

Title: REVIEW OF THE FOOD SAFETY (SAMPLING & QUALIFICATIONS) REGULATIONS 1990 IA No: FOOD0035 Lead department or agency: FOOD STANDARDS AGENCY Other departments or agencies:	Impact Assessment (IA)			
	Date: 29/01/2013			
	Stage: FINAL			
	Source of intervention: UK			
	Type of measure: Secondary Legislation			
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Summary: Intervention and Options				RPC: ENACB figure validated

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as One-Out?
£22k	£-122 (negligible)	£13 (negligible)	Yes	Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

The current legislation is out of date and contains some obsolete provisions which could cause confusion amongst those who use it; principally with regards to qualification and training requirements for food examiners. There are also certain aspects of sampling provisions that are out of date. It is necessary therefore to review this piece of legislation with a view to updating and simplifying its contents. This will allow end users to better understand the Regulations and ensure that the Regulations conform with more current legislation. An additional provision is also being considered to ensure that the qualification requirements to be a food analyst/examiner are not restrictive but allow other equivalent qualifications to be considered thus enabling the right to free movement of workers from other EU countries.

What are the policy objectives and the intended effects?

The policy objectives are to specify the qualifications necessary to be a public analyst, food analyst or food examiner for the purposes of the Food Safety Act 1990 and also specify the procedures to be followed when a sample has been procured under the Act. Its intent is to ensure that public analysts (PAs) and food examiners (FEs) are suitably qualified for the purpose of carrying out official control work and that samples are dealt with correctly and fairly.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two policy options have been considered:

Option 1: Do nothing - retain the current state of the Regulations,

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 is the preferred option which will incorporate all previous amendments that are still in force and update the food examiner qualifications and aspects of the sampling provisions. It is also proposed that criteria for assessing and recognising other equivalent qualifications are set out in a guidance document to ensure that this domestic legislation is non-restrictive to UK and EU analysts with equivalent qualifications.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: April 2018

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro YES	< 20 YES	Small YES	Medium YES	Large YES
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: n/a	Non-traded: n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Anna Soubry

Date: 09/02/2013

Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There are no monetised incremental costs or benefits associated with this option. This is the baseline against which other options are assessed.

Other key non-monetised costs by 'main affected groups'

There are no non-monetised incremental costs or benefits associated with this option. This is the baseline against which other options are assessed.

BENEFITS (£)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

There are no monetised incremental costs or benefits associated with this option. This is the baseline against which other options are assessed.

Other key non-monetised benefits by 'main affected groups'

There are no non-monetised incremental costs or benefits associated with this option. This is the baseline against which other options are assessed.

Key assumptions/sensitivities/risks

Discount rate (%)

Without the revocation and re-making of the FS(S&Q) Regs, the existing Regulations will not be brought up to date and so will not be fit for purpose. In addition, not providing guidance on employing equivalently qualified food analysts/examiners from the EU may restrict the right to free movement of workers in the EU.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	Zero net cost

Summary: Analysis & Evidence

Policy Option 2

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

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low: Optional	High: Optional	Best Estimate: £21,834

COSTS (£)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	14,309	N/A	12,317

Description and scale of key monetised costs by 'main affected groups'

Total Familiarisation costs (England Only): £12,317 (EAC 1,431) comprised of: Business £377 (EAC £44); Local Authorities (LAs): £10,865 (EAC £1,262); Public Labs: £1,074 (EAC £125).

Other key non-monetised costs by 'main affected'

There are no non-monetised costs associated with this option.

BENEFITS (£)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/A	3,967	34,151

Description and scale of key monetised benefits by 'main affected groups'

Benefits of this policy will be attributable to businesses employing FEs and PAs in terms of reduced recruitment costs and additional benefits to LAs through availability of guidance.

Total benefits (England Only): £34,151 (annual benefit constant price £3,967) comprised of businesses: £255 (annual benefit constant prices £30), public labs £255 (annual cost constant prices £30) and LAs £33,641 (annual cost constant prices £3,908).

