Post Implementation Review

The Food Safety (Sampling and Qualifications) (England) Regulations 2013

Executive Summary

1. ***On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.***

2. The Food Safety (Sampling and Qualifications) (England) Regulations 2013[1] ("2013 S&Q Regs") specify the qualifications necessary to be a public analyst, food analyst or food examiner for the purposes of the Food Safety Act 1990. They also specify the procedure to be followed when a sample has been procured under the Act for analysis or examination. The Regulations revoke, remake and consolidate previous amendments that were still in force into one consolidated SI. This SI was made under section 27 of the Food Safety Act 1990[2] and is in line with European Legislation Reg (EC) No. 882/2004 (currently being replaced by Official Controls Regulation (EU) 2017/625[3]). An additional requirement to introduce guidance to address the recognition of equivalent qualifications is now part of the Food Law Code of Practice (Section 4.6).

3. This report on the post implementation review (PIR) of the 2013 S&Q Regs assesses the effect of the Regulations in England and assesses the baseline costs and benefits outlined in the associated impact assessment. This is a light touch PIR based on the very low 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 establishes whether the objectives of the 2013 S&Q Regs have been achieved and the continued relevance of the requirements. It also looks at whether there have been any unintended effects on stakeholders resulting from the implementation of the 2013 S&Q Regs. The report also considers the effect of implementing legislation for qualifications in the UK compared with other EU Members States.

5. In line with the light-touch approach deemed to be appropriate for this PIR, the review has been based on evidence obtained from our initial engagement with key stakeholders (e.g. Enforcement Authorities, Official Control Laboratories, Government Chemist, Royal Society of Chemistry and other identified key stakeholders) and tested through wider FSA public consultation which was conducted in February 2018[4] to evidence the effect of the legislation. In particular, to ascertain any unforeseen burdens

[1] http://www.legislation.gov.uk/uksi/2013/264/contents/made
[2] https://www.legislation.gov.uk/ukpga/1990/16/contents
[3] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0625&from=EN
[4] https://beta.food.gov.uk/news-alerts/consultations/post-implementation-review-of-the-food-safety-sampling-qualifications-england-regulations-2013

resulted from their introduction. The findings of this engagement support the FSA view that the regulation fulfilled its intended objective and continues to be fit for purpose.

6. No strong evidence was presented by key stakeholders to suggest that the introduction of the Regulations has led to any negative or unintended consequences. This view was endorsed by the wider stakeholder consultation.

7. Stakeholder evidence supports the FSA view that the 2013 S&Q Regs continue to meet their objectives of enforcing the sampling and qualification requirements for official controls and that the objectives continue to be valid and relevant.

8. Stakeholders considered our estimates on the actual costs of familiarisation to be reasonable and correct and the cost of simplification of the regulations to be beneficial.

9. We recommend that The Food Safety (Sampling & Qualifications) (England) Regulations 2013 are retained and that minor updates to the list of SIs in Schedule 1 are addressed at the next substantive update to this regulation.

1. Introduction and Background

1.1. The Food Safety (Sampling & Qualifications) (England) Regulations 2013 came into effect on 6 April 2013. They revoke, remake and consolidate previous amendments to the Food Safety (Sampling and Qualifications) Regulations 1990 ensuring that the UK implementing legislation is aligned with the requirements of European legislation (such as Regulation (EC) 882/2004 on official controls). The 2013 regulations specify the qualifications necessary to be a public analyst, food analyst or food examiner for the purposes of the Food Safety Act 1990. They also specify the procedure to be followed when a sample has been procured under the Act for analysis or examination.

1.2. The 2013 S&Q Regs support the Food Safety Act 1990 which recommends that authorised officers of local authorities should submit samples for chemical analysis to Public Analysts or for microbiological examinations to Food Examiners whose requisite qualifications are laid down in the 2013 S&Q Regs made by the Secretary of State.

1.3. Consideration has also been given to ensure that qualification requirements to be a food analyst/examiner are not too restrictive and that staff with equivalent qualifications can be considered in accordance with The Food Safety Act 1990, s27(2)(b) and s30(9) where other qualifications may be approved by the Secretary of State. Guidance on a procedure to recognise equivalent qualifications was considered during the 2013 S&Q review. This is now contained within the Food Law Code of Practice (Section 4.6 – Equivalency of Other Qualifications)[5].

