

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

- 1.1 Review of the Food Safety (Sampling & Qualifications) Regulations 1990.

2. Purpose and Intended Effect

Objectives

- 2.1 The objective of this policy is to ensure that food analysts/examiners that carry out official control work under the Food Safety Act 1990 are suitably qualified and that adequate procedures are followed when a sample has been procured under the Act for official analysis or examination. By updating the qualifications, it will address concerns about restricting and inhibiting workers rights to freedom of movement within the European Union (EU).

Background

- 2.2 The Food Safety (Sampling & Qualification) Regulations¹ (S&Q Regulations) were made in 1990 in Scotland, England and Wales (SI 1990 No. 2463) and in 1991 in Northern Ireland (SR 1991 No. 198). These Regulations support the Food Safety Act 1990 which requires that authorised officers of food authorities should submit samples for chemical analysis to public analysts (PAs) or for microbiological examination to food examiners (FEs) whose requisite qualifications are laid down in Regulations made by Scottish Ministers.
- 2.3 The S&Q 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 procedures to be followed when a sample has been procured under that Act for analysis or examination. These Regulations are now out of date. They contain some obsolete provisions which could cause some confusion amongst those who use them; principally with regard to qualification and training requirements for food examiners which are out-dated. There are concerns that qualifications listed in the Regulations are restrictive and inhibit workers right to freedom of movement within the European Union (EU). Additionally there are certain aspects of the sampling provisions that require updating. For example, revising the regulation concerning submission of the retained sample will give food business owners the right to have the reference sample analysed without the need for an agreement with the authorised officer. This will ensure fairness to businesses and the change will allow conformity to Article 11 of Reg (EC) 882/2004.

Rationale for Government Intervention

- 2.4 Previously, there have been numerous amendments to the S&Q Regulations, in particular to Schedule 1, which have never been consolidated. It is, therefore, intended that the current Regulations be revoked in their entirety and replaced with a consolidated Scottish Statutory Instrument (SSI) which will encompass all previous

¹ Food Safety (Sampling & Qualifications) Regulations 1990
(<http://www.legislation.gov.uk/ukxi/1990/2463/contents/made>)

amendments into one comprehensive Regulation. Additionally, it is recognised that food examiner qualifications/training and aspects of the sampling provisions are out of date. To ensure that these Regulations are fit for purpose to enable end users to better understand and use them, the food examiner qualifications/training and sampling provisions require amendment.

2.5 There are some concerns with respect to other qualifications and training that may be considered as equivalent which are not addressed in the current Regulations but referred to in the Food Safety Act 1990 (Part III, s27(2)(b) and s30(9)). A guidance document is therefore being considered to set out procedures for the recognition of other equivalent qualifications. This will ensure that the qualification requirements to be a food analyst/examiner in the UK are not too restrictive to analysts with equivalent qualifications from UK or other EU countries enabling workers' right to freedom of movement.

2.6 The proposal to update the Food Safety (Sampling & Qualification) Regulations 1990 aims to:

- Update the qualification and training requirements for food examiners
- Update aspects of the sampling provisions
- Consolidate previous amendments

This will provide greater clarity to the regulations and address concerns about workers rights to freedom of movement within the EU. This also contributes to the Scottish Government's Economic Strategy, specifically towards developing a skilled workforce and encouraging immigration of talented people, and in turn supporting the business environment.

3. Consultation

Following an informal consultation and discussions with internal and external stakeholders in May 2012, the Agency conducted a formal written consultation in March 2012 asking stakeholders about their views on the revision of the S&Q Regulations. This was carried out in all four UK countries and two options were put forward for consideration. Responses received from a wide range of stakeholders² have helped develop this impact assessment:

Option 1: Do Nothing

Option 2: Revoke the S&Q Regulations and replace them with a consolidated SSI, updating food examiner qualification/training and aspects of sampling provisions. Introduce additional provisions on equivalent qualifications and training for food/public analysts and food examiners

To ensure all alternatives had been covered, two further options were considered during the informal consultation:

² Summary of stakeholder responses to the formal consultation can be found at:

<http://www.food.gov.uk/multimedia/pdfs/consultationresponse/summary-responsesandq.pdf>

- a) To revise the Regulations without addressing equivalent qualifications. The Agency found that this option would restrict the rights to free movement of workers from the EU, a view expressed by a majority of stakeholders. For this reason we had not listed this option in the formal consultation
- b) A non-regulatory option to revoke the qualifications aspect of the Regulations and replace them with guidance.

