

EXPLANATORY MEMORANDUM TO
THE FOOD SAFETY (SAMPLING & QUALIFICATIONS) (ENGLAND)
REGULATIONS 2013

2013 No. 264

1. This explanatory memorandum has been prepared by The Food Standards Agency and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Instrument specifies the qualifications necessary to be a public analyst, a food analyst or a food examiner for the purposes of the Food Safety Act 1990. It prohibits specified persons from carrying out analyses or examination under the Act.

2.2 The Instrument also specifies the procedures to be followed when a sample has been procured under that Act for analysis or examination, and exclude from these procedures samples taken under Regulations which have their own procedures.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This Instrument revokes and remakes with amendments the Food Safety (Sampling and Qualifications) Regulations 1990 (S.I. 1990/2463). In particular it updates the list of prescribed qualifications and experience required to act as a food examiner contained in Schedule 2 of the 1990 Regulations. It also makes provision for the procedures to be followed where samples are taken under powers contained in the Food Safety Act 1990 and submitted for chemical or microbiological analyses, and prescribes the form of the resultant certificates of analysis and/or examination.

4.2 The Regulations fulfil the function given to the Secretary of State under section 27 of the Food Safety Act 1990 of prescribing the qualifications of public analysts. It fulfils the function under section 31 of that Act of supplementing or modifying provisions of the Act relating to sampling and analysis, including the submission of a reference sample to the Laboratory of the Government Chemist.

4.3 The Regulations give effect to certain requirements of European Regulation (EC) No. 882/2004 on official feed and food controls by fulfilling the Agency's role as a competent authority in ensuring that there are sufficient numbers of suitably qualified and experienced staff to carry out official control work, and that food business operators who are the subject of enforcement action in the form of sampling and analysis should have access to an expert second opinion.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 Similar national instruments are in the process of being made in Scotland, Wales and Northern Ireland to a parallel timetable to that in England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Food Safety (Sampling & Qualifications) Regulations (England) 2013, in revoking and replacing the existing Food Safety (Sampling & Qualifications) Regulations 1990, will bring together all previous amendments that are still in force into one consolidated SI. The 1990 Regulations were found to be out of date principally with regards to the qualifications and training requirements for food examiners. Certain aspects of the sampling provisions were also found in need of updating. Bringing these Regulations up to date was welcomed by stakeholders during both the informal and formal consultations. Revoking the existing Regulations and replacing them with a consolidated version will benefit analysts and examiners working in both public and private laboratories as well as enforcement officers working for local authorities. The new Regulations will ensure that public analysts (PA) and food examiners (FE) are suitably qualified for the purposes of carrying out official control work and that samples are dealt with correctly by enforcement officers.

7.2 In addition guidance is being developed to ensure that the qualification requirements to be a food analyst/examiner are not over-restrictive but allow other equivalent qualifications to be considered thus allowing free movement of workers across EU. This addresses a provision in section 27(2)(b) of the Food Safety Act 1990 which gives the Secretary of State discretion to approve other suitable qualifications.

- *Consolidation*

7.3 This Instrument consolidates amendments which are still in force into one Regulation. These amendments are principally to Schedule 1 of the 1990 Regulations, which lists the provisions to which the 1990 Regulations do not apply.

8. Consultation outcome

8.1 These Regulations have been subjected to an informal consultation in 2011 and a 12 week formal public consultation in 2012 in each of the four UK countries. A further Stakeholder Workshop was held in December 2012. Responses have been taken into consideration when developing the final SI and IA.

8.2 The informal consultation took place during May/June 2011 where non-legislative option of revoking the qualifications aspects of the Regulations and options to revise the Regulations without addressing equivalent qualifications were put forward. However both options were found to be unfavourable, constrained and would work against what is laid down in the Food Safety Act 1990. The option favoured by majority of the stakeholders was to revise and up-date aspects of the current Regulations related to the food examiner qualifications, sampling provisions and to address equivalent qualifications.

8.3 A formal public consultation on a draft of the proposed SI and the associated draft Impact Assessment was held between 5 March 2012 and 4 June 2012. Views received from 20 stakeholders showed a majority were in favour of revoking the Regulations and replacing them with a consolidated SI. Concern was raised in regard to food industry laboratories requiring time to familiarise themselves with the new Regulations. However the FSA considered that private sector laboratories will face no additional familiarisation costs as the changes to the sampling provisions are minor and that PAs/FEs are appointed by local authorities which means that private businesses need not engage in the process of determining if a qualification is equivalent to that stipulated in the Regulations. Stakeholder responses on the draft SI were found to be useful, in particular views on Schedule 2 of the Regulations which details the qualifications and training requirements of food examiners. Stakeholder's comments have helped to bring the FE qualifications up to date.

8.4 A stakeholder workshop was held on 7th December 2012 to finalise the draft SI. Views from stakeholders have been taken into consideration when developing this Instrument.

9. Guidance

9.1 The guidance will be produced on official control analysts and laboratories and will include recognition of equivalent qualifications. It is envisaged that the guidance will be available to coincide with the SI coming into force and will be published on the Agency's website. It will be available to stakeholders and enforcement agencies.

10. Impact

10.1 The impact on private sector businesses, public sector and local authorities is set out in the accompanying IA (Annex X)

11. Regulating small business

11.1 Although the legislation applies to all businesses evidence available from the consultation suggests that the businesses affected are government owned or are small or medium sized (SMEs).

12. Monitoring & review

12.1 The Regulations will be reviewed as set out in the Instrument's regulation 13.

13. Contact

13.1 **Bhavna Parmar** at the Food Standards Agency, Analysis and Research Division. Tel: 020 7276 8307 or email: bhavna.parmar@foodstandards.gsi.gov.uk for any queries regarding the instrument.

13.2 If Bhavna Parmar is not available the contact is **Dr Andrew Damant** in the same Division. Tel: 0202 7276 8757 or email: andrew.damant@foodstandards.gsi.gov.uk