Other key non-monetised benefits by 'main affected groups'

There may be other intangible benefits to food examiners from having access to legislation that's up to date and more comprehensive and there could potentially be benefits associated with providing freedom of movement of employees throughout the EU, though due to inherent uncertainties it is not possible to quantify these.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<p>1) Where data is not available we have assumed two FEs are on average employed by a laboratory (min of 1 and max of 3).</p> <p>2) The FSA has no precise information regarding the number of newly employed PAs and FEs per year for public and private labs and so have assumed 2 new PAs/FEs per year for England and 1 for each of the devolved countries). For LA benefits it has been assumed that 1 person per LA per year will benefit (these assumptions were unchallenged at consultation)</p>		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual):			In scope of OIOO?	Measure qualifies as
Costs: £44(negligible)	Benefits: £30 (negligible)	Net cost: £13 (negligible)	Yes	Zero net cost

Evidence Base (for summary sheets)

Problem under consideration

The Food Safety (Sampling & Qualifications) Regulations (S&Q Regs) were made in 1990 in England, Scotland 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 local authorities should submit samples for chemical analysis to public analysts or for microbiological examination to food examiners whose requisite qualifications are laid down in Regulations made by the Secretary of State.

The S&Q Regs specify the qualifications necessary to be a public analyst, food analyst or food examiner for the purposes of the Food Safety Act 1990. They also specify the 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 regards to qualification and training requirements for food examiners which are out-dated. Additionally there are certain aspects of the sampling provisions that require updating. For example, by revising the regulation concerning submission of the retain 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. There are also concerns that qualifications listed in the Regulations are restrictive and inhibit workers' right to freedom of movement within the European Union (EU) .

Rationale for intervention

Previously there have been numerous amendments to the S&Q Regs, in particular to Schedule 1¹ and these have never been consolidated. It is, therefore, intended that the current Regulations be revoked in their entirety and replaced with a consolidated SI which will encompass all previous amendments still in force in one comprehensive set of Regulations (see Annex B). 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.

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)). The Act states that no person shall be appointed as a public analyst or a food examiner unless he possesses qualifications prescribed by regulations or "such other qualifications as the Secretary of State may approve". Guidance 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.

Policy objective

The objective of this policy is to ensure that food analysts/examiners who 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.

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

Description of options considered

The review of the S&Q Regs must take into account the Government's Reducing Regulation Agenda. This is to ensure that any changes to the Regulations do not introduce any new burdens and any existing burdens are either removed or minimised.

Following on from an informal consultation and discussions with internal and external stakeholders, 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 (see below). Responses received from a wide range of stakeholders² have helped develop this impact assessment:

Option 1 – Do nothing; and

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.

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

- 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 aspects 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 the Secretary of State or (b) such other qualifications as the Secretary of State may approve. If the Secretary of State 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 one of our options in this Impact Assessment.

Option 1 - Do Nothing

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

² Summary of stakeholder responses to the formal consultation can be found at:
<http://www.food.gov.uk/multimedia/pdfs/consultationresponse/summary-responsessandq.pdf>

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 SI 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 Regs 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 the Secretary of State 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 Secretary of State 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 Regs 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.

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

Sectors affected

The sectors likely to be affected by this measure include:

- 1) businesses, in the form of private laboratories that employ food examiners and public analysts; and
- 2) the public sector (including public laboratories and local authorities).

The details of how each sector will be affected are set out in each of the costs and benefits sections. The distribution of affected parties by type and location is provided in Tables 1a and 1b below:

Table 1a: Public and Private Laboratories

	Public Analyst Labs ONLY		Food Examiner Labs ONLY		Both Food Examiner and Public Analyst Labs		Total
	Public	Private	Public	Private	Public	Private	
England	4	1	5	2	3	2	17
Wales	1	2	3	0	0	0	6
Scotland	0	0	0	0	4	0	4
NI	0	1	1	1	0	0	3
TOTAL	5	4	9	3	7	2	30