[5] Food Law Code of Practice 2017 https://www.food.gov.uk/sites/default/files/food_law_code_of_practice_2017.pdf

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 and set out the conclusions in a report within five years of the measure coming into force.

2.2. This report assesses the actual effect of the 2013 S&Q Regs, by collating evidence from key stakeholders and the wider public and assessing the baseline costs and benefits outlined in the associated impact assessment. This is a light touch review based on the low impact the FSA believes to be associated with the 2013 S&Q Regs. Therefore, the level of evidence sourced 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.

2.4. As a minimum, this report seeks to establish whether:

- ❖ the 2013 S&Q Regs have achieved their original objectives and whether the objectives continue to be relevant;
- ❖ improvement to the 2013 S&Q Regs are necessary;
- ❖ there have there been any unintended consequences brought about by the Regulations;
- ❖ the implementing legislation for qualifications in the UK compared with other EU Members States has affected businesses.

3. Objectives and baseline costs of the 2013 S&Q Regs

3.1. 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 update qualifications and experience required to act as a food examiner which will benefit staff working in this area (Schedule 2); and

- To update sampling provision by excluding those samples taken under Regulations which have their own procedures (Schedule 1); and

- To introduce guidance for the recognition of equivalent qualifications

A further objective from the stakeholder's consultation carried out during the review of the former 1990 S&Q Regulations resulted in provision of a form of Certificate of Analysis and/or Examination that is fit for purpose for official control analysts (Schedule 3).

A summary of stakeholder responses to the informal engagement and formal consultation has been published on the FSA website.

3.2. Baseline costs

The estimated baseline costs and benefits anticipated for the enforcement of the 2013 S&Q Regs were set out in the FSA impact assessment which accompanied the Regulations[6].

3.3. ***Estimated costs of familiarisation***

The distribution of affected parties by type and location is provided in Tables 1a and 1b below:

Table 1a: Public and Private Laboratories (England Only) - original

	No. of Public Analyst Labs ONLY		No. of Food Examiner Labs ONLY		No. of BOTH PA and FE Labs		Total No of Labs
	Public	Private	Public	Private	Public	Private	
England	4	1	5	2	3	2	17

Table 1b: Pubic Analysts and Food Examiners (England Only) - original

	No. of PAs employed by labs (1)		No. of FEs employed by labs (2)		No. of Local Authorities
	Public	Private	Public	Private	
England	12	8	25	8	354

(1) The number of PAs is based on APA data that indicates that 20 PAs are currently employed in England.

(2) The number of food examiners is an estimate based on two examiners being employed by each lab, with the exception of the HPA (now PHE) labs in England for which we had data. This is a central estimate based on a max of 3 and a min of 1 FE employed per lab.

It should be noted that these tables were updated post stakeholder consultation in 2012 to ensure that the data used were the most up to date that the FSA has available. The laboratory landscape

[6] http://www.legislation.gov.uk/uksi/2013/264/impacts

can change frequently and as such this information was guaranteed to be correct only at time of publication (correct as at August 2012).

Estimated Costs to Business (Private Labs)

It was envisaged that *businesses* (private laboratories including Public Analyst (PA) labs and Food Examiner (FE) labs) faced one-off costs associated with reading and becoming familiar with the new legislation. For private laboratories, we assumed that on average 2 FEs are employed per business (a maximum of 3 and a minimum of 1). We estimated that familiarisation took approximately 30mins for each FE and PA.

Using an ASHE wage rate[7] of £20.18 for a science professional, up-rating by 30% to account of overheads in line with Standard Cost Model (SCM) methodology and multiplying by the total number of businesses, total costs for England to all businesses was £325 (present value (PV) best estimate).

Estimated Costs to Local Authorities

Local Authorities who appoint FEs and PAs would also need to become familiar with the new updated S&Q legislation. The FSA estimated that this would have taken approximately 30mins for each LA, assuming that one Environmental Health Officer (EHO) per LA would familiarise him/herself. Using an ASHE median wage rate of £18.97 for an EHO and up-rating by 30% to account of overheads, it was estimated that the cost to each LA would equate to £12.33. Multiplying by the total number of LAs, total costs in England of approximately £4,365 (best estimate (PV)) were estimated. The FSA estimated that in addition to the 30mins required to familiarise themselves, there would be an additional cost to the LA in terms of time spent disseminating the information to other colleagues. It was estimated that this is likely to take a further 30mins increasing total familiarisation costs of the S&Q Regs to £8,730. In addition to familiarisation costs associated with the new S&Q Regs, LAs would also have been required to familiarise themselves with the new guidance on equivalent qualifications. It was anticipated, using the same methodology as above, that this will take a further 30mins and as such cost an additional £4,365 in England. A total familiarisation cost of £13,095 to Local Authorities in England was estimated.

