

<p>Title: Post Implementation Review of the Food Safety (Sampling and Qualifications) (England) Regulations</p> <p>Lead department: Food Standards Agency</p> <p>Other departments or agencies: DHSC, FSA</p> <p>Contact for enquiries: Oliver.Severn@food.gov.uk</p>	Post Implementation Review
	Date: 26/11/2025
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 06/04/2013
	Recommendation: Keep

1. What were the policy objectives of the measure? (Maximum 5 lines)

To revoke and remake the Food Safety (Sampling and Qualifications) (England) Regulations 1990 into a new simplified consolidated statutory instrument (SI). To update provisions and procedures when taking samples, including qualifications and experience required to be a Food Examiner. To introduce guidance for the recognition of equivalent qualifications. To provide a form of Certificate of Analysis (CoA) that is fit for purpose for official control analysts.

2. What evidence has informed the PIR? (Maximum 5 lines)

Evidence has been collated of the views and experiences of key stakeholders, an assessment made of the baseline costs and benefits outlined in the associated impact assessment, and a 2018 PIR. This light touch assessment is based on the low impact identified in the regulatory impact assessment expected to arise from the change in Regulations. The level of evidence sourced is commensurate to the scale of the Regulations and associated impacts

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

All stakeholders agreed that the Regs continue to meet their stated objectives and remain relevant and valid. To future proof the Regs, and support mutual recognition with Free Trade Agreement countries, the FSA proposes to amend the Regs at the next substantive review to enable the RSC and FSA to recognise qualifications that they deem equivalent to the MChemA to practice as a Public Analyst and to address minor updates to the list of SIs in Schedule 1.

4. What were the original assumptions?(Maximum 5 lines)

Benefits to stakeholders through simplified and consolidated Regulations include reduced recruitment time for laboratory managers by approximately 30 minutes per hire, a 30-minute familiarisation saving per LA per annum, a one-off combined 14 hour saving for 2 LAs through the simplified appointed process and a one-off standard familiarisation cost to LAs and laboratories from the new Regulations.

5. Were there any unintended consequences? (Maximum 5 lines)

No evidence has been provided by stakeholders regarding negative or unintended consequences as a result of the Regulations.

6. Has the evidence identified any opportunities for reducing the burden on business?

(Maximum 5 lines)

Our analysis concludes that the Regulations continue to deliver reduced administrative burdens. 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.

7. 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? (Maximum 5 lines)

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. This unique approach pre-dates the introduction of harmonised EU food law, but key stakeholders made it clear in their 2018 and 2023 consultations that this is the preferred option as it provides clarity during legal scrutiny and does not present any disadvantages to businesses in the UK.

Food Standards Agency Chair Sign-off for Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed:



Date: 4 December 2025

POST IMPLEMENTATION REVIEW

THE FOOD SAFETY (SAMPLING AND QUALIFICATIONS) (ENGLAND) REGULATIONS 2013

Executive Summary

1. The Food Safety (Sampling and Qualifications) (England) Regulations 2013¹ (“2013 S&Q Regs”) specify the qualifications necessary to be a Public Analyst (referred to as either a Public Analyst or Food Analyst in legislation) or Food Examiner for the purposes of the Food Safety Act 1990² (“Act”). 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 2013 S&Q Regs revoked and remade former sampling and qualification regulations into one consolidated SI.
2. The 2013 S&Q Regs were, in part, made under section 27 of the Food Safety Act 1990² and support the execution of the official controls requirements contained in assimilated Regulation (EU) 2017/625³. This routine Post Implementation Review (PIR) fulfils the statutory review requirements of the 2013 S&Q Regs
3. This report on the post implementation review (PIR) assesses the continued effectiveness of the 2013 S&Q Regs in England since the 2018 PIR⁴, 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 2013 S&Q Regs, 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 2013 S&Q Regs 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 Food Standards Agency 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, as well as a public consultation. Stakeholder views have been analysed in comparison 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 to the 2013 S&Q Regs at the next substantive update.
 - No strong evidence has been presented to suggest that the 2013 S&Q Regs 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 was further tested through wider FSA public consultation, the findings of which are reflected in this report.