This non-regulatory option (revoking part of the Regulations) was carefully considered by the Agency. This option would have been executed in similar format to option 2 (consolidation) but provisions of the Regulations relating to the qualifications would be revoked and replaced with a guidance document. The Agency is, however, aware that revoking the legal requirement for qualifications to be a food/public analyst or a food examiner would work against what is laid down in the Food Safety Act 1990. Sections 27(2) and 30(9) of the Act require local authorities to appoint public analysts and food examiners who possess qualifications that (a) have been prescribed by regulations made by Scottish Ministers or (b) such other qualifications as the Scottish Ministers may approve. If the Scottish Ministers has not prescribed any qualifications by regulations, then logically there can be no other qualifications to approve. Therefore section 27(2) of the Food Safety Act would be deprived of effect because it would be impossible for there to be any officially recognised qualifications that would render a person eligible to be appointed as a public analyst. Furthermore, in order to fulfil the Agency's obligation as the competent authority under Regulation (EC) 882/2004 on official controls for food and feed law, it is required of the authority to ensure that there are sufficient numbers of suitably qualified and experienced staff to carry out official control work. By removing legislation required for food analyst/examiner qualifications, we cannot ensure that conditions under Regulation (EC) 882/2004 can be met. For these reasons we have not listed the non-regulatory alternative as an option in this Impact Assessment.

3.1 Within Government

During both the informal and formal consultations, Scottish Government (Health Protection) was contacted, as were local authorities and local authority scientific services. Feedback was received from local authorities and scientific services. Those responding were supportive of the changes proposed to the Regulations – consolidating the Scottish Statutory Instrument to update the food examiner qualification/training and aspects of sampling provisions and introduce additional provision on equivalent qualifications and training for food/public analysts and food examiners.

Details of responses can be found at:-

<http://www.food.gov.uk/multimedia/pdfs/consultationresponse/summary-responsessandq.pdf>

Following the consultation, the FSA held a workshop to discuss the amendments to the Regulations following the consultation and to develop guidance providing for procedures for recognition of equivalent qualifications and other aspects of the regulations. Scotland was represented through the Association of Public Analysts Scotland.

3.2 Public Consultation

A public consultation, based on the outcomes of the pre-consultation described above, took place from 14 March 2012 until 6 June 2012. In Scotland, responses were

received only from national and local Government (details above). Industry and professional organisations provided responses on a UK basis which fed into UK-wide consideration.

3.3 Business

No discussions have taken place as there are currently no private laboratories, employing food examiners, which carry out analysis for official control purposes. However, it is acknowledged that this may change in the future. Private businesses were contacted with details of this consultation.

4. Options

Option 1 - Do Nothing

This option requires that we maintain the status quo and continue to use the existing S&Q Regulations as they stand.

Consequences – Under this option no further work will be required. As there will be no change to the Regulations, there will be no additional burdens on the private or public sector. However, the current legislation governing the food examiners' qualifications will not be brought up to date and obsolete information will not be removed/amended, which could result in the Regulations being inadequate for the purpose. Additionally other equivalent qualifications will not be addressed which could be seen to restrict the right to free movement of workers in the EU.

Option 2 – Revoke the current Food Safety (Sampling & Qualifications) Regulations 1990, replace them with a consolidated Statutory Instrument and introduce guidance for recognising equivalent qualifications.

This option involves revoking the current Regulations in their entirety and replacing them with a consolidated SSI which will bring together all previous amendments currently in force. Additionally there are aspects of the food examiner qualifications/training within Schedule 2 of the S&Q Regulations which are out of date and will require updating. Aspects of the sampling provisions found within Regulations 6 & 7 of the Regulations will also require updating. The current public analyst qualification will be maintained.