Estimated Cost to Public laboratories

Public laboratories also faced costs of familiarisation as a result of the introduction of this new legislation. As with private labs it was assumed that it will be the FEs and PAs employed by the labs that will need to familiarise themselves. The FSA estimated that this would take approximately 30mins for each FE and PA employed by a public lab. The data for the number of FEs and PAs employed by laboratories came from various sources – these are outlined in the Impact Assessment[8]. Using an ASHE wage rate of £20.18 for a

[7] Please note that these figures have been updated to reflect the latest median wage rate data from the 2016 Annual Survey of Hours and Earnings (ASHE), Office for National Statistics (ONS) - https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14

[8] http://www.legislation.gov.uk/uksi/2013/264/impacts

science professional and up-rating by 30% to account of overheads in line with SCM methodology, a total cost for English public labs is approximately £1,093 (best estimate).

Summary of Estimated Costs

Table 2 presents a summary of the estimated costs set out in the original impact assessment with respect to incremental one-off familiarisation costs associated with updates to the existing legislation. In order for one-off transition costs to be compared on an equivalent basis across policies spanning different time periods, it was necessary to 'equivalently annualise' costs (EAC) using a standard formula. Under Standard HMT Green Book guidance[9], a discount rate of 3.5% was used[10].

Table 2: Summary of Costs (England Only)

COSTS	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 5 (£s)	Year 6 (£s)	Year 7 (£s)	Year 8 (£s)	Year 9 (£s)	Total	Total NPV	EAC
Businesses	38	38	38	38	38	38	38	38	38	38	378	325	38
LA	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	15,209	13,095	1,521
Public labs	127	127	127	127	127	127	127	127	127	127	1,270	1,093	127
Total costs	1,686	1,686	1,686	1,686	1,686	1,686	1,686	1,686	1,686	1,686	16,857	16,857	1,958

3.4. ***Actual costs of familiarisation***

The distribution of affected parties by type and location is provided in Tables 3a and 3b below based on 2018 information:

Table 3a: Public and Private Laboratories (England Only) - updated

	No. of Public Analyst Labs ONLY		No. of Food Examiner Labs ONLY		No. of BOTH PA and FE Labs		Total No of Labs
	Public	Private	Public	Private	Public	Private	
England	3	0	3	0	2	1	9

Table 3b: Pubic Analysts and Food Examiners (England Only) - updated

[9] http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

[10] EANCB = PVNCB/a_{tr}, where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

	No. of PAs employed by labs (1)		No. of FEs employed by labs (2)		No. of Local Authorities
	Public	Private	Public	Private	
England	10	7	18	1	354

(1) The number of PAs is based on APA data that indicates that 17 PAs are currently employed in England. Some of the PAs working in public labs also act as FEs.

(2) The number of food examiners working in Public labs is based on PHE data, for Private lab it is based on PASS data.

The number of laboratories in England has changed in the 4 years since the original impact assessment was done. There are now 8 public laboratories with 28 official control analysts and 1 private laboratory with 8 official control analysts.

Actual Cost to Business (Private Labs)

Changes to the laboratory landscape as per tables 3a and 3b, changes total costs to business. Private laboratories including Public Analyst (PA) and Food Examiner (FE) labs face one-off familiarisation costs for analysts. Familiarisation takes approximately 30mins for each FE and PA. Using an ASHE wage rate[11] of £20.18 for a science professional, up-rating by 30% to account of overheads in line with Standard Cost Model (SCM) methodology and multiplying by the total number of businesses (8 analysts) total costs for England to all businesses is £236 (best estimate).

Actual Cost to Local Authorities

Costs to Local Authorities in England remain unchanged with a total familiarisation cost of £13,095.

Actual Cost to Public laboratories

As with private labs there were changes in the number of FEs and PAs employed by the labs that will need to familiarise themselves as per tables 3a and 3b. This changes the total costs to public labs. Familiarisation takes approximately 30mins for each FE and PA employed by a public lab. Using an ASHE wage rate of £20.18 for a science professional and up-rating by 30% to account of overheads in line with SCM methodology, a total cost for English public labs is approximately £828 (best estimate).