1. Introduction and Background

- 1.1. The UK exited the EU on 31 January 2020 and, subsequently, directly applicable EU feed law became retained EU law (which is now known as assimilated law). The 2013 S&Q Regs assessed

¹ [Food Safety \(Sampling and Qualifications\) \(England\) Regulations 2013](#) (SI 2013/264)

² [Food Safety Act 1990, c.16](#)

³ [Regulation \(EU\) 2017/625 of the European Parliament and of the Council](#)

⁴ [2018 Post Implementation Review of the 2013 S&Q Regs](#)

in this routine PIR, continue to provide for the execution of powers and enforcement in England of assimilated 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 assimilated Regulation (EU) 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 (regs. 4 and 5, and Schedule 2). They prohibit specified persons from carrying out analyses or examinations (reg. 6), and also specify the procedure to be followed when a sample has been procured under the Act for analysis or examination (regs. 7, 8 and 9).
- 1.3. The 2013 S&Q Regs support the Food Safety Act 1990 which details how authorised officers of Food 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 assimilated Regulation (EU) 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 Practice⁵ gives instructions that Local Authorities must consider when enforcing food law. The Food Law Code of Practice is issued under section 40(1) of the Food Safety Act 1990 and in exercise of their functions, Local Authorities are required to have regard to any relevant provision of the code and must comply with any direction requiring them to take any specified steps in order to comply with the code. 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. Other qualifications can be considered in accordance with the Food Safety Act 1990, s.27(2)(b) for Public Analysts and s30(9) for Food Examiners, if 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).

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 regulations coming into force and every five years subsequently.

⁵ [Food law code of practice \(England\)](#) June 2023

- 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 the 2013 S&Q Regulations.
- 2.3. The statutory requirement to undertake and report on the findings of PIRs relates to England only. 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 five years (including EU exit, Covid-19, recent laboratory closures and the review of the MChemA qualification examination);
 - if improvements to the 2013 S&Q Regs are necessary;
 - if there is any evidence of unintended consequences resulting from the 2013 S&Q Regs; and,
 - how the UK's legislative approach compares to other countries, including EU member states.

3. **Assessment of the Objectives of the 2013 S&Q Regs**

Objectives

The policy objectives and intended effects of the 2013 S&Q Regs 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 the 2013 S&Q Regs 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).

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

- 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 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. While the consultation showed there to be no equivalent to the MChemA qualification, to future proof the legislation to provide flexibility in recognising any new qualifications that are equivalent, it is proposed that the 2013 S&Q Regs are amended so that the qualification requirements to be a Public Analyst include the MChemA and qualifications recognised as being equivalent to the MChemA by the Royal Society of Chemistry and FSA in Free Trade Agreement countries.
- 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 for microbiology 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, food labelling, competency to draw up CoA, microscopy or physical testing without the need for the whole MChemA to be a Public Analyst.
- 3.11 In contrast, another stakeholder in the public consultation argued that the qualification requirements to be a Public Analyst cannot be compared to that of the Food Examiner for several reasons; there are a much higher number of chemical techniques required in food chemistry compared to microbiology; Public Analysts need to refer to a large number of regulations to carry out their role while a Food Examiner only needs to compare their results to a single set of guidelines; and Public Analysts also have food labelling within their remit but Food Examiners do not. In addition, it was believed that samples cannot fall neatly into different testing areas and that competency to perform the analysis does not mean competency to draw up the CoA, especially where comparison to labelling regulations are required.
- 3.12 The public consultation sought views in relation to specifying the process of Local Authorities appointing Food Examiners and Public Analysts. One stakeholder clarified that Food Examiners are not appointed, noting that it may be useful to have a provision for this. Another stakeholder expressed the importance of continuing to specify the process by which Local Authorities appoint Public Analysts. This is prescribed in the Food Safety Act 1990 and a stakeholder considered these arrangements to be sufficiently robust. As such, the FSA agrees that a provision should be made for appointing Food Examiners and the Food Law Code of Practice could be a potential way to do this.
- 3.13 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). The FSA have not been made aware of any issues concerning recognising equivalent qualifications following its inclusion into the Food Law Practice Guidance (England).

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

- 3.14 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.
- 3.15 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, which is to provide the result of the analysis (the only document which is sufficient evidence of the facts stated in it for a court of law). 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. Views were sought on this in the public consultation and a stakeholder agreed that alternative routes to providing the FSA and Local Authorities with the information needed is a better option than impacting the CoA and its suitability in court.
- 3.16 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' or removed completely. While the laboratory of analysis would be useful information to have on the CoA, this can be made available upon request. In addition, the laboratory of employment would not necessarily be the same laboratory as where analysis is carried out, potentially creating confusion. Therefore, making changes to the template is not believed to be necessary.