Under this option, the Agency will develop guidance to consider other equivalent qualifications and training. These equivalences will be assessed by the Agency and approved by Scottish Ministers under Section 27(2) (b) and Section 30 (9) of the Food Safety Act 1990. The guidance will be developed in consultation with key stakeholders, covering the recognition of equivalent qualifications which will include suitability criteria for assessing these qualifications. The guidance will be useful to food analysts/examiners and institutions who are considering applying for positions as a public analyst or a food examiner within the UK and for local authorities to help them appoint suitably qualified analysts within their area. Assessment and recognition of equivalent qualifications/training will be made by the Agency and this will be used to provide advice to the Scottish Ministers on suitability for approval. These equivalent qualifications will only be effective for enforcement work carried out under the Food Safety Act 1990 and any relevant secondary legislation. They will not be used for work done under other primary legislation where public analysts or food examiners are cited or referenced.

Consequences – The S&Q Regulations will be simplified and brought up to date thus enabling them to be easily followed by users in both the private and public sector. Updating the food examiner qualifications and sampling provisions will ensure that they are fit for purpose. The guidance for recognising other equivalent qualifications will avoid possible restrictions on the right to free movement of workers in the EU. Maintaining these restrictions would carry the risk of legal challenge and, in the worst case scenario, the threat of infraction proceedings by the Commission. Any additional burdens on the private or public sector will be minimal as demonstrated in the evidence base of this IA.

Option 2 is the preferred option and this is reflected by the consultation responses. Costs and benefits are therefore provided on that basis.

A summary of stakeholder responses to the formal consultation on the revision of the S&Q Regulations can be found at: <http://www.food.gov.uk/multimedia/pdfs/consultationresponse/summary-responsesandq.pdf>

5. Sectors Affected

The sectors likely to be affected by this measure include the public sector (including public laboratories and local authorities (food authorities)). There is currently no identifiable impact on the private sector in Scotland because there are no private laboratories that employ food examiners and public analysts, which carry out analysis for official control purposes at the present time.

Table 1: Summary of affected groups and impacts

| | Groups affected | Impact |
|--|--|--|
| 1) Update the regulation:- | | |
| a) Update the FE qualifications | Public sector FE/PA laboratories, food authorities. May affect private sector laboratories in the future | Familiarisation costs and new entrant simplification benefits. |
| b) Update the sampling aspect of the regulations | Public sector FE/PA laboratories, food authorities. May affect private sector laboratories in the future | Familiarisation costs and new entrant simplification benefits. |
| 2) Guidance on equivalent qualifications | Food authorities | Familiarisation costs and new entrant simplification benefits. |

The costs/benefits/impacts in the Impact Assessment are based on Option 2 (revoke the current Food Safety (Sampling & Qualifications) Regulations 1990, replace them with a consolidated Statutory Instrument and introduce guidance for recognising equivalent qualifications).

The two parts to this option, a) updating the out of date Regulations and b) providing guidance on equivalence, will affect different stakeholder groups. This impact

assessment is based on both parts of option 2 and provides an early estimation of the familiarisation costs involved on introducing the guidance document.

A full Impact Assessment on the guidance document will be carried out once it has been developed.

6. Costs

Costs to Local Authorities (LAs)

One off Familiarisation Costs

Food Authorities who appoint FEs and PAs would need to become familiar with the new updated S&Q legislation. The FSA estimate that this will take approximately 30 minutes for each LA, assuming that one enforcement officer per LA will familiarise him/herself. Using an ASHE³ median wage rate of £15.74 for an environmental health officer and up-rating by 30% to account of overheads in line with SCM⁴ methodology, we estimate the cost to each LA will be equal to £20.46. Multiplying by the total number of LAs (32), total costs in Scotland of approximately £327 are estimated.

The FSA estimates that in addition to the 30 minutes required to familiarise themselves, there will be an additional cost to the LA in terms of time spent disseminating the information to other colleagues. It is estimated that this is likely to take a further 30 minutes, increasing total familiarisation costs of the S&Q Regulations to £654.

In addition to familiarisation costs associated with the new S&Q Regulations, LAs will also need to familiarise themselves with the new guidance on equivalent qualifications. We anticipate, using the same methodology as above, that this will take a further 30 minutes and as such cost an additional £327 in Scotland.

Total cost to food authorities, therefore, is £982 (present value over 10 years). Refer to Appendix 1.