Summary of Actual Costs

Table 4 presents a summary of actual costs. In order for one-off transition costs to be compared on an equivalent basis across policies spanning different time periods, it was necessary to 'equivalently annualise' costs (EAC) using a standard formula. Under Standard HMT Green Book guidance[12], a discount rate of 3.5% was used[13].

[11] Please note that these figures have been updated to reflect the latest median wage rate data from the 2016 Annual Survey of Hours and Earnings (ASHE), Office for National Statistics (ONS) - https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14

[12] http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

[13] EANCB = PVNCB/a_{tr}, where a_{tr} is the annuity rate given by:

Table 4: Summary of Actual Costs (England only)

COSTS	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 5 (£s)	Year 6 (£s)	Year 7 (£s)	Year 8 (£s)	Year 9 (£s)	Total Costs (£s)	Total NPV (£s)
Businesses	27	27	27	27	27	27	27	27	27	27	275	236
LA	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	15,209	13,091
Public labs	96	96	96	96	96	96	96	96	96	96	961	828
TOTAL	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**16,445**	**14,155**

Consultation Response to Q1
All stakeholders considered our estimates on the actual costs of familiarisation to be reasonable and correct.

3.5. ***Estimated simplification benefits of the 2013 Regulations***

Estimated Benefits to Business (Private Labs)

It was envisaged that businesses would have benefited from increased clarity of the updated Regulations. Any manager responsible for recruiting new FEs would have been able to do so at a lower time premium than previously. This was estimated to be approximately 30mins. Based on a conservative assumption, we estimated that up to 2 new FEs in England would be appointed each year. Benefits were estimated by multiplying the 30mins time saving in recruitment by the number of new entrants and the ASHE median wage rate[14] for a HR/Business manager of £23.68 uprated to £30.78.

Estimated Benefits to Public Labs

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

[14] Please note that these figures have been updated to reflect the latest median wage rate data from the 2016 Annual Survey of Hours and Earnings (ASHE), Office for National Statistics (ONS) - https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14

We also assumed that *public labs* would benefit from changes to the Regulations in the same way as private labs, from reduced recruitment costs. Any manager responsible for recruiting new FEs would be able to do so at a lower time premium than previously. This was estimated to be approximately 30mins. The FSA made an assumption that up to 2 new FEs in England will be appointed each year. Benefits were estimated by multiplying the 30mins time saving for recruitment of each new entrant, by the number of new entrants and the ASHE median wage rate of a HR manager £23.68 uprated to £30.78

Estimated Benefits to Local Authorities

Local authorities would also realise benefits associated with simplification of the S&Q Regs. Any new EHO/TSO officers will be able to benefit from the simplified Regulations. We estimated that on average one person from each affected LA per year will benefit from the simplified legislation, saving a time premium of 30mins per LA per annum. Using an ASHE wage rate of £18.97 uprated by 30% to account for overheads in line with SCM methodology results is an annual saving of approximately £ £4,365for England.

In addition, there would have been benefits to LAs from the introduction of the new guidance on equivalent qualifications. The guidance would simplify the process for LAs to appoint a PA or FE with equivalent qualification in the future by providing a clear procedure for doing this. The FSA conservatively assumed that it would save a day's work (7 hours) for two LAs in England; equivalent to an annual saving of £345. Total annual benefits for LAs was therefore estimated at approximately £4,710. Table 5 presents a summary of the total estimated benefits associated with simplification of the 2013 S&Q Regs.

Table 5: Summary of Simplification Benefits (England Only)

BENEFITS	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 5 (£s)	Year 6 (£s)	Year 7 (£s)	Year 8 (£s)	Year 9 (£s)	Total Costs (£s)	Total NPV (£s)
Businesses (private labs)	31	31	31	31	31	31	31	31	31	31	308	265
LA	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	47,103	40,544
Public labs	31	31	31	31	31	31	31	31	31	31	308	265
TOTAL	**4,772**	**4,772**	**4,772**	**4,772**	**4,772**	**4,772**	**4,772**	**4,772**	**4,772**	**4,772**	**47,718**	**41,074**

3.6. ***Actual simplification benefits***

The recruitment of Pubic Analysts and Food Examiners is provided in Table 6 below based on 2018 information:

Table 6: Summary of comparison of Pubic Analysts and Food Examiners (England Only)

	No. of PAs/FEs employed in labs PUBLIC		No. of PAs/FEs employed in lab PRIVATE	
England	PA	FE	PA	FE
2013	12	25	5	8
2018	10	18	7	1
New appointments since 2013	1*	3**	1*	0
Average No. of new recruits per year◆	0	0	0	0

** Information on new PAs based on correspondence with APA and PASS labs. **Information based on correspondence with PHE.*
◆Rounded to 0 decimal places.