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 June 2018 and June 2023, the average rate for appointing newly qualified Food Examiners and Public Analysts in England per annum remains at zero. Three laboratories have closed over this period, but not as a result of this 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 333⁶. Using the ASHE (2022) hourly wage rate for an EHO of £21.04⁷ (£25.67 including a 22% uplift to account for overheads⁸); 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.
- 4.4 No evidence was provided to counter the FSA's analysis of the impact of the 2013 S&Q Regs although it has been noted that minimal changes will have a beneficially small familiarisation time and costs for Public Analyst Official Laboratories.

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 that are now assimilated law, or how other countries have implemented international agreements.

- 5.1. Although the 2013 S&Q Regs give effect to certain requirements of assimilated Regulation (EU) 2017/625, such as ensuring there are sufficient numbers of suitably qualified and experienced

⁶ [Local government structure and elections - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

⁷ [Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics](#)

⁸ Consistent with Regulatory Policy Committee ([RPC](#)) [short guidance note - Implementation costs August 2019](#)

staff to carry out official control work, the 2013 S&Q Regs were made under section 27 of the 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 to interpret results and provide an opinion on compliance with regulations. 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.

- 5.2. In the public consultation, a stakeholder highlighted how the UK legal system is different to most other countries, with requirements for a Public Analyst which carries a high cost. This stakeholder was however of the opinion that cumulative costs of splitting this function across multiple roles would be more expensive due to the costs and time required for communication between parties including solicitors, therefore the UK approach generates cost savings.
- 5.3. The assimilated Regulation (EU) 2017/625 includes the role, purpose and process for designating Official Laboratories and National Reference Laboratories (NRLs). A stakeholder commented that there is currently no provision for NRLs in UK legislation such as the 2013 S&Q Regs or Food Safety Act 1990 for testing samples for enforcement purposes, which is in contrast to EU member states where NRLs are used for testing for enforcement purposes or to act as an impartial referee in a testing dispute. While the importance of including NRLs in UK legislation is recognised through assimilated Regulation (EU) 2017/625, the FSA believes that an alternative legislative review would be the appropriate route to address this issue and clarify the operations of the NRLs with regards to ensuring food safety.

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. The Food Law Code of Practice or The Food Law Practice Guidance (England) will be considered for the alternative approach to provide guidance for CoAs. Similarly, the Food Law Code of Practice will be considered for providing further clarification on the process of Local Authorities appointing Food Examiners.
- 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. Additionally, the FSA proposes to consider an amendment at the next substantive update to this regulation, which allows for the qualification requirements of a Public Analyst to include the MChemA and qualifications recognised as being equivalent to the MChemA by the Royal Society of Chemistry and FSA in Free Trade Agreement countries.
- 6.4. No stakeholder provided any evidence to suggest that the qualifications to be a Food Examiner were not fit for purpose, however in the initial consultation, it was raised that there is a discrepancy between the

Public Analyst and Food Examiner qualification requirements. The public consultation highlighted that the vast number of potential test types and competency to draw up a CoA, which may involve comparison to a large number of different regulations, is justification for this discrepancy. 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). The FSA have not been made aware of any issues concerning recognising equivalent qualifications following its inclusion into the Food Law Practice Guidance (England).

- 6.5. The FSA is not aware of any EU Member States or third countries introducing legislative requirements on qualifications/experience for analysts to interpret results and provide an opinion on compliance with regulations. While a unique approach to the UK, this approach does not present any disadvantages to UK businesses.
- 6.6. Minor technical 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. Recommendations

- 7.1 There is general agreement by all stakeholders, which support the FSA view, that 2013 S&Q Regs continue to meet their stated objectives and that the objectives continue to be relevant and valid.
- 7.2 We recommend that an amendment is considered at the next substantive update to this regulation, which allows for the qualification requirements to be a Public Analyst to include the MChemA and qualifications recognised as being equivalent to the MChemA by the Royal Society of Chemistry and FSA in Free Trade Agreement countries.
- 7.3 We recommend that minor updates to the list of SIs in Schedule 1 are addressed at the next substantive update to this regulation.
- 7.4 We recommend that further clarification on the process of Local Authorities appointing Food Examiners is included in the Food Law Code of Practice.

Summary of stakeholder responses

Introduction

This consultation was issued on 25 May 2023 and closed on 23 June 2023.

