments noted
Staffordshire County Council	Email	(15) We consider that this objective has been achieved. We noted improved clarity in parts over the 1990 Regulations.	Comments noted
Q5. Guidance on procedure for recognising equivalent qualifications is now part of the Food Law Code of Practice (4.6). Do you feel that this is sufficient to address this provision, suitable for this requirement, easily accessible to those who require it and is there a better alternative?			
Government Chemist	Email	(16) The guidance provided is sufficient and suitable to address this requirement. As an open document that is consulted upon before periodic revision, the guidance is easily accessible to those who require it and no better alternative presents itself.	Comments noted
Staffordshire County Council	Email	(17) Provided it is not vulnerable to legal challenge by defendants in criminal proceedings, we are satisfied that the guidance in the Code of Practice will (if followed) protect prosecutors that employ PAs and FEs that do not satisfy the strict qualification requirements as laid down in the Regulations.	The risk of a successful legal challenge to the guidance is low given that there are no obvious grounds to suggest that the content of the guidance in this respect exceeds what might reasonably be adopted and published by the Secretary of State under relevant legislation.

East of England Trading Standards Association (EETSA)		(18) It is a sensible provision however, the professional bodies may charge excessive fees to review equivalency and have a conflict of interest as they make income from the provision of courses and exams. It may be beneficial for an independent third party to have oversight and audit the decisions made to ensure the bodies are both fair to applicants and consistent with each other.	Any unreasonable fee charges or decisions made by relevant professional and awarding bodies are likely to be scrutinised under judicial review which would act as a sufficient check on their activities without the need of any third-party oversight.
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