Actual Benefits to Business (Private Labs)

The FSA had previously made an assumption that up to 2 new FEs in England will be appointed each year. However, new evidence informs us that we should expect to see on average 0 new recruits per year. This means businesses may not have realised a direct monetised benefit from reduced simplification costs.

Businesses will however benefit from the associated clarity of understanding the legislative requirements for FE appointments. FEs and PAs will also continue realise benefits in their educational training during the qualification period than when they are employed by the business.

Actual Benefits to Public Labs

As with private labs, new evidence suggests that less than one new FE and PA are recruited on average per year by public labs; meaning they may not have realised a direct monetised benefit from reduced simplification costs. However, public labs will benefit from the associated clarity of understanding the legislative requirements for FE appointments. FEs and PAs will also continue realise benefits in their educational training during the qualification period than when they are employed by the business.

Actual Benefits to Local Authorities

Local authorities would continue to realise benefits associated with simplification of the S&Q Regs as identified and estimated in the Impact Assessment, with total annual benefits for LAs estimated at approximately £4,710 (see table 7).

BENEFITS	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 5 (£s)	Year 6 (£s)	Year 7 (£s)	Year 8 (£s)	Year 9 (£s)	Total Costs (£s)	Total NPV (£s)
Businesses (private labs)	0	0	0	0	0	0	0	0	0	0	0	0
LA	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	47,103	40,544

Public labs	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL BENEFITS	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	47,103	40,544

Table 7: Actual Benefits

Summary of Actual Costs and Benefits (England Only)

In order for one-off transition costs and benefits to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs using a standard formula[15]. Under Standard HMT Green Book[16] guidance a discount rate of 3.5% is used. Table 8 below provides details of EACs by sector and annual benefits.

Consultation response to Q2
Majority of the stakeholders considered the simplification in updating the regulations to be beneficial.

[15] EANCB = PVNCB/a_{tr}, Where a_{tr} is the annuity rate given by:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^{j} \left(\frac{1}{1+r_i} \right)$$

PVNCB is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

[16] http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 5 (£s)	Year 6 (£s)	Year 7 (£s)	Year 8 (£s)	Year 9 (£s)	Total Costs (£s)	Total NPV (£s)
COSTS												
Businesses (private labs)	27	27	27	27	27	27	27	27	27	27	275	236
LA	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	1,521	15,209	13,091
Public labs	96	96	96	96	96	96	96	96	96	96	961	827
Total costs	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**1,644**	**16,445**	**14,155**
BENEFITS												
Businesses	0	0	0	0	0	0	0	0	0	0	0	0
LA	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	4,710	47,103	40,544
Public labs	0	0	0	0	0	0	0	0	0	0	0	0
Total benefits	**4,710**	**4,710**	**4,710**	**4,710**	**4,710**	**4,710**	**4,710**	**4,710**	**4,710**	**4,710**	**47,103**	**40,544**
NET COSTS/BENEFITS												
Businesses	27	27	27	27	27	27	27	27	27	27	275	276
LA	-3,189	-3,189	-3,189	-3,189	-3,189	-3,189	-3,189	-3,189	-3,189	-3,189	-31,893	-32,070
Public labs	96	96	£96	96	96	96	96	96	96	96	961	967
TOTAL net costs	**-3,066**	**-3,066**	**-3,066**	**-3,066**	**-3,066**	**-3,066**	**-3,066**	**-3,066**	**-3,066**	**-3,066**	**-30,658**	**-30,827**

Table 8 – Summary of Actual Cost and Benefits

4. Assessment of the objectives of the 2013 S&Q Regs

Objective 1 – To revoke, remake and consolidate previous amendments that were still in force into one consolidated SI

4.1. The 1990 S&Q Regulations were revoked in their entirety and replaced with a consolidated SI which brought together all previous relevant amendments that were currently in force at the time. The consequence of this was that the S&Q Regulations were simplified and brought up to date thus enabling them to be easily followed by users in both private and public-sector laboratories and by local enforcement officers.