As part of the Government's commitment to review provisions in secondary legislation that regulate businesses, the Food Safety (Sampling and Qualifications) (England) 2013 ("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 regulations coming into force and every five years subsequently. The Post Implementation Review (PIR) 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. The initial FSA assessment had been based on evidence obtained from targeted engagement with key stakeholders including Enforcement Authorities, Official Laboratories, the Government Chemist, Royal Society of Chemistry (RSC) and other identified key stakeholders. Stakeholder views had 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 2013 S&Q Regs continue to fulfil their intended objectives and remain fit for purpose following the 2018 PIR. This view was then tested through a wider FSA public consultation to formulate the final report.

The FSA is grateful to those stakeholders who responded and sets out a summary of the responses in the table below.

The key proposals on which the consultation sought views were in relation to:

- 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.
- 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).
- Identifying any specific challenges with the Certificate of Analysis (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.
- The analysis of the impact of the 2013 S&Q Regs in the PIR report (Section 4 - Costs and Benefits).
- 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.

The Food Standards Agency's considered responses to stakeholders' comments are given in the last column of the table. A summary of changes to the original proposal(s) resulting from stakeholder comments is set out in the final table.

A list of stakeholders who responded can be found at the end of the document.

Summary of substantive comments

Respondent: Minton Treharne and Davies Ltd

Respondent Comment	FSA Response
<p>1. It should be a legal requirement such as the S&Q Regs, so unambiguous and clearly stated what the Local Authority (LA) is required to do, together with the process. Possibly reiterate, it is the person, not their employee that is appointed; to prevent confusion.</p> <p>2. By having the MChemA qualification, those with it are able to provide the required evidence for court, via LA in the Formal Certificate of Analysis (CoA) and as required evidence in person to the court; so it is still a fit qualification for primary purpose. The recognition of other equivalent qualification has been a well-accepted option and should continue to be so. An important issue is what the holder is required to do. They are an expert of the court in this area of food and feeding stuff analysis, technical interpretation/review (including if safe and/or authenticity) and then opinion as to if compliant with UK law in such matters. The areas and number of potential test types encompassed by this is large and hence the time and effort required to obtain the qualification and to continue to maintain competence. Often the reporting is not just with reference to a numerical limit which one side of it is a Pass (compliant) and the other Fail (non-compliant), as is the norm for some other areas such as say Food Examiner. Rather it is more subjective and numerous factors have to be accounted for come to the outcome and report on the CoA. For this reason, the qualification is necessarily more demanding to be able to provide this expert output demanded by the courts. The proof is the fact that the courts still rely on and trust Public Analyst CoAs. The qualification must be such that the holder is able to provide the expert information required by LA officer and the court.</p> <p>The decline in numbers sitting and/or passing the MChemA is often cited as evidence it is too demanding and deferring future candidates, with low numbers endangering the profession. Currently, with the shrinking of the Public Analyst Laboratory service</p>	<p>It is noted that the CoA can only be completed by the Public Analyst as these are the only individuals who have developed the high level of skill and competency required to pass the MChemA, a significantly demanding qualification which demands ability to provide expert opinion in a court of law. Including additional information on the CoA would need to be handled with care and preferably provided to the FSA and/or local authorities via an alternative route so that court proceedings are not impacted. As a result, the FSA is not currently looking to change the template provided in Schedule 3, however addressing some of the challenges with the CoA via a non-legislative approach will be considered.</p> <p>It is understood that some of the potential drivers for the low numbers of MChemA candidates is due to the reduction in Public Analyst laboratories, lack of available positions and the workload once qualified. Making the MChemA easier to pass would not solve these issues and undermine the expert information the Public Analyst is expected to provide. The FSA proposes that the 2013 S&Q Regs are amended so that the qualification requirements to be a Public</p>

