

EXPLANATORY MEMORANDUM TO

THE FOOD SAFETY (SAMPLING AND QUALIFICATIONS) REGULATIONS (NORTHERN IRELAND) 2013

2013 No. 66

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Food Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 27(2), 30(9), 32(1),(2)(c),(d),(e),(g) and (h), 47(2) and 48(2) of the Food Safety (Northern Ireland) Order 1991.

2. Purpose of the Rule

- 2.1 The rule specifies the qualifications necessary to be a public analyst, a food analyst or a food examiner for the purposes of the Food Safety (Northern Ireland) Order 1991. It prohibits specified persons from carrying out analyses or examination under the Order.
- 2.2 The rule also specifies the procedures to be followed when a sample has been procured under that Order for analysis or examination, and exclude from these procedures samples taken under Regulations which have their own procedures.

3. Legislative Context

- 3.1 This Rule revokes and remakes with amendments the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991 (S.R. 1991 No. 198). In particular it updates the list of prescribed qualifications and experience required to act as a food examiner contained in Schedule 2 of the 1991 Regulations. It also makes provision for the procedures to be followed where samples are taken under powers contained in the Food Safety (Northern Ireland) Order 1991 and submitted for chemical or microbiological analyses, and prescribes the form of the resultant certificates of analysis and/or examination.
- 3.2 The Regulations fulfil the function given to the Department of Health, Social Services and Public Safety under Article 27 of the Food Safety (Northern Ireland) Order 1991 of prescribing the qualifications of public analysts. It fulfils the function under Article 32 of that Order of supplementing or modifying provisions of the Order relating to sampling and analysis, including the submission of a reference sample to the Laboratory of the Government Chemist.
- 3.3 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.

4. Parity or Replicatory Measure

- 4.1 This Rule applies to Northern Ireland only. Parallel legislation is being made in England, Scotland and Wales.

5. European Convention on Human Rights

- 5.1 As this Rule is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Policy background

- What is being done and why

6.1 The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013, in revoking and replacing the existing Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991, will bring together all previous amendments that are still in operation into one consolidated statutory rule. The 1991 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 district councils. 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.

6.2 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 Article 27(2)(b) of the Food Safety (Northern Ireland) Order 1991 which gives the Department of Health, Social Services and Public Safety discretion to approve other suitable qualifications.

- *Consolidation*

6.3 This Rule consolidates amendments which are still in operation into one Regulation. These amendments are principally to Schedule 1 of the 1991 Regulations, which lists the provisions to which the 1991 Regulations do not apply.

7. Consultation outcome

7.1 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 SR and IA.

7.2 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 (Northern Ireland) Order 1991. 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.

- 7.3 The Food Standards Agency in Northern Ireland conducted a formal public consultation from 12 March and 4 June 2012 on a draft of the proposed S.R and the associated draft Impact Assessment. Two responses were received in Northern Ireland.
- 7.4 A stakeholder workshop was held on 7th December 2012 to finalise the draft SR. Views from stakeholders have been taken into consideration when developing this Rule.

8. Equality Impact

- 8.1 These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the section 75 groups.

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 statutory rule coming into operation 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 district councils is set out in the attached IA to this memorandum.

10. Regulating small business

- 10.1 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).

11. Contact

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| | | | |
|---|---|--|--|
| Title: REVIEW OF THE FOOD SAFETY (SAMPLING & QUALIFICATIONS) REGULATIONS (NORTHERN IRELAND)1991 IA No: FOOD0035 Lead department or agency: FOOD STANDARDS AGENCY Other departments or agencies: | Impact Assessment (IA) | | |
| | Date: 15/02/2013 | | |
| | Stage: FINAL | | |
| | Source of intervention: UK | | |
| | Type of measure: Secondary Legislation | | |
| Contact for enquiries: Esther Chartres, Incidents, Standards and Science Unit Tel: 028 9041 7737 Email: esther.chartres@foodstandards.gsi.gov.uk | | | |

Summary: Intervention and Options

| 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 |
| £3k | £31 (negligible) | -£4 (negligible) | No | 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 (NI) Order 1991 and also specify the procedures to be followed when a sample has been procured under the Order. 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 (NI) 1991, replace them with a consolidated Statutory Rule 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? N/A in Northern Ireland If applicable, set review date: N/A in Northern Ireland

| | | | | | |
|--|------------------|--------------------|--------------------|-------------------|------------------------|
| 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 SELECT SIGNATORY: _____ Date: _____

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 Food Safety (Sampling & Qualifications) Regulations, 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 | No | Zero net cost |

Summary: Analysis & Evidence Policy Option 2

Description: Revoke the current Food Safety (Sampling & Qualifications) Regulations (NI) 1991, replace them with a consolidated Statutory Rule 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: £2,805 |

| 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 | 1,129 | N/A | 972 |

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

Total Familiarisation costs (Northern Ireland Only): £972 (EAC 113) comprised of: Business £116 (EAC £13); District Councils (DCs): £798 (EAC £93); Public Labs: £58 (EAC £7).