Table 1b: Food Examiners and Public Analysts in the UK

	No. of FEs employed by labs (1)		No. of PAs employed by labs (2)		No. of Local Authorities
	Public	Private	Public	Private	
England	25	8	12	5	354
Wales	7	0	2	3	22
Scotland	13	0	7	0	32
NI	2	2	0	2	26
TOTAL	47	10	21	10	434

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

(2) The number of PAs is based on APA data that indicates 30 PAs are currently employed across England, Wales, Scotland and NI. As disaggregated data is not available we have applied proportions based on the number of labs in each country; this is with the exception of Scotland for which there are 7 PAs who are also FEs. For Scotland the FEs and PAs in this table are therefore not additive.

It should be noted that these tables have been updated post consultation to ensure that the data used are the most up to date that the FSA has available. The laboratory landscape can change frequently and as such this information is guaranteed to be correct only at time of publication (correct as at August 2012).

Size of laboratories

The FSA does not have complete data on the size of laboratories across the UK. However for England, using data from a targeted laboratory survey carried out by the FSA in September 2011³, the split is: micro businesses 5%, small businesses 91% and medium size businesses 5% (note that this does not sum to 100% due to rounding⁴). This illustrates that the whole of the impact (as far as we are aware) will be on SMEs.

Consultation Responses 1:

a) Some of the consultation responses disputed the accuracy of laboratory numbers. The FSA has noted above that this is an ever changing landscape and some of the online sources available are not up to date. The evidence has been checked thoroughly and Tables 1a and 1b are accurate as of August 2012.

b) Some of the evidence from consultation indicated a concern regarding the size distribution of these businesses. However the discrepancy appeared to be resulting from whether the lab was PA or FE. Some of the evidence indicated that all labs would be small (PA) and some that they would be medium (FE). The FSA has as a result re-assessed the evidence collected and has found the above information to be up to date and as accurate as possible.

³ Note that the data doesn't cover all laboratories and as such may only be used indicatively.

⁴ The unrounded figures are 90.91%, 4.55% and 4.55% respectively

Option 1 – Do nothing

There are no incremental costs/benefits associated with this option as this is the baseline against which other options are assessed.

However, aspects of the current legislation governing the food examiners' qualifications and sampling provisions would not be up-dated, which could result in the current Regulations not being fit for purpose. This would also result in the issue of equivalent qualifications not being addressed which could be seen to impede the right to free movement of workers in the EU and may result in infraction proceedings.

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 current S&Q Regs and replacing them with a consolidated SI. This will allow information that is obsolete to be updated in addition to amending the food examiner qualification (Schedule 2) and aspects of the sampling provisions. The current food/public analyst qualification will be maintained.

An additional procedure to recognise and assess equivalent EU qualifications and training will also be considered. This will be done by developing a guidance document covering the recognition of equivalent qualifications. These equivalent qualifications will be restricted to enforcement work carried out under the Food Safety Act 1990 and any relevant secondary legislation.

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.

Table 2 provides a summary of which parties will be affected by the changes and what the impact will be.

Table 2: summary of affected groups and impacts

	Groups affected	Impact
1) Update the regulation		
a) update the FE qualifications	Private FE Labs, public FE Labs, local authorities.	Public and private laboratory Familiarisation costs and simplification benefits associated with understanding the guidance necessary to employ new FEs in future years. LAs will also benefit from reduced familiarisation costs in future years.
b) update the sampling aspect of the Regulations	Private FE Labs, public FE Labs, local authorities, private PA labs, public PA labs	Public and private laboratory Familiarisation costs and simplification benefits associated with understanding the guidance necessary to employ new PAs/FEs in future years. LAs will also benefit from reduced familiarisation costs in future years.
2) Guidance on equivalent qualifications	Local Authorities	Familiarisation costs, and benefits associated with ease of appointment/designation of FEs and PAs from overseas.

Costs

Costs to business (private labs)

The familiarisation costs outlined in this section refer only to **incremental costs** associated with the updates to the existing legislation. These costs do not in any way refer to an assessment of the familiarisation costs associated with the current baseline. A full explanation of this is provided in **Appendix 1** and should help to aid understanding of these calculations.