Respondent Comment	FSA Response
<p>the numbers qualify is matching needs. From my own discussions with potential candidates from inside the workplace, the effort and time did not dissuade them. The reason they gave for not progress taking studies up was three-fold:</p> <ul style="list-style-type: none"> • lack of positions to take up on qualifying, • the long-term decline in service, • workload for qualified. <p>If these were different they all said they would have been happy to take up the studies with goal of qualifying. LA laboratories (Public) have reduced numbers of post for Public Analysts over historic levels due to budgetary constraints, together with lower sampling testing income. 30 years ago, often section leaders would have an MChemA or be part qualified (as 3-part, A, B & C to qualifying). So a laboratory may have 5+ qualified and near qualified. Now just one or two who are the senior posts in the lab. Then there were more labs so the pool of posts was much larger and vacancies occurred quarterly. Now one a year if that. The labs have been funded through samples numbers and the tests on these. With the continual year-on-year fall in these sample numbers the numbers of labs to provide the needed testing have fallen to match required with the related posts for qualified falling. This has meant the testing service has met needs (though would struggle in emergency incidence) but those looking in for a long career don't see this as such and are turning elsewhere. Finally, with smaller numbers of samples the breath of testing is still wide so requires effort to interpret and provide opinion in the CoA, but smaller batch sizes for a given test means the effort verses numbers of samples increasing. Targeted samples with small numbers for each test are exasperating this issue. Added to this, qualified post not been replaced means holders still in post are under more pressure of workload year-on-year. These are the reasons numbers sitting/passing examine are falling, not the complexity nor time/effort of the MChemA. The decline in total testing for</p>	<p>Analyst include the MChemA and qualifications recognised as being equivalent to the MChemA by the United Kingdom National Academic Recognition Information Centre (UK NARIC), in consultation with the RSC.</p> <p>Should there be a high turnover of Public Analysts, it is expected that there would be a familiarisation time and cost for Public Analyst Official Laboratories, however this is not currently the case. The FSA will not be recommending any changes to the 2013 S&Q Regs in light of this evidence.</p> <p>The UK is unique in that there is a requirement for Public Analysts and this comes at a high financial cost for an individual. However, it is noted that as the Public Analyst function is not split up into several roles, cost savings are generated. The FSA will not be recommending any changes to the 2013 S&Q Regs in light of this evidence.</p>

Respondent Comment	FSA Response
<p>all labs needed to be halted and ideally turned around if you wish to have numbers of those sitting and passing growing. Not make the examination easier/let suitable to needs of LAs/courts.</p> <p>3. The CoA is appropriate for the needs of the court. Care is needed if additional information must be included for LAs and/or FSA as it may impact suitability for court. There is a risk that the defence possibly use extra information to muddle water; and impacting outcomes. There are other routes to provide additional information to both LAs and FSA already available which do not impact the CoA as a proven court document.</p> <p>4. Minimal changes have a beneficially small familiarisation time (& cost) for Official Control Labs. With current sampling levels, Public Analysts are not frequently replaced. If there was a growing enforcement testing environment, rather than shrinking, then this would be a more frequent occurrence and potentially changes to S&Q Regs would have some recruitment impact, though not great. As is, minimal to no effect in short term.</p> <p>5. With the UK legal system, which is different to most other countries, then requirements are for an Expert in testing, food/feeding stuff and legislation/courts, mean we need akin to Public Analyst. This does carry higher cost for single person to business over outlined other countries but, in my opinion, if split over 2 or even 3 posts to give the courts what they need then the total FTE hours is likely to be more for same outcome and cumulative costs would be more. This is because there would be the extra time liaising between parties. Having solicitor or similar involved would put costs up. Assume FSA have access to average salaries lab manager, Food examiner and solicitor to compare to typical Public Analyst.</p>	

Respondent: The Public Analyst Service Ltd

Comment	Response
<p>1. FEs are not appointed. Perhaps provision should be made for this to happen. Different LAs have different processes. For some it is a matter for elected members, in others a senior officer will have delegated powers. When FSS conducted an audit of LAs in Scotland, some were found not to have appointed a PA. Very often an LA will appoint a PA and AA in the same letter, but in my experience, they often need to be given a template, particularly for an AA as only one may be appointed under the Agriculture Act.</p> <p>2. I see no reason why this should not remain in the Food Law Practice Guidance (England).</p> <p>3. In my opinion less is more with a CoA which is admissible in evidence on its own in the criminal court. This is its purpose. I would also argue that this information is best supplied if and when required rather than universally.</p> <p>4. Three laboratories closed over the period: Staffordshire, West Yorkshire and Worcestershire. I don't think that this figure (in Section 4 of the PIR) is correct and using an average over a number of years when the total number is small is not appropriate. On my initial reading I thought that by new you meant individuals being appointed for the first time, but if new appointments is what was meant then the figure will be much higher as the closure of laboratories will have resulted in new appointments. For example, when Staffordshire closed, they wrote to appoint me without prior discussion. Of course, I did not accept the appointment as my own laboratory was just about to close. I also know that West Yorkshire appointed Bharathi in Preston.</p> <p>5. There are individual PAs who are appointed to authorities in more than one of the devolved administrations (some will be appointed to three), I personally am appointed in two. A divergence in the requirements of the S&Q Regs in the four devolved administrations will place a burden on those PAs whose practice covers more than one of them.</p>	<p>It is understood that Food Examiners are currently not appointed by local authorities, in contrast to Public Analysts. As such, it is recommended that a provision is made for this in the Food Law Code of Practice.</p> <p>It is noted that the provision of some information on the CoA could potentially impact court proceedings. As a result, the FSA is not currently looking to change the template provided in Schedule 3, however addressing some of the challenges with the CoA via a non-legislative approach will be considered.</p> <p>It is understood that the figure of 'two' laboratory closures in the initial report was incorrect. This figure should reflect the number of closures since the latest PIR which was conducted in June 2018. According to reports on the APA website, Staffordshire closed in February 2018 and West Yorkshire lost the Public Analyst function in March 2018. The figure will therefore be changed in the final report to 'one', reflecting the closure of Worcestershire at the end of 2018. The initial report referred to the appointment of newly qualified Public Analysts and Food Examiners. 'Newly qualified' will be added to the final report to make this clearer.</p>

