

FSA workshop to review the Food Safety (Sampling and Qualifications) Regulations 1990

DRAFT REPORT – version 2

***Disclaimer:** please note that this reports provides detail of the open discussions that took place at the workshop covering three imaginary scenarios and does not necessarily reflect the views of individual participants or the organisation they represent. The scenarios were used as a tool to explore risks and benefits and do not represent any organisation's view of the future. The views and opinions expressed within this report does not necessarily reflect those of the Agency.*

Louise Shaxson

Mike Thomson

15 December 2009

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Introduction

The workshop, held on 1st December 2009 was the first step in the consultation process to inform the amendment of the Food Safety (Sampling and Qualifications) Regulations 1990.

The aim of the workshop was to hear views from a range of stakeholders: in particular members of the official food /feed control laboratory community and those with knowledge of associated qualifications and food law practitioners (see final page for list of participants). The idea was to open up discussions on various options for suitable qualifications; identify any potential associated risks and to scope out other areas of the Regulations which may need amendment.

The Food Standards Agency's (FSA's) primary responsibility is to protect the public's health and consumer interests in relation to food. Specific responsibilities are also held by the FSA under European Legislation (Regulation 882/2004) to ensure that there is adequate laboratory capacity for testing food and a sufficient number of suitably qualified and experienced staff. The FSA carries out this responsibility by designating suitable laboratories as Official Control Laboratories. Local authorities need to have access to sufficient laboratory capacity and expertise to carry out their statutory functions to protect consumers. They also require laboratories that meet the needs of the increasingly global food market and the increasing technical complexity of food analysis.

The workshop proposed three different imaginary scenarios which were set 10 years in the future. The scenarios were created by the workshop facilitators on advice from the FSA.

When viewing the scenarios the following should be noted:

- The scenarios may appear extreme and are not intended as accurate or real predictions of the future
- The scenarios are a workshop tool. The scenarios are used to provoke discussions and airing of opinions on the possible implications of certain courses of action. The overall purpose is to use stakeholder reactions to the scenarios to assess the risks, benefits and implications of any possible changes.

The workshop process

Following three presentations from LACORS (the Local Authorities Coordinators of Regulatory Services), the Association of Public Analysts (APA) and the FSA, participants were encouraged to think broadly about what other issues each scenario might present. They were then invited to consider the risks and benefits to the entire food safety system that are inherent in each scenario. Participants were given the opportunity to work on all three scenarios; critiquing and grouping issues as they moved from one to the other. A final plenary session summarised the key issues that emerged during the day.

The day was facilitated by an independent facilitator to help develop and administer the workshop to ensure constructive discussion of divergent viewpoints, without having a vested interest in supporting or encouraging specific options within the revised legislation.

The comments contained within this report are those given by participants during the workshop and do not necessarily reflect the views of the FSA unless specifically indicated.

**Stakeholder workshop to discuss amending
the Food Safety (Sampling and
Qualifications) Regulations 1990**

1 December 2009

Outline of the day

Introduction and scene setting

Presentations

- short plenary session following each presentation

Group work (1): using three scenarios to identify risks

- scenarios are a workshop tool to stimulate discussion
- they are not 'on the table'


Group work (2): challenging and critiquing the scenarios, risks and benefits

Final plenary session and wash-up

Close at 1630 promptly

The presentations

LACORS (the Local Authorities Coordinators of Regulatory Services), presentation



The local authority perspective

Gwyneth Rogers
Team Leader for Food and Animal Health




The local authority perspective

- Local authorities and public analysts working well together
- Sampling levels
- Working together as partners in the future



Local authorities and public analysts working well together

- Easily accessible scientific support that can be trusted.
- Provide guidance within the legislative framework and support decision making.
- Reliable, particularly in emergencies.
- Working together on local and regional projects.
- Working together on national guidance.




Sampling levels

- Political agreement that sampling levels should not be fixed.
- Move away from central targets, towards local priorities and accountability.
- All enforcement activity should be risk based.
- Do fixed sampling levels improve public safety?
- Future of public sector funding.
- Are increased / fixed sampling levels priority for public spending?
- Should there be a guarantee that public funds will be used to maintain PA laboratories at the current level?