Costs to Public Sector Laboratories

Public laboratories will also face costs of familiarisation as a result of the introduction of this new legislation. It is assumed that it will be the FEs and PAs employed by the laboratories that will need to familiarise themselves. There are 13 FEs in Scotland, of which 7 are also PAs. The FSA estimate that this will take approximately 30 minutes for each FE and PA employed by a public laboratory. Using an ASHE⁵ wage rate of £18.54 for a science professional and up-rating by 30% to account of overheads in line with SCM⁶ methodology, we estimate the cost to each FE/PA will, on average, be equal to £24.10 in Scotland. Multiplying by the total number of food examiners (13), total costs of approximately £157 are estimated.

However, a consultation response has indicated that the opportunity costs of employment for an FE or PA in a laboratory could be much greater (around £92) than that of other officer workers and the SCM assumption may underestimate costs involved.

³ ASHE (annual survey of hours and earnings) “Median hourly pay excluding overtime”
<http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-235202>

⁴ <http://www.berr.gov.uk/files/file44503.pdf>

⁵ ASHE (annual survey of hours and earnings) “Median hourly pay excluding overtime”
<http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-235202>

⁶ <http://www.berr.gov.uk/files/file44503.pdf>

To account for this, an upper bound estimate using £92 per hour (which includes an overhead of 30%) has been provided in table below:

Mid-point estimates are given as the 'best estimate' and are the values which appear in the summary tables and presented in the IA summary pages.

Table 2

| | No. of Public Labs | No. of FEs and PAs employed | Costs (lower bound) £s | Costs (upper bound) £ | Costs (midpoint) £ |
|----------|--------------------|-----------------------------|------------------------|-----------------------|--------------------|
| Scotland | 4 | 13 | 157 | 598 | 377 |

Most of the consultation responses supported the case that the familiarisation time was a reasonable estimate of the time that would need to be spent in this activity. However, one respondent expressed concern with the assumption that only one enforcement officer per LA would need to familiarise themselves with the new legislation. The post consultation cost estimates now account for this by including costs of dissemination in the analysis.

An additional issue was raised with respect to further costs to local authorities associated with splitting of the samples for analysis. This has been reviewed by the FSA and the existing wording of the Regulations will be retained to avoid any confusion. As such no additional costs associated with this will be borne by local authorities.

Summary of Costs

In order for one-off transition costs to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs (EAC) using a standard formula⁷. Under Standard HMT Green Book⁸ guidance a discount rate of 3.5% is used. The total cost of Policy Option 2 is £982 (present value over 10 years) as can be seen in Table 3 below.

Table 3: Summary of All Costs under Option 2 in Scotland

| | Year (£s) | | | | | | | | | | Total | EAC | PV ⁹ |
|------------------------------------|-----------|---|---|---|---|---|---|---|---|---|-------|-----|-----------------|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | | | |
| Cost to LAs | 982 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 982 | 114 | 982 |
| Cost to public sector laboratories | 377 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 377 | 44 | 377 |

⁷ $EANCB = PVNCB/a_{tr}$, 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.

⁸ http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

⁹ Present Value

The present value presents a discounted total cost. Discounting is a technique used to compare future costs (and benefits) that occur in different periods and is based on the principle that, generally, people place a higher value on money today than in the future which is why future costs are discounted. Costs are presented in current prices.

7. Benefits

Benefits to Private Sector Laboratories

While we note there are currently no private laboratories carrying out official control work in Scotland, it is feasible that at some point over the next 10 years a private laboratory may be appointed as an official food laboratory. In order to account for this and future potential benefits, we have applied the same assumptions to Scotland as the rest of the UK.

Consultation responses have indicated that there are unlikely to be benefits to business from simplification of familiarisation costs as the benefits will be realised by FEs and PAs in their educational training during their qualification period rather than when they are employed by a business.

However, although businesses may not benefit from reduced simplification costs, the FSA recognises that there will be benefits associated with clarity of understanding the legislative requirements from FE appointments by business managers or HR managers recruiting individuals to carry out FE work.

Although appointments are made at the Local Authority level, private laboratories will need to ensure they have suitably qualified staff in place to benefit from winning contracts to do the work that LAs require from FEs.