Comment	Response
<p>Other comments:</p> <p>In relation to Section 3.10 and 6.4, the roles of Public Analyst and Food Examiner cannot be considered similar. If you look at the scope of accreditation for all of the UK Health Security Agency, Food, Water and Environmental Microbiology Services laboratories in England (https://www.gov.uk/guidance/york-food-water-and-environmental-laboratory-services#accreditation) you will see accreditation for 28 methods applicable to foods. I counted about 66 food chemistry methods on the Hampshire PA lab's schedule (https://www.ukas.com/wp-content/uploads/schedule_uploads/00002/0024Testing-Multiple.pdf), that is before you consider other methods that may be accessed through other OLs and secondary OLs. I would argue that the number of different techniques covered in food chemistry is also much broader than that in microbiological examination of foods.</p> <p>For food examination the vast majority of results will be compared against a single set of guidelines (guidelines for assessing the microbiological safety of ready-to-eat foods on the market), a document unchanged since 2009. I will not attempt to give an exhaustive list of the regulations that are relevant when assessing the results of the chemical analysis of foods, but there are food specific ones such as bread and flour, honey, jam and similar products, cocoa and cocoa products, products containing meat etc, spirit drinks, drinking milk, spreadable fats, bottled water, etc. Then there are the horizontal ones; additives, contaminants, irradiation, GM, etc. Also the General Food Regulations 2004.</p> <p>Another major difference is that a Food Examiner will not concern her or him-self with food labelling, something that PA's routinely do as part of their analysis. As well as a good working knowledge the FIR [Food Information Regulations], there are nutrition and</p>	<p>It is noted that a divergence in requirements of the 2013 S&Q Regs in the four devolved administrations will place a burden on Public Analysts whose practice covers more than one, therefore the FSA will engage with FSA colleagues in Wales, Scotland and Northern Ireland throughout the PIR process.</p> <p>As the competency requirements to be a Public Analyst are significantly different that of a Food Examiner, the FSA will not be looking to change the qualification requirements.</p> <p>The FSA will not be seeking to amend the CoA template provided in Schedule 3.</p>

Comment	Response
<p>health claims, specific labelling requirements for supplements, pictorial representation considerations, etc.</p> <p>Samples do not fall neatly into “certain aspects” (like suggested in section 3.10), even before you add in the question of food labelling. Competence to carry out any analysis does not automatically confer competence to issue a report or certificate on the results, particularly if those results are being compared to label declarations and when other labelling considerations need to be assessed.</p> <p>In relation to 6.2, it makes no sense to do this as the signatory is not at the laboratory of employment either. Also, I am not employed by a laboratory, so I would not be able to complete this truthfully. A place may not be required at all. No place is required to accompany the signature on a Section 9 statement (https://www.legislation.gov.uk/ukpga/1967/80/section/9). If a place is needed then the only logical place is for the physical place where the PA or FE is when the document is given its (usually electronic) signature which is my current practice.</p>	

Respondent: Kent Scientific Services

Comment	Response
<p>I still feel that the S&Q regulations are fit for purpose. Since the last review little has changed. The number of Public Analysts has reduced to 22 in GB and so are quite a critical mass with one laboratory only having one sitting Public Analyst. The MChemA qualification has undergone a review and the part B exam, which only had a 20% pass rate, has been changed to open book. This has only been run for the last two years and so it is still too early to assess the impact. However, the hope is that this will ensure a better throughput of qualified MChemA holders to meet the regulatory requirements but also the structure of the</p>	<p>It is noted that the 2013 S&Q Regs remain fit for purpose and that the MChemA has had a recent review, the impact of which cannot be assessed this early on. The FSA will continue to review this going forward.</p>