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 | 439 | 3,778 |

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 DCs through availability of guidance.

Total benefits (Northern Ireland Only): £3778 (annual benefit constant price £439) comprised of businesses: £127 (annual benefit constant prices £15), public labs £127 (annual cost constant prices £15) and LAs £3523 (annual cost constant prices £409).

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

- Where data is not available we have assumed two FEs are on average employed by a laboratory (min of 1 and max of 3).
- 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 DC benefits it has been assumed that 1 person per DC per year will benefit (these assumptions were unchallenged at consultation)

BUSINESS ASSESSMENT (Option 2)

| | | | |
|--|-------------------------------|----------------------------|----------------------|
| Direct impact on business (Equivalent Annual): | | In scope of OIOO? | Measure qualifies as |
| Costs: £13(negligible) | Benefits: £15 (negligible) | Net cost: -£2 (negligible) | No Zero net cost |

Evidence Base (for summary sheets)

Problem under consideration

The Food Safety (Sampling & Qualifications) Regulations (S&Q Regs) were made in 1991 in Northern Ireland, (SR 1991 No. 198) and in 1990 in England, Scotland and Wales (SI 1990 No. 2463). These Regulations support the Food Safety (Northern Ireland) Order 1991 in Northern Ireland (Food Safety Act 1990 in England, Scotland and Wales) which requires that authorised officers of local authorities/district councils 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 Department of Health.

The Food Safety (Sampling and Qualifications) Regulations specify the qualifications necessary to be a public analyst, food analyst or food examiner for the purposes of the Food Safety (NI) Order 1991. They also specify the procedures to be followed when a sample has been procured under that Order 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 Food Safety (Sampling and Qualifications) Regulations, in particular to Schedule 1 and these have never been consolidated. It is, therefore, intended that the current Regulations be revoked in their entirety and replaced with a consolidated SR which will encompass all previous amendments still in force in one comprehensive set of Regulations. 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 (Northern Ireland) Order 1991 (Part III, Article 27(2)(b) and Article 30(9)). The Order states that a person shall not be appointed as a public analyst or a food examiner unless he possesses qualifications prescribed by regulations or "such other qualifications as the Department of Health 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 (Northern Ireland) Order 1991 are suitably qualified and that adequate procedures are followed when a sample has been procured under the Order for official analysis or examination.

Description of options considered

The review of the Food Safety (Sampling and Qualifications) Regulations 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 Food Safety (Sampling and Qualifications) 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 stakeholders¹ have helped develop this impact assessment:

Option 1 – Do nothing; and

Option 2 - Revoke the current Food Safety (Sampling & Qualifications) Regulations (Northern Ireland) 1991, replace them with a consolidated Statutory Rule 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 (Northern Ireland) Order 1991. Articles 27(2) and 30(9) of the Order require district councils to appoint public analysts and food examiners who possess qualifications that (a) have been prescribed by regulations made by the Department of Health or (b) such other qualifications as the Department of Health may approve. If the Department of Health has not prescribed any qualifications by regulations, then logically there can be no other qualifications to approve. Therefore Article 27(2) of the Food Safety (Northern Ireland) Order 1991 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 Food Safety (Sampling and Qualifications) Regulations as they stand.

¹ 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 (Northern Ireland) 1991, replace them with a consolidated Statutory Rule and introduce guidance for recognising equivalent qualifications.

This option involves revoking the current Regulations in their entirety and replacing them with a consolidated SR which will bring together all previous amendments currently in operation. Additionally there are aspects of the food examiner qualifications/training within Schedule 2 of the Food Safety (Sampling and Qualifications) 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 the Department of Health under Article 27(2)(b) and Article 30(9) of the Food Safety (Northern Ireland) Order 1991. 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 Department of Health on suitability for approval. These equivalent qualifications will only be effective for enforcement work carried out under the Food Safety (Northern Ireland) Order 1991 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 Food Safety (Sampling and Qualifications) 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.

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-responsesandq.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 2011², the split is: micro businesses 5%, small businesses 91% and medium size businesses 5% (note that this does not sum to 100% due to rounding³). 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.

² Note that the data doesn't cover all laboratories and as such may only be used indicatively.

³ 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 (Northern Ireland) 1991, replace them with a consolidated Statutory Rule and introduce guidance for recognising equivalent qualifications.