Businesses will benefit from increased clarity of the updated Regulations. Any manager responsible for recruiting new FEs will be able to do so at a lower time premium than previously. This is estimated to be approximately 30 minutes. Given inherent uncertainties around the future direction of PA and FE laboratories, there is no precise evidence as to the likely number of businesses that will benefit from this simplification. However, evidence of the number of newly qualified PAs and FEs each year indicates that a conservative assumption of one new FE in Scotland appointed appears reasonable. This assumption was not challenged during the consultation process.

While it is noted there are currently no private laboratories in Scotland carrying out official control work, it is feasible that at some point over the next 10 years, a private laboratory move into this area of work. In order to account for this and future potential benefits, the same assumptions have been applied to Scotland as to the rest of the UK.

Benefits are estimated by multiplying the 30 minutes time saving in recruitment by the number of new entrants and the ASHE¹⁰ median wage rate for a HR/Business manager of £22.78 uprated¹¹ to £29.61.

Consultation responses indicated that there was unlikely to be a simplification benefit to businesses from reduced familiarisation costs as these benefits would be accrued by training FEs/PAs rather than by businesses. The FSA has reflected this assertion in the analysis and removed these benefits.

¹⁰ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-235202>

¹¹ In line with SCM methodology by 30% to account for overheads

Benefits to Food Authorities

Local authorities will also realise benefits associated with simplification of the S&Q Regulations. Any new enforcement officer will be able to benefit from the simplified Regulations. We estimate that, on average, one enforcement officer from each affected LA per year will benefit from the simplified legislation, saving a time premium of 30 minutes per LA per annum. Using an ASHE wage rate of £15.74, uprated by 30% to account for overheads in line with SCM methodology, results in an annual saving of approximately £327 for Scotland. Over 10 years, this results in a total NPV of £2818 for Scotland.

In addition, there will be benefits to LAs from the introduction of the new guidance on equivalent qualifications. The guidance will make it easier for LAs to appoint a PA or FE in the future by providing a clear procedure for doing this. At present no evidence about the number of LAs likely to appoint a PA or FE from outside the UK is available; the only evidence the FSA has been able to obtain so far suggests that there has only been one previous instance of an LA seeking approval of a qualification other than those named in the Regulations. As such, it has been conservatively assumed it will save a day's work (7 hours) for 1 LA in Scotland.

On the whole, consultation responses agreed that this was a reasonable assessment of the potential benefits to be realised by local authorities.

One response argued that there would be no benefits to LAs as the "current process for appointing FEs/PAs is clear". This is however contrary to the FSA's investigation into this issue and the consensus view that this legislation requires updating.

Appendix 1 provides a detailed description of how savings are estimated and the relationship with the baseline, which is intended to aid ease of understanding and is in response to the confusion identified around savings estimation in the consultation
[\(<http://www.food.gov.uk/multimedia/pdfs/consultationresponse/summary-responsessandq.pdf>\)](http://www.food.gov.uk/multimedia/pdfs/consultationresponse/summary-responsessandq.pdf)

Benefits to Public Sector Laboratories

Public laboratories will benefit from changes to the Regulation from having reduced familiarisation costs. Any new member of staff that needs to become familiar with the legislation will do so at a reduced cost. We estimate this time premium to be approximately 30 minutes which will result in a reduced burden to any new market entrants through simplification. At present, we have no evidence as to the likely number of public laboratories that will benefit from this simplification however, in order to assess potential magnitudes, we have assumed that public laboratories in Scotland will employ maximum of 1 new entrant per year.

Benefits are estimated by multiplying the 30 minutes time saving for recruitment of each new entrant, by the number of new entrants and the ASHE¹² median wage rate of a HR manager £22.78 updated¹³ to £29.61

Table 4: Benefits by sector in Scotland

| | Year (£s) | | | | | | | | | | | Total | Total (NPV) £s |
|----------------------|-----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------|----------------|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | | | |
| Private Laboratories | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 148 | 127 |
| Local Authorities | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 3274 | 2818 |
| Public Laboratories | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 148 | 127 |

The changes made to benefits to public laboratories in the post consultation IA reflect concerns that it would not be the laboratories but individual FEs and PAs in training that would benefit from these savings. The benefits above are consistent with those outlined for private laboratories in the previous section.