Private laboratories will face one-off costs associated with reading and becoming familiar with the new legislation. As the table above indicates, this option will affect both Public Analyst labs and Food Examiner labs through different changes to the Regulations. The FSA notes that it will be the food examiners (FE) and public analysts (PA) within each private laboratory that familiarise themselves with these new Regulations.

Data on the number of FEs employed by public laboratories in England has been provided by the Health Protection Agency (HPA). However for private laboratories the FSA does not have access to this information. As such in order to estimate the number of FEs required to familiarise themselves with this legislation an assumption has been made that HPA data can be used to approximate for private labs. It has therefore been assumed that on average 2 FEs are employed per business (a maximum of 3 and a minimum of 1).

The number of public analysts employed by local authorities has been provided by the Association of Public Analysts (APA).⁵

It is estimated that familiarisation will take approximately 30mins for each FE and PA. Using an ASHE⁶ wage rate of £18.54 for a science professional, up-rating by 30% to account of overheads⁷ in line with Standard Cost Model (SCM⁸) methodology and multiplying by the total number of businesses, total costs for the UK of approximately £241⁹ are estimated. For England the cost to all businesses is £157. This represents the lower bound range for cost estimates.

Consultation responses indicated that the opportunity costs associated with laboratory workers may be larger than the standard 30% uprating assumed by the standard cost model and the true opportunity cost of a lab worker could in fact be as large as £92 per hour (or a 5 fold increase). Although this appears to be a substantial cost increase, labs have high equipment/testing costs which could result in considerably larger opportunity costs than other businesses. As such, to attempt to take this into account in the analysis, costs associated with an opportunity cost of £92 per hour have also been estimated to provide an upper bound range.

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.

⁵ APA correspondence with FSA

⁶ 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>

⁷ Uprating for overheads is a method of accounting for the opportunity costs of an individual worker. $£18.54 \times 1.3 = £24.10$

⁸ <http://www.berr.gov.uk/files/file44503.pdf>

⁹ $0.5 \times £18.54 \times 1.3 \times 9 = £241$

Table 3: Costs to Private Laboratories

	No. of private	No. of PAs and FEs	Costs (lower bound) £s	Costs (upper bound) £s	Costs (mid point) £s
England	5	13	157	598	377
Wales	2	3	36	138	87
Scotland	0	0	0	0	0
NI	2	4	48	184	116
TOTAL	9	20	241	920	581

Notes: Some of the private labs employ PAs and FEs; the figures presented in this table account for this.

Totals may not sum due to rounding. The costs reported in the table are estimated by multiplying wage rates uplifted by 30% to account for overheads.

Rounding takes place after calculation of the total and therefore the country level figures may not appear to sum accurately to this.

Note that private sector businesses will face no additional familiarisation costs associated with the equivalent qualification guidance. This is because PAs are appointed by LAs and FEs are designated by LAs which means that private sector businesses need not engage in the process of determining if an EU qualification is equivalent to those stipulated in the Regulations. The guidance is aimed at local authorities who wish to consider appointing or designating a PA or FE who does not possess qualifications and experience laid-down within the new revised Regulations. As such, there will be no additional burden attributable to private sector businesses, though they may find it useful to know the guidance exists¹⁰.

An additional point to note is that as the new Regulations apply **only** to public and private sector PA and FE laboratories carrying out official controls work; **food industry** laboratories will not face an impact from updates made to this legislation, as these do not employ PAs or FEs.

Consultation Responses 2:

On the whole, responses indicated that a familiarisation time of 30mins appeared reasonable. However one respondent indicated concern due to confusion between the baseline and incremental cost estimates. An attempt has been made to address this concern by providing a full and thorough explanation of how baseline costs fit with this model in Appendix 1.

In addition, sensitivity analysis has been provided in Table 3 to ensure all of the evidence provided by consultation is taken into account in the analysis.