4.2. Stakeholders informed us that the regulations remain valid and relevant and the best option to achieve this objective. They also noted that there have been no unintended consequences brought about by these regulations.

Objective 2 – To update qualifications and experience required to act as a food examiner which will benefit staff working in this area (Schedule 2)

4.3. There were some aspects of the Food Examiner qualifications and experience within Schedule 2 (Part I & II) of the original 1990 S&Q Regulations which were obsolete. This information was removed and updated within the 2013 S&Q Regs.

4.4. Stakeholders informed us that the 2013 S&Q Regs have achieved their original objectives and remain valid and relevant to ensure that Food Examiners have appropriate qualifications and experience to meet this objective.

4.5. They agreed that regulation is the best option to achieve this objective and an important part of the framework of food examination, ensuring that sufficiently qualified and competent Food Examiners are in place for official control testing. Deregulation for this requirement would not be appropriate.

4.6. Stakeholders commented that the regulations were thoroughly consulted upon before being made and have thrown up no pressing issues that require improvement in terms of Food Examiner qualifications. They also noted that there have been no unintended consequences brought about by the Regulations.

4.7. The Royal Society of Chemistry, who are the examination board for the Mastership of Chemical Analysis qualification, affirmed that this qualification provides the knowledge necessary to act as a Food Examiner and ensures that it remains up-to-date with current legislative requirement.

Objective 3 – To update sampling provision by excluding those samples taken under Regulations which have their own procedures (Schedule 1)

4.8. Some of the regulations on sampling provisions within Schedule 1 of the original 1990 S&Q Regulations were found to be obsolete. This information was removed and updated within the 2013 S&Q Regs.

4.9. The stakeholders that we contacted informed us that the regulations remain valid and relevant and the best option to achieve this objective. They also state that there have been no unintended consequences brought about by these regulations.

4.10. Stakeholders considered that some improvement to the regulations are necessary. In particular, references to the instruments in Schedule 1. For example, reference to Contaminants in Food (England) 2013 Regulations have been updated and will need to be reflected in the 2013 S&Q Regs.

4.11. Although not related to Schedule 1, stakeholders (Public Analysts and local authorities) also considered the sampling provisions in Regulation 7 of the 2013 S&Q Regs needed improving. In particular, the practicality of division of the sample into 3 parts that has been procured under non-typical conditions. For example, when the contaminant is unevenly distributed e.g. allergens, mycotoxins or when purchasing samples online. It should be noted that the wording '*The authorised officer who has procured a sample…shall cause the sample to be divided into three parts*' at Regulation 7(1) of the 2013 S&Q Regs 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.

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

4.12. During the 2012 review of the S&Q Regs there was a requirement to introduce guidance on the procedure for the recognition of equivalent qualifications for official control analysts. This was to ensure that qualification requirements are not too restrictive and that analysts with equivalent qualifications can be considered.

4.13. This requirement was introduced within the Food Law Code of Practice (section 4.6 – Equivalency of other qualifications) which states that "*The equivalence of non-UK qualifications can be determined by the United Kingdom National Academic Recognition Information Centre (UK NARIC) for the purposes of the Mutual Recognition Directive (EC) 2005/36 on the recognition of professional qualifications.*" In such circumstances, Competent Authorities should make enquiries with the relevant professional and awarding bodies before confirming an appointment.

4.14. Stakeholders were generally satisfied with the guidance in the Code of Practice stating that it is sufficiently suitable to address the requirement, as an open document it is regularly consulted upon before periodic revision and is easily accessible.

4.15. One stakeholder noted that the guidance within the Food Law Code of Practice could be vulnerable to legal challenge by defendants in criminal proceedings. However, the risk of a successful legal challenge to the guidance is low given that there is 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.

4.16. The Code of Practice requires the competent authority to consult relevant professional and awarding bodies before confirming appointments based on equivalency of qualification. A stakeholder noted that an independent third party would need to have an oversight and audit the decisions made by the professional bodies to ensure fairness and consistency. Any unreasonable fee charges or decisions made by these 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.