Summary of Costs and Benefits (Scotland)

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 formula¹⁴. Under Standard HMT Green Book¹⁵ guidance a discount rate of 3.5% is used.

Table 5: Details of EACs by sector (Scotland)

| | Year (£s) | | | | | | | | | | | Total | EAC (per annum) | Total (NPV) £s |
|-----------------------------|-----------|---|---|---|---|---|---|---|---|---|---|-------|-----------------|----------------|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | | | | |
| Cost to LAs | 982 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 982 | 114 | 982 |
| Cost to public laboratories | 377 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 377 | 44 | 377 |
| Cost to private | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

¹² <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-235202>

¹³ In line with SCM methodology by 1/3 to account for overheads

¹⁴ $EANCB = PVNCB/a_{t,r}$, Where $a_{t,r}$ 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.

¹⁵ http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

| | | | | | | | | | | | | | | |
|-----------------------------------|------|------|------|------|------|------|------|------|------|------|-------|------|-------|--|
| laboratories | | | | | | | | | | | | | | |
| Total | 1360 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1360 | 158 | 1360 | |
| Benefit to LAs | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 327 | 3274 | 327 | 2818 | |
| Benefit to public laboratories | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 148 | 15 | 127 | |
| Benefit to private laboratories | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 148 | 15 | 127 | |
| Total | 357 | 357 | 357 | 357 | 357 | 357 | 357 | 357 | 357 | 357 | 3570 | 357 | 3072 | |
| Net cost to LAs | 655 | -327 | -327 | -327 | -327 | -327 | -327 | -327 | -327 | -327 | -2292 | -213 | -1836 | |
| Net cost to public laboratories | 362 | -15 | -15 | -15 | -15 | -15 | -15 | -15 | -15 | -15 | 229 | 29 | 250 | |
| Next cost to private laboratories | -15 | -15 | -15 | -15 | -15 | -15 | -15 | -15 | -15 | -15 | -148 | -15 | -127 | |
| Total | 1003 | -357 | -357 | -357 | -357 | -357 | -357 | -357 | -357 | -357 | -2210 | -199 | -1712 | |

The present value presents a discounted total cost. Discounting is a technique used to compare future costs (and benefits) that occur in different periods and is based on the principle that, generally, people place a higher value on money today than in the future which is why future costs are discounted. Costs are presented in current prices.

Direct costs and benefits to business are summarised in table 5 above. As the evidence shows this policy is cost neutral.

8. Scottish Firms Impact Test

Most businesses using these Regulations are publicly owned laboratories. However, there may be, in the future, a number of small and medium sized businesses (private laboratories carrying out official control work) that would also use these Regulations. Given the assessment of the costs and benefits associated with the preferred option, it is highly unlikely that the preferred option will have a material impact on the operations and performance, otherwise undertaken, of these businesses; in fact the simplified Regulations will make it easier in the future for FEs and PAs employed by small businesses to comply with the legislation. From the evidence we have available, all of the businesses affected by this policy currently are publicly owned and those privately owned, in other parts of the UK, are Small and Medium Enterprises (SMEs). This is due to the size, nature and work of the laboratories which does not generally support a large business structure.

➤ Business & Regulatory Impact Assessment

We do not consider there to be any identifiable costs or benefits to the private sector currently. As a result, face to face business discussions and impact assessment have not taken place.

➤ Competition Assessment

Some consultation responses argued that there would be a significant impact on competition; however this was from the perspective of market incumbents rather than new entrants. Using the Office of Fair Trading competition question filter, it has been established that it is not necessary to carry out a full competition assessment as access

to the market will be improved with the introduction of the guidance on equivalent qualifications rather than decreased.

➤ **Test run of business forms**

The S&Q Regulations introduces an amended Certificate of Analysis. This is not a new requirement.

9. Legal Aid Impact Test

The Legal Aid Team has been informed of the proposal and confirms that the proposal will not introduce new criminal sanctions or civil penalties therefore there are no legal aid implications.

10. Sustainable Development

The three aspects of sustainable development; economic, social and environmental, have been considered in this Impact Assessment under evidence base. Option 2 is relatively sustainable as social and environmental impacts are negligible and the economic impact is as described throughout the IA and above under the competition assessment and the small firms' impact test. This legislation will provide for a continuation of access to a necessary supply of qualified public analysts and food examiners who can ensure food safety testing is robust and meets the necessary standards.