Public Sector Costs

Costs to Local Authorities

Local Authorities who appoint FEs and PAs would need to become familiar with the new updated S&Q legislation. The FSA estimates that this will take approximately 30mins for each LA, assuming that one Environmental Health Officer (EHO) per LA will familiarise him/herself. Using an ASHE¹¹ median wage rate of £15.74 for an environmental health officer and up-rating by 30% to account of overheads in line with SCM¹² methodology, it is estimated that the cost to each LA will be equal to £10.23. Multiplying by

¹⁰ This is only from the viewpoint that they may wish to employ someone in future that may decide to become a FE/PA and so businesses may find it useful to know that the ease with which equivalent qualifications are established has been improved.

¹¹ 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>

¹² <http://www.berr.gov.uk/files/file44503.pdf>

the total number of LAs, total costs in England of approximately £3,622 are estimated. The FSA estimates that in addition to the 30mins 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 30mins increasing total familiarisation costs of the S&Q Regs to £7,244.

In addition to familiarisation costs associated with the new S&Q Regs, LAs will also need to familiarise themselves with the new guidance on equivalent qualifications. It is anticipated, using the same methodology as above, that this will take a further 30mins and as such cost an additional £3,622 in England.

Total costs to Local Authorities of the guidance and the new S&Q Regs are set out in the table below.

Table 4: Costs to Local Authorities

	Number of LAs	Familiarisation costs £s	Dissemination costs £s	Guidance familiarisation costs £s	Total Costs £s
England	354	3,622	3,622	3,622	10,865
Wales	22	225	225	225	675
Scotland	32	327	327	327	982
NI	26	266	266	266	798
TOTAL	434	4,440	4,440	4,440	13,321

Note: Totals may not sum due to rounding

Totals may not sum due to rounding. The costs reported in the table are estimated by multiplying wage rates uplifted by 30% to account for overheads. Rounding takes place after calculation of the total and therefore the country level figures may not appear to sum accurately to this.

Costs to Public Laboratories

Public laboratories will also face costs of familiarisation as a result of the introduction of this new legislation. As with private labs it is assumed that it will be the FEs and PAs employed by the labs that will need to familiarise themselves. The FSA estimates that this will take approximately 30mins for each FE and PA employed by a public lab. The data for the number of FEs and PAs employed by laboratories comes from various sources – these are outlined in the footnote of table 5. Using an ASHE¹³ wage rate of £18.54 for a science professional and up-rating by 30% to account of overheads in line with SCM¹⁴ methodology, a total UK cost of approximately £735 is estimated; this is £446 for England only.

As stated in the private sector labs section above, a consultation response has indicated that the opportunity costs of employment for an FE or PA in a laboratory could be much greater than that of other officer workers and the SCM assumption may underestimate costs involved. To account for this an upper bound estimate using £92 per hour has been provided in table 5 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.

¹³ 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>

¹⁴ <http://www.berr.gov.uk/files/file44503.pdf>

Table 5: Costs to Public Laboratories

	No. of Public Labs	No. of FEs and PAs employed	Costs (lower bound) £s	Costs (upper bound) £s	Costs (mid point) £s
England	12	37	446	1702	1074
Wales	4	9	108	414	261
Scotland	4	13	157	598	377
NI	1	2	24	92	58
TOTAL	21	61	735	2806	1771

Note: Totals may not sum due to rounding

Totals may not sum due to rounding. The costs reported in the table are estimated by multiplying wage rates uplifted by 30% to account for overheads. Rounding takes place after calculation of the total and therefore the country level figures may not appear to sum accurately to this.

Data is sourced from various: No. of PAs across UK is provided by APA and FS Scotland, No. of FEs England provided by HPA (where data isn't available an estimate of 2 per lab is used), No. of FEs Wales provided by Health Protection Wales. NI, no data available an average of 2 assumed. Note that in Scotland the FEs and PAs are the same people and so the numbers in table 1 are not additive.

