

## **POLICY NOTE**

### **THE FOOD SAFETY (SAMPLING & QUALIFICATIONS) (SCOTLAND) REGULATIONS 2013**

#### **SSI 2013/84**

The above instrument was made in exercise of the powers conferred by sections 27(2) and (5), 30(9), 31(1), (2)(c), (d), (e), (g) and (h), 48(1) and 49(2) of the Food Safety Act 1990. The instrument is subject to negative procedure.

#### **Policy Objectives**

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. It 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.

The instrument fulfils the function given to Scottish Ministers 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.

It gives 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.

The Food Safety (Sampling & Qualifications) Regulations (Scotland) 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 SSI. The 1990 Regulations were found to be out of date principally with regards to the qualifications and training requirements for food examiners.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 and food examiners are suitably qualified for the purposes of carrying out official control work and that samples are dealt with correctly by enforcement officers.

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.

The Food Safety (Sampling & Qualifications) Regulations (Scotland) 2013 shall come into force in Scotland on 6<sup>th</sup> April 2013. Parallel legislation is to come into force on the same day in England, Wales and Northern Ireland.

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 Scottish Ministers discretion to approve other suitable qualifications.

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 SSI coming into force and will be published on the Agency's website. It will be available to stakeholders and enforcement agencies.

### **Consultation**

A public consultation took place from 14 March to 6 June 2012. This formed part of a wider UK consultation. In addition, an informal consultation took place in 2011 and a Stakeholder Workshop was held in December 2012. Responses have been taken into consideration when developing the final SSI and Business and Regulatory Impact Assessment.

The informal consultation took place during May/June 2011 where a non-legislative option of revoking the qualifications aspects of the 1990 Regulations and options to revise the 1990 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 a majority of the stakeholders was to revise and up-date aspects of the 1990 Regulations related to the food examiner qualifications, sampling provisions and to address equivalent qualifications.

Views were received from 20 stakeholders during the formal 2012 consultation. They showed a majority were in favour of revoking the 1990 Regulations and replacing them with a consolidated SSI. Stakeholder responses on the draft SSI were found to be useful, in particular views on Schedule 2 of the instrument which details the qualifications and training requirements of food examiners. Stakeholder's comments have helped to bring the food examiner qualifications up to date.

A stakeholder workshop was held on 7<sup>th</sup> December 2012 to finalise the draft SSI. Views from stakeholders have been taken into consideration when developing this instrument.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Food Standards Agency website.

### **Impact Assessments**

An equality impact assessment has been completed on the draft SSI and is attached. There are no equality impact issues.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. We do not consider there to be any identifiable costs or benefits to private sector laboratories currently as only public sector laboratories and local authorities are involved in this activity. It is highly unlikely that this option will have a material impact on the operations and performance of these businesses.

The simplified instrument will make it easier in the future for food examiners and public analysts employed by small businesses to comply with the legislation.

## **Contact**

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