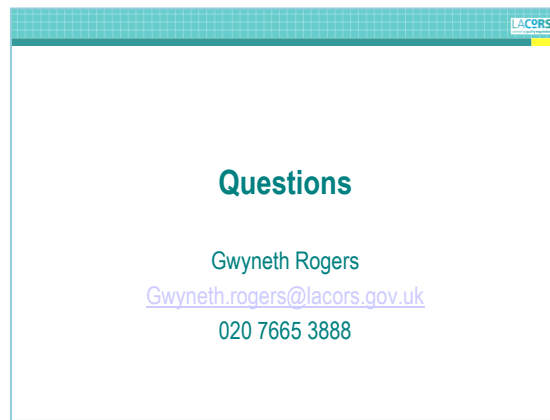
Working together as partners in the future

- Positive engagement with local authorities, such as training and developing regional projects.
- Contribute to the development and promotion of national surveys.
- Understand the drivers and needs for local government.



Working together as partners in the future

- Response timescales for day to day work.
- Transparency.
- Publicise services, competencies and analysis techniques openly.
- Competitive pricing.
- Local authorities need to have samples analysed in the most cost effective, efficient and robust way.
- Flexible, but robust qualification.



Q&A following the LACORS presentation

- Is there a bit of a false divide between Local Authorities and Public Analysts? Public Analysts are Local Authority (LA) officers: it's not a master-and-servant relationship
- Sampling levels: are sampling levels high enough given the risks? Other countries have higher sampling levels. Sampling levels in Germany of 5 samples per 1000 population taken were given as an example.
 - Risk-based sampling does happen now, and the FSA is revising the risk sampling guidance
- Transparency / competitiveness in pricing is an important issue, but there is a question over whether there should be pricing competition or fixed pricing for national surveys
- EU legislation doesn't seem to cater for the possibility of Member States re-exporting unsafe products that may then be subsequently re-imported into the EU
- Food examiners are outside the PA arena, but are a central part of the process
- LACORS/HPA (Health Protection Agency) relationships could be something for the FSA to consider, in terms of how they receive credits for microbiological work, not direct funding. The HPA has a 'great' model: one participant thought the FSA could usefully look at this system.
 - However, it is different in Scotland: the HPA does not provide Food Examiner Services in Scotland. This is provided by the four Scottish Public Analyst labs and one hospital lab. Most of the Public Analysts in Scotland are also Food Examiners and there are several more Food Examiners who do not hold a Mastership in Chemical Analysis¹ (MChemA). In Scotland, microbiological samples are not centrally funded but come out of the LA's sampling budget (similar to food standards samples) and so also compete for funds.
 - It is different again in Wales and Northern Ireland.
- Important to distinguish between two sampling-related issues:
 - Sampling as a proxy for funding the service
 - Risk-based protection of consumers
- LAs are looking at local priorities, but don't forget that they also play a key role in setting national priorities. Don't want them to forget their national role.
- Are we talking about the risk to public health or the risk of non-compliance?
- If we don't have targets for funding, the danger is that we don't get the allocation according to levels of risk
- All of the above points come down to providing as much information to LA officers as possible, so that they can use it to bid up to senior management and make the case

¹ Following the workshop, one participant commented that combining food examination and analysis in one laboratory has many advantages, including reduced sampling requirements, a more thorough approach to the investigation of problematic samples where both analysis and examination are complementary. It is also useful to have chemical and microbiological analysis in the same laboratory, particularly where information is needed on withdrawal of samples (eg for vac-pac type samples).

for additional funds. This isn't only for food & feed sampling: it also applies to environmental health & other issues. LACORS have a co-ordinating role in this, making the links at the national level so that LA officers' time and budgets can be spent efficiently.

APA presentation

AMENDING THE FOOD SAFETY
(SAMPLING AND QUALIFICATIONS)
REGULATIONS
STAKEHOLDER WORKSHOP

APA PERSPECTIVE

Dr Duncan Campbell
Public Analyst and Agricultural Analyst
President, Association of Public Analysts
Past Chief Examiner - MChemA



The key challenges for ensuring future capacity for local authority food analysis in respect of the Food Safety (Sampling and Qualification) Regulations 1990.

It is not intended to open up discussion on the issue of funding at the workshop.

Regulation (EC) No 882/2004

The FSA as the Competent Authority is required to ensure:


- Adequate provision of accredited laboratories
- Sufficient qualified and experienced staff
- Appropriate and properly-maintained facilities and equipment

How did we get here?