Consultation Responses 3:

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 TSO/EHO 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 using a standard formula¹⁵. Under Standard HMT Green Book¹⁶ guidance a discount rate of 3.5% is used.

Table 6 provides details of Equivalent Annual Costs (EAC) by sector. Note that the costs included in the summary table are for England only.

¹⁵ 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.

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

Table 6: Summary of Costs (England Only)

	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 5 (£s)	Year 6 (£s)	Year 7 (£s)	Year 8 (£s)	Year 9 (£s)	Total Cost (£)	Total (NPV £s)
Cost to business (private labs)	44	44	44	44	44	44	44	44	44	44	438	377
Costs to LAs	1,262	1,262	1,262	1,262	1,262	1,262	1,262	1,262	1,262	1,262	12,623	10,865
Cost to Public Labs	125	125	125	125	125	125	125	125	125	125	1,248	1,074
Total	1,431	1,431	1,431	1,431	1,431	1,431	1,431	1,431	1,431	1,431	14,309	12,317

Note: The table presents costs to England Only

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.

Benefits

Benefits to businesses

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 for 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 30mins. 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 up to 2 new FEs in England appointed each year appears reasonable and that for each of the devolved administrations respectively this will be 1 per year. This assumption was not challenged during the consultation process.

While it is noted there are currently no private laboratories in Scotland, it is feasible that at some point over the next 10 years a private lab may open. In order to account for this and future potential benefits, the same assumptions have been applied to Scotland as to the rest of the devolved countries.

Benefits are estimated by multiplying the 30mins time saving in recruitment by the number of new entrants and the ASHE¹⁷ median wage rate for a HR/Business manager of £22.78 updated¹⁸ to £29.61.

Table 7: Benefits Private Laboratories

	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 5 (£s)	Year 6 (£s)	Year 7 (£s)	Year 8 (£s)	Year 9 (£s)	Total Cost (£)	Total (NPV £s)
England	30	30	30	30	30	30	30	30	30	30	296	255
Wales	15	15	15	15	15	15	15	15	15	15	148	127
Scotland	15	15	15	15	15	15	15	15	15	15	148	127
NI	15	15	15	15	15	15	15	15	15	15	148	127
TOTAL	74	74	74	74	74	74	74	74	74	74	740	637

¹⁷ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-235202>

¹⁸ In line with SCM methodology by 30% to account for overheads

Consultation Responses 4:

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.

Benefits to Public laboratories

Public labs will benefit from changes to the Regulations in the same way as private labs, from reduced recruitment costs. 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 30mins. At present, no evidence as to the likely number of businesses that will benefit from this simplification is available however in order to assess the potential magnitudes the FSA has made an assumption that up to 2 new FEs in England will be appointed each year and that for each of the devolved administrations respectively this will be 1 per year.

Benefits are estimated by multiplying the 30mins time saving for recruitment of each new entrant, by the number of new entrants and the ASHE¹⁹ median wage rate of a HR manager £22.78 uprated²⁰ to £29.61

Table 8 below summarises the annual benefits

Table 8: Benefits Public Laboratories

	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 5 (£s)	Year 6 (£s)	Year 7 (£s)	Year 08 (£s)	Year 9 (£s)	Total Cost (£)	Total (NPV £s)
England	30	30	30	30	30	30	30	30	30	30	296	255
Wales	15	15	15	15	15	15	15	15	15	15	148	127
Scotland	15	15	15	15	15	15	15	15	15	15	148	127
NI	15	15	15	15	15	15	15	15	15	15	148	127
TOTAL	74	74	74	74	74	74	74	74	74	74	740	637

Consultation Responses 5:

The changes made to benefits to public labs 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 labs in the previous section.

Benefits to LAs

Local authorities will also realise benefits associated with simplification of the S&Q Regs. Any new EHO/TSO officers will be able to benefit from the simplified Regulations. We estimate that on average one person from each affected LA per year will benefit from the simplified legislation, saving a time premium of 30mins per LA per annum. Using an ASHE wage rate of £15.74 uprated by 30% to account for overheads in line with SCM methodology results in an annual saving of approximately £4440 for the

¹⁹ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-235202>

²⁰ In line with SCM methodology by 1/3 to account for overheads

UK and £3622 for England only. Over 10 years this results in a total NPV of £38,220 for the UK and £31,175 for England only.