This option involves revoking current Food Safety (Sampling & Qualifications) Regulations (Northern Ireland) 1991 and replacing them with a consolidated SR. 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 (Northern Ireland) Order 1991 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 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).⁴

It is estimated that familiarisation will take approximately 30mins for each FE and PA. Using an ASHE⁵ wage rate of £18.54 for a science professional, up-rating by 30% to account of overheads⁶ in line with Standard Cost Model (SCM⁷) methodology and multiplying by the total number of businesses, total costs for the UK of approximately £2418 are estimated. For Northern Ireland the cost to all businesses is £48. 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.

⁴ APA correspondence with FSA

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

⁷ <http://www.berr.gov.uk/files/file44503.pdf>

⁸ 0.5*£18.54*1.3*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 businesses, though they may find it useful to know the guidance exists⁹.

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.

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 ASHE¹⁰ median wage rate of £15.74 for an environmental health officer and up-rating by 30% to account of overheads in line with SCM¹¹ methodology, it is estimated that the cost to each LA will be equal to £10.23. Multiplying by the total number of LAs, total costs in Northern Ireland of approximately £266 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 £532.

⁹ 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.

¹⁰ 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>

¹¹ <http://www.berr.gov.uk/files/file44503.pdf>

In addition to familiarisation costs associated with the new Food Safety (Sampling & Qualifications) Regulations, 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 £266 in Northern Ireland.

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 ASHE¹² wage rate of £18.54 for a science professional and up-rating by 30% to account of overheads in line with SCM¹³ methodology, a total UK cost of approximately £735 is estimated; this is £24 for Northern Ireland 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.

¹² 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>

¹³ <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 formula¹⁴. Under Standard HMT Green Book¹⁵ 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 Northern Ireland only.

Table 6: Summary of Costs (Northern Ireland 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) | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 135 | 116 |
| Costs to LAs | 93 | 93 | 93 | 93 | 93 | 93 | 93 | 93 | 93 | 93 | 927 | 798 |
| Cost to Public Labs | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 67 | 58 |
| Total | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 1,129 | 972 |

Note: The table presents costs to NI 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.

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

r_i is the annuity rate given by:

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

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 ASHE¹⁶ median wage rate for a HR/Business manager of £22.78 uprated¹⁷ 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 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 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

¹⁶ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-235202>

¹⁷ In line with SCM methodology by 30% to account for overheads

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 ASHE¹⁸ median wage rate of a HR manager £22.78 uprated¹⁹ 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 Food Safety (Sampling & Qualifications) Regulations. 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 UK and £266 for Northern Ireland only. Over 10 years this results in a total NPV of £38,220 for the UK and £2290 for Northern Ireland 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.

¹⁸ <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-235202>

¹⁹ In line with SCM methodology by 1/3 to account for overheads

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 (Northern Ireland 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 formula²⁰. Under Standard HMT Green Book²¹ 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 Northern Ireland only.

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

r is the annuity rate given by:

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.

²¹ http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

Table 10: Summary of Costs and Benefits (Northern Ireland 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) | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 13 | 135 | 116 |
| Costs to LAs | 93 | 93 | 93 | 93 | 93 | 93 | 93 | 93 | 93 | 93 | 927 | 798 |
| Cost to Public Labs | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 7 | 67 | 58 |
| Total | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 113 | 1,129 | 972 |
| Benefit to business (private labs) | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 148 | 127 |
| Benefit to LAs | 409 | 409 | 409 | 409 | 409 | 409 | 409 | 409 | 409 | 409 | 4,092 | 3,523 |
| Benefit to Public Labs | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 148 | 127 |
| Total | 439 | 439 | 439 | 439 | 439 | 439 | 439 | 439 | 439 | 439 | 4,389 | 3,778 |
| Net cost to business (private labs) | -1 | -1 | -1 | -1 | -1 | -1 | -1 | -1 | -1 | -1 | -13 | -11 |
| Net cost to LAs | 317 | 317 | 317 | 317 | 317 | 317 | 317 | 317 | 317 | 317 | 3,165 | 2,725 |
| Net cost to Public Labs | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 8 | 81 | 69 |
| Total Net Cost | 326 | 326 | 326 | 326 | 326 | 326 | 326 | 326 | 326 | 326 | 3,259 | 2,805 |

Note: The table presents costs to NI 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.

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 believes that the proposal will have no impact on race, gender or disability equality.

Implementation Plan

If the FSA's preferred option to revoke the Food Safety (Sampling & Qualifications) Regulations (Northern Ireland) 1991 and replace them with a new 2013 consolidated Statutory Rule is taken forward then we would plan for the SR 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 Food Safety (Sampling & Qualifications) 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 Food Safety (Sampling & Qualifications) Regulations.

With the introduction of amendments to the Food Safety (Sampling & Qualifications) Regulations, 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 (Northern Ireland) 1991. 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 Analyst / 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. This saving is estimated to be 30mins.