Comment	Response
<p>qualification will also ensure that the qualified candidates are also ready to take up an appointment to act as a Public Analyst.</p> <p>The candidates are being assessed during the exam process by appointed MChemA holders and they also work with appointed councillors, one of which must be an appointed MChemA holder. Therefore, an award of the final MChemA qualification means not only have they passed the requisite examinations, but they have also had their work scrutinised by practicing Public Analysts confirming their competency.</p> <p>The comments above really refer to regulation 4 of the legislation.</p>	

Respondent: National Reference Laboratory

Comment	Response
<ol style="list-style-type: none"> 1. Not relevant to us as NRL. The Food Law Practice Guidance talks extensively about 'Appointment of Public Analyst' and 'Appointment of Staff', but I can't see anywhere in the document where it talks about appointing a Food Examiner. I think it's a bit unclear what the link is between Food Examiner and the 'suitably qualified and competent officers'. Food Examiner as a role is specified in several places, but specifically appointing one does not seem to be mentioned? Although I was somewhat confused by there being 2 documents (Food Law Code of Practice and Food Law Practice Guidance) – so I may well have missed something. 2. This seems comprehensive. It also describes a process similar to that which was suggested for Public Analyst where a mixture of experience and staged skills / experience and qualifications can be built up so the person may not be qualified for all aspects of the role initially but can develop into them without the need for a full MChemA. 	<p>It is understood that Food Examiners are not currently appointed by local authorities, in contrast to Public Analysts. As such, it is recommended that a provision is made for this in the Food Law Code of Practice.</p> <p>It is noted that the role of the Public Analyst could be divided into several aspects such as chemical analysis, microscopy, physical testing, however as samples cannot neatly fall into different testing areas, the development route for Public Analysts cannot be mirrored by that of Food Examiners. Moreover, Public Analysts have additional roles such as drawing up the CoA and verifying the accuracy of</p>

Comment	Response
<p>3. Not relevant to NRLs under the current system as we have no role in issuing these for official purposes. However it would seem sensible to include e.g. a specimen CoA or CoAs in the Food Law Practice Guidance that meets current requirements, and then update this if or when required.</p> <p>4. Not relevant to NRLs.</p> <p>5. The UK legislative approach is, as stated, different to EU Member States. The other Member States follow the process described in Regulation 625/2017, and to the best of my knowledge use the definition of ‘suitably qualified’ for the personnel involved in controls. I don’t know the specifics of this, but am aware it is a combination of specified levels of education, e.g. first degree, higher degree and number of years of relevant experience. The seems broadly similar to the approach used in the UK for Food Examiners. The requirements for this are set out in the Sampling & Qualifications Regulation, then in more detail for the Fes and other food safety officers in the Food Law Code of practice. The situation of the Public Analyst seems to be the anomaly where the MChemA is required.</p> <p>The other thing to point out is the role of the NRL. The OCR (625/2017) sets out that NRLs need to be appointed, how they work and their role and purpose. In other EU Member States the NRL is used as part of the Official Control mechanism and for adjudications / referee decisions – although there may be other local arrangements in some MS (see snip below from Aflatoxin Guidance Document). But it’s clear at the time this document was written there was no single approach. This Guidance is from 2010, and the OCR was published in 2017 so the situation may have changed, but this Guidance is still available on the EU DG Sante website. The point I wanted to make is that NRLs are not mentioned anywhere in the Sampling & Qualification Regulation or the Food Law Guidance. The role, purpose or where NRLs fit in to any of this system is totally missing from all of these documents. I know that is because the introduction of NRLs was</p>	<p>food labelling, both of which are covered in the MChemA.</p> <p>It is noted that providing a specimen CoA meeting current requirements would seem sensible.</p> <p>While the importance of including NRLs in UK legislation is recognised through assimilated Regulation (EU) 2017/625, the FSA believes that an alternative legislative review would be the appropriate route to address this issue and clarify the operations of the NRLs with regards to ensuring food safety.</p>