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 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 or 2 LAs per country per year; two for England and one for each of the devolved countries.

Table 9: Benefits to LAs

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Total Saving (current prices)	NPV
S&Q Regs	£s	£s	£s	£s	£s	£s	£s	£s	£s	£s	£s	£s
England	3,622	3,622	3,622	3,622	3,622	3,622	3,622	3,622	3,622	3,622	36,218	31,175
Wales	225	225	225	225	225	225	225	225	225	225	2,251	1,937
Scotland	327	327	327	327	327	327	327	327	327	327	3,274	2,818
NI	266	266	266	266	266	266	266	266	266	266	2,660	2,290
TOTAL	4,440	4,440	4,440	4,440	4,440	4,440	4,440	4,440	4,440	4,440	44,403	38,220
Guidance												
England	286	286	286	286	286	286	286	286	286	286	2,865	2,466
Wales	143	143	143	143	143	143	143	143	143	143	1,432	1,233
Scotland	143	143	143	143	143	143	143	143	143	143	1,432	1,233
NI	143	143	143	143	143	143	143	143	143	143	1,432	1,233
TOTAL	716	716	716	716	716	716	716	716	716	716	7,162	6,165

Note: Totals may not sum due to rounding

The costs reported in the table are estimated by multiplying wage rates uplifted by 30% to account for overheads. Rounding takes place after calculation of the total and therefore the country level figures may not appear to sum accurately to this.

An additional point to note is that in England only approximately 21 LAs have labs that carry out PA/FE work in their jurisdiction; this is 4 for Wales, 4 for Scotland and 3 for NI and so the largest possible number of local authorities that would potentially be able to benefit from this guidance is 32 across the UK. This helps to understand the distribution of the quantified benefits but does not affect the quantification of the benefits estimates.

Consultation Responses 6:

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>)

Summary of Costs and Benefits (England Only)

In order for one-off transition costs and benefits to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs using a standard formula²¹. Under Standard HMT Green Book²² guidance a discount rate of 3.5% is used.

The table below provides details of EACs by sector and annual benefits. Note that the costs and benefits included in the summary table are for England only.

Table 10: Summary of costs and Benefits (England Only)

	Year 0 (£s)	Year 1 (£s)	Year 2 (£s)	Year 3 (£s)	Year 4 (£s)	Year 05 (£s)	Year 6 (£s)	Year 7 (£s)	Year 8 (£s)	Year 9 (£s)	Total Cost (£)	Total (NPV £s)
Cost to business (private labs)	44	44	44	44	44	44	44	44	44	44	438	377
Costs to LAs	1,262	1,262	1,262	1,262	1,262	1,262	1,262	1,262	1,262	1,262	12,623	10,865
Cost to Public Labs	125	125	125	125	125	125	125	125	125	125	1,248	1,074
Total Cost	1,431	1,431	1,431	1,431	1,431	1,431	1,431	1,431	1,431	1,431	14,309	12,317
Benefit to business (private labs)	30	30	30	30	30	30	30	30	30	30	296	255
Benefit to LAs	3,908	3,908	3,908	3,908	3,908	3,908	3,908	3,908	3,908	3,908	39,082	33,641
Benefit to Public	30	30	30	30	30	30	30	30	30	30	296	255
Total Benefit	3,967	3,967	3,967	3,967	3,967	3,967	3,967	3,967	3,967	3,967	39,675	34,151
Net cost to business (private labs)	14	14	14	14	14	14	14	14	14	14	142	122
Net cost to LAs	-2,646	-2,646	-2,646	-2,646	-2,646	-2,646	-2,646	-2,646	-2,646	-2,646	- 26,460	- 22,776
Net cost to Public Labs	95	95	95	95	95	95	95	95	95	95	952	819
Total Net Cost	-2,537	-2,537	-2,537	-2,537	-2,537	-2,537	-2,537	-2,537	-2,537	-2,537	- 25,366	- 21,834

Note: The table presents costs to England Only

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 10 above. As the evidence shows this policy is approximately cost neutral.