11. Enforcement, Sanctions and Monitoring

There are no enforcement provisions or sanctions under the FS(S&Q) Regulations.

The effectiveness and impact of the regulations will be monitored via feedback from stakeholders, including Enforcement Agencies, as part of the ongoing policy process. FSA mechanisms for monitoring and review include; open fora, stakeholder meetings, surveys and general enquiries.

12. Implementation and Delivery Plan

If the FSA's preferred option to revoke the Food Safety (Sampling & Qualifications) Regulations 1990 and replace them with a new 2013 consolidated Scottish Statutory Instrument is taken forward then we would plan for the SSI to come into force in April 2013. Guidance for equivalent qualifications will be issued at the same time following a separate targeted consultation with key stakeholders.

➤ **Post Implementation Review**

The effectiveness of the instrument will also be monitored via feedback from industry and enforcement authorities, and the policy will be reviewed by the Food Standards Agency in April 2015.

13. Summary and Recommendations

The FSA recommends option 2, to revoke the current Food Safety (Sampling & Qualifications) Regulations 1990, replace them with a consolidated Scottish Statutory Instrument and introduce guidance for recognising equivalent qualifications.

Summary Costs and Benefits Table

| | Total benefit per annum: economic, environmental, social | Total cost per annum: economic, environmental, social, policy and administrative |
|---|--|---|
| Option 1: do nothing | None | No direct costs. However, the current legislation will not be brought up to date and obsolete information will not be removed/amended, which could result in the Regulations being inadequate for the purpose. Other equivalent qualifications will not be addressed which could be seen to restrict the right to free movement of workers in the EU. Maintaining these restrictions would carry the risk of legal challenge and, in the worst case scenario, the threat of infraction proceedings by the Commission. |
| Option 2: revoke the current Food Safety (Sampling & Qualifications) Regulations 1990, replace them with a consolidated Statutory Instrument and introduce guidance for recognising equivalent qualifications | The S&Q Regulations will be simplified and brought up to date thus enabling them to be easily followed by users in both the private and public sector. Updating the food examiner qualifications and sampling provisions will ensure that they are fit for purpose. The guidance for recognising other equivalent qualifications will avoid possible restrictions on the right to free movement of workers in the EU. Benefits equate to a cost of £357 per annum across both public and private (based on future laboratories) sector. | Costs per annum, restricted to the public sector, is £156. |

14. Declaration and Publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy and (b) that the benefits justify the costs.

Ministers Signature

Ministers Title

Date

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Appendix 1

Costs to business resulting from the S&Q Regulations will be transitional. This means that they will occur in a single period and will be a 'one-off'. Business will need to familiarise themselves with the new Regulations which they will only have to do once.

At present, every PA and FE in operation will have at one point, as part of their education/training, familiarised themselves with the existing S&Q Regulations. In the analysis provided in the impact assessment this time has not been accounted for *explicitly* as it is part of the baseline and is *implicit* in the analysis. Only **incremental** or **additional** costs and benefits are considered in the IA.

With the introduction of amendments to the S&Q Regulations, FEs and PAs will need to re-familiarise themselves with the Regulations. The estimated time premium associated with the minor changes is approximately 30 minutes. This is intended to be an average estimate across all affected individuals.

Benefits to business are estimated by considering **future** ongoing savings as a result of the improved and updated regulation. Because the existing Regulations are out of date and require modification to make them more accessible, the FSA estimates that once they have been updated, businesses that need to recruit FEs and PAs will benefit from the improved accessibility. This saving is estimated to be 30 minutes.

This 30 minutes is not related to the 30 minutes familiarisation costs above, as the costs and benefits reported are **incremental** - that is **additional** to the baseline, so savings are estimated by comparing to the existing time that it would take for someone to use the regulation in its current form. The table below (A1) indicates how this assumption works.

Table: baseline versus options costs

| | | Time spent in familiarisation | Time saving from reduced familiarisation |
|---|---------------------|---|--|
| A | Existing regulation | 1 hour (implicit assumption - baseline costs) | |
| B | New regulation | 30 mins | 30 mins (A-B) |