Comment	Response
<p>after the Food Safety Act, and the system of the Public Analysts, and the Government Chemist acting as Referee Laboratory pre-dates this. The EU Guidance below states Reference (referee) samples are analysed by the NRL in the UK, but that is not the case, other MS appear to have different systems too. With respect to this consultation I wonder if there is any merit of referring to NRLs somewhere? At the moment NRLs are invisible within the control / Food Law enforcement process – even though they are required by the OCR. If it is the intention that NRLs somehow sit outside the official control or enforcement structures it would still be worth clarifying what the purpose of the NRLs is and how they operate and fit into the overall system.</p>	

Respondent: Government Chemist

Comment	Response
<ol style="list-style-type: none"> 1. The Government Chemist agrees it is important to continue to specify the processes by which local authorities appoint Food Examiners and Public Analysts and considers the current arrangements to be sufficiently robust to ensure there are competent analysts who can perform their duties as official Food Examiners and Public analysts under the Food Safety Act 1990. 2. The Government Chemist is not aware of any issues concerning recognising equivalent qualifications following its inclusion into the Food Law Practice Guidance (England). 3. The Government Chemist does not have any comments regarding specific challenges with CoA. 4. The Government Chemist does not have any comments on the impact of the 2013 S&Q Regs in this report. 	<p>The feedback that the current system for appointing Public Analysts is sufficiently robust is noted, however there is not this same provision for Food Examiners. As such, it is recommended that a provision is made for this in the Food Law Code of Practice.</p>

Comment	Response
5. The Government Chemist does not have any other comments regarding comparison with other countries and EU Member States.	

Summary of changes made

Comment/Issue	Response
<p>Changes to the CoA to include additional information could potentially impact court proceedings.</p> <p>The MChemA is the only course which provides the necessary competency to practice as a Public Analyst and changes to the qualification could put the profession at risk. There has been a recent review of the MChemA which resulted in minor changes to the examination format, however it is too soon to assess the impact of this.</p> <p>The discrepancy between the qualification requirements to be a Public Analyst and a Food Examiner are justified due to the additional responsibilities of the Public Analyst such as comparison of results to a large number of Regulations, studying food labelling and competency to draw up the CoA.</p>	<p>It is noted that additional information which is currently not provided on the CoA can be provided to the FSA via an alternative non-legislative approach and the FSA will not look to make changes to the CoA template in Schedule 3.</p> <p>It is noted that it would be inappropriate to make changes to the MChemA qualification and that there are currently no known equivalent qualifications which could be included in the 2013 S&Q Regs. However, the FSA recommends that the 2013 S&Q Regs are amended to allow for the qualification requirements to be a Public Analyst to include the MChemA and qualifications recognised as being equivalent to the MChemA by the UK NARIC, in consultation with RSC.</p> <p>It is noted that there is a big difference between the role of a Public Analyst and the role of the Food Examiner, therefore the FSA will not be looking to make changes to the 2013 S&Q Regs by including</p>

Comment/Issue	Response
<p>There are currently no provisions in UK legislation for the appointment of Food Examiners.</p> <p>There is currently no provision for NRLs in UK legislation for testing samples for enforcement purposes, which is in contrast to EU member states where NRLs are used for testing for enforcement purposes or to act as an impartial referee in a testing dispute.</p>	<p>additional qualifications to practice as a Public Analyst.</p> <p>The FSA recommends that further clarification on the process of local authorities appointing Food Examiners is included in the Food Law Code of Practice.</p> <p>While the importance of including NRLs in UK legislation such as the 2013 S&Q Regs or Food Safety Act 1990 is recognised, assimilated Regulation (EU) 2017/625 includes the role, purpose and process for designating NRLs, therefore the FSA believes that an alternative legislative review would be the appropriate route to address this issue and clarify the operations of the NRLs with regards to ensuring food safety.</p>

Actions to be implemented

- We recommend that 2013 S&Q Regs are amended to allow for the qualification requirements to be a Public Analyst to include the MChemA and qualifications recognised as being equivalent to the MChemA by the UK NARIC, in consultation with RSC.
- We recommend that further clarification on the process of local authorities appointing Food Examiners is included in the Food Law Code of Practice.
- Addition of 'newly qualified' to the final report to make the reference of the appointment of Food Examiners and Public Analyst clearer.
- Amendment to the number of laboratory closures to 'one' in the final report rather than 'two' to reflect the correct number of closures since the June 2018 PIR.

List of respondents

1. Minton Treharne and Davies Ltd
2. The Public Analyst Service Ltd
3. Kent Scientific Services
4. National Reference Laboratory
5. Government Chemist