²¹ $EANCB = PVNCB/a_r$, Where a_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.

²² http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

Competition Assessment

The FSA has assessed the impact on competition using the OFT competition assessment guidance (http://www.of.gov.uk/shared_of/reports/comp_policy/Quick-Guide1-4.pdf) and the four filter questions highlighted below. If yes can be answered to one or more of these questions then a full competition assessment should be carried out.

Does the policy:

1. Directly limit the number or range of suppliers?

- e.g. will it award exclusive rights to a supplier or create closed procurement or licensing programmes?

No, introduction of the guidance document will aid competition across EU borders thereby increasing ease of access to the market by removing potential entry barriers.

2. Indirectly limit the number or range of suppliers?

- e.g. will it raise costs to smaller entrants relative to larger existing suppliers?

No, introduction of the guidance document will aid competition across EU borders thereby increasing ease of access to the market by removing potential entry barriers.

3. Limit the ability of suppliers to compete?

- e.g. will it reduce the channels suppliers can use or geographic area they can operate in?

No, introduction of the guidance document will aid competition across EU borders thereby increasing ease of access to the market by removing potential entry barriers.

4. Reduce suppliers' incentives to compete vigorously?

- e.g. will it encourage or enable the exchange of information on prices, costs, sales or outputs between supplier?

No, introduction of the guidance document will aid competition across EU borders thereby increasing ease of access to the market by removing potential entry barriers.

Introducing guidance for assessing equivalent qualifications under the preferred option may encourage competition from other equally qualified analysts around the UK and EU to do official control work. This will be considered in a separate consultation for the guidance.

Consultation responses 7:

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 OFT competition question filters, 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 introduction of the guidance on equivalent qualifications rather than decreased.

Small Firms Impact Test

Most businesses using these Regulations are publicly owned laboratories however there are a growing number of small and medium sized businesses (private laboratories) 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 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 are government owned or are SMEs. This is due to the size, nature and work of the laboratories which does not generally support a large business structure.

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.

Race/Gender/Disability

The FSA has considered what effect this policy would have for different groups in the community. This has found that there would be no detrimental impact on any particular group which the results of the consultation have confirmed.

Implementation Plan

If the FSA's preferred option to revoke the Food Safety (Sampling & Qualifications) Regulations 1990 and replace them with a new 2013 consolidated Statutory Instrument is taken forward then we would plan for the SI 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.

Appendix 1

Costs to Private Businesses (Public Analyst/Food Examiner laboratories)

Costs to business resulting from the S&Q Regulations will be transitional. They are one-off costs occurring during the first year of the policy resulting from businesses familiarising themselves with the new Regulations.

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.

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

Using this information, costs to business as a result of changes to this legislation are estimated and reported in table 3 in the IA document.

Food industry laboratories will not incur any additional costs from updates made to this legislation. They will have no additional familiarisation costs associated with both sampling and qualification aspects of the new legislation as the legislation is aimed at PA/FE laboratories and local enforcement authorities only - food industry laboratories do not employ PAs or FEs. Staff working in food industry laboratories cannot act as public analysts or food examiners because this would be classed as a disqualification under Regulation 5 of the Food Safety (Sampling & Qualifications) Regulations 1990. It is also envisaged that they will not be required to engage in the process of determining if a qualification is equivalent to those stipulated in the regulation. There is guidance aimed at local authorities who wish to consider appointing or designating a PA or FE who does not possess the requisite qualifications and experience laid-down in the revised Regulation.

Benefits to Private Businesses (Public Analysts/Food Examiner laboratories)

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. Stakeholder consultation has indicated that it will take 30 minutes less for a business to familiarise themselves with the new simplified regulation, which represents a benefit in terms of time savings.