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

4.17. The official Certificate of Analysis in the former 1990 S&Q Regulations required updating to allow staff more flexibility in completing the form. This was updated in 2013 and located within Schedule 3 of the Regulations.

4.18. The stakeholders that we contacted informed us that Schedule 3 of the Regulations remains valid and relevant and the best option to achieve this objective. They also supported the view that there have been no unintended consequences introduced by these regulations.

4.19. Stakeholders commented that the prescribed uniform reporting format ensures the required information for recipient (enforcement, courts, and businesses) to reach equitable conclusion on subject matter. Stakeholders also noted that the revised form in the 2013 S&Q Regulations improved upon the 1990 Regulations and introduced a scope of variation

which gives sufficient and reasonable amount of flexibility to staff who need to complete the formal Certificate of Analysis/Examination.

5. How does the UK's implementation compare with that in other EU member states in terms of costs to business?

5.1. The S&Q Reg 2013 give effect to certain requirements of European Regulation (EC) No. 882/2004 (currently replaced by Reg (EU) 2017/625), such as ensuring there are sufficient numbers of suitably qualified and experienced staff to carry out official control work. In accordance with Article 37 (4) of the Regulation (EC) 2017/625, any person working in an official control laboratory who is responsible for the interpretation and verification of results is required to be suitably qualified in terms of training and experience under ISO/IEC 17025/2017. This applies to all staff working on official controls in official control laboratories throughout the EU Member States therefore costs based on qualification requirements should relatively be relatively at a same level throughout EU Member States. Further understanding of legislative requirements in other EU Member States continues to be explored.

5.2. Although they give effect to aspects of EU legislation, the S&Q Regulations are ultimately made under section 27 of the UK Food Safety Act 1990. The approach adopted by the UK, which pre-dates the introduction of harmonised EU food law, may be unique amongst Member States and is recognised by stakeholders 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 have made clear in their 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 Regulations met its objective of prescribing suitable qualifications and experience required to act as a Food Examiner (Schedule 2). Stakeholders unanimously agreed that the requirement for qualifications and training for Food Examiners remain valid and relevant.

6.2. The 2013 S&Q Regulations met its objective of providing up to date provision when taking samples under the Food Safety Act 1990 by excluding those samples taken under Regulations which have their own procedures (Schedule 1). Stakeholders agreed that some regulations within Schedule 1 that have become out of date since the publication of the 2013 S&Q Regs and require updating.

6.3. There were concerns that the sampling provisions do not provide for the division of samples into 3 parts when taken under non-typical conditions – however it should be noted that the provision made in Reg 7(1) of the 2013 S&Q Regs allows sampling officers to carry out homogenisation and division of inhomogeneous samples at the public analyst laboratory.

6.4. The 2013 S&Q Regulations met its objective of providing a form of the Certificate of Analysis and/or Examination that is fit for purpose. Staff working in official controls and local enforcement authorities informed us that the revised form provided sufficient flexibility and was an improvement on the original certificate.

6.5. The 2013 S&Q Regulations met its objective of revoking and consolidating previous amendments into one statutory instrument thus simplifying these regulations. Stakeholders informed us that the consolidation had simplified the regulations and achieved its intended objective by adding clarity to the 1990 regulations.

6.6. Guidance on the procedure for the recognition of equivalent qualifications for official control analysts introduced in the Food Law Code of Practice was generally found to be satisfactory, but could be vulnerable to legal challenge. However, the risk of a successful challenge is low given that there is no obvious ground to suggest that the content of the guidance exceeds what might reasonably be adopted by the Secretary of State under relevant legislation. In addition, any unreasonable fees or decisions made by professional bodies that award the qualifications 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.

6.7. Changes to the laboratory landscape has had a marginal impact on changes to total cost and benefit estimates to business (private labs), public labs and local authorities who use these regulations. Overall, we have not identified any evidence to suggests the 2013 S&Q Regulations have led to any negative or unintended consequences that impact on stakeholders.

7. Recommendations

7.1. There is a general agreement by all stakeholders, which support the FSA view, that the Food Safety (Sampling & Qualifications) (England) Regulations 2013 continue to meet their stated objectives and that the objectives continue to be relevant and valid.

7.2. We recommend that The Food Safety (Sampling & Qualifications) (England) Regulations 2013 are retained and that minor updates to the list of SIs in Schedule 1 are addressed at the next substantive update to this regulation.