- James
- Turner
- Statham
- Hampton
- Smith

- James
- Turner
- Statham
- Hampton
- Smith

Local Authority
Sampling Activity



Why Amend?

- Tidy up qualifications for Food Examiners
- Clarify sampling in the light of EC Regulations
- Authorise other suitably qualified analysts
- Provide additional capacity and skills
- Ensure sufficient levels of control

Authorise other Suitably Qualified Analysts

- Professional code of conduct
- Impartiality
- Competence
- Able to draft effective certificates
- CPD/CPC
- Willing to stand in the witness box
- Free from conflicts of interest
- Ethos of consumer protection

Provide Additional Capacity and Skills

- Laboratories carrying out Official Controls accredited to ISO 17025 for that work
- Food Safety Act 1990 (S 27) prevents PAs from being engaged directly or indirectly in any food business in their area
- Section 30 (4) allows for samples to be passed on by Public Analysts

Parallels Between UK and EU

- Free market
- Central control
- No set standards for sampling rates
- Standards in some states
- Food law is criminal law
- Food law is administrative law
- PA & FE only lab posts with set qualifications
- Qualifications set for other lab staff?

Big retailers & manufacturers can self-police

- Sudan I in Worcestershire Sauce
- Cadbury fined £1m over salmonella
- Supermarket Lean Minced Beef
- Tesco fined £23 000 over mouse-bitten bagel
- Sainsbury's probes '53% fish' dinners*

* Telegraph online 21st November 2009

In some cases the food fraudster can apply highly sophisticated techniques and make it very difficult, if not impossible, for the public to detect that food fraud has occurred. Thus, as part of food fraud control enforcement, there must be an equally sophisticated analytical service to support the food enforcement officer in the field.

FOOD FRAUD TASK FORCE: FINAL REPORT
20th SEPTEMBER 2007

Q&A following the APA presentation

- 220,000 samples per year in the 1950s has dropped to 50,000 samples per year in 2008. And they are budget-related drops in sampling rather than risk-based drops.
- EU data suggests that an average of 6 samples per '000 head are taken – using the UK data it suggests that our rate is less than 1 sample per '000 head.
- There are 17 PA labs, 15 of which are LA-owned, they earn £5.5m p.a. from Official Food & Feed analysis (including £1.5m from the FSA for imported food & feed sampling)
- To explain “tidying up the regs” – the intention by DH was to look at the qualifications in 1990 and introduce something equivalent to the MChemA, but it was too

expensive to make the changes. The qualifications that came through in 1991 were to enable the existing Food Examiners to practice.

- All qualifications apply to all FE's regardless of which umbrella they fall under (PA or not, public or private sector). The difference between them and people who work on food examination for industry is their ethos of consumer protection.
- Being able to interpret results of analysis and how these results comply with the law, is just as important as the ability to do the analysis.
- What are the implications in terms of the supply of MChemA qualified people in the future? Two downward pressures on this:
 - Demand for sampling is decreasing
 - Efficiencies in labs are increasing
- So is there an oversupply problem? Could we in fact manage with 1-2 PA labs? The key question here is whether there is enough capacity for consumer protection to cope with the unknown unknowns (eg the next Sudan 1)
- It's important to distinguish between competence in analysis and competence in interpretation. Both are needed, though it may be the case that some labs may want to leave out the latter.

FSA presentation

Food Standards Agency Perspective

Sarah Appleby
Head: Food Safety:
Implementation & Delivery



Role of the FSA

“Safe food and healthy eating for all”

- Putting consumers first
- Science and evidence based
- Openness and independence



Role of the FSA

- UK Central Competent Authority for food safety / food standards
- Food incidents & RASFF coordination
- Role in Europe (EU legislation, EFSA)
- International role (Codex)



Putting Consumers First

- Food Safety
 - Physical
 - Chemical
 - Microbiological
- Food Standards
 - Chemical composition
 - Labelling
 - Allergens



Openness & Independence

- Robust and respected enforcement chain from sampling to witness box
- Repeatability, reproducibility of analysis
- Ability to withstand active and professional challenge
- Consumer confidence



Future Challenges for Public Services

- Political
 - central/local
 - devolved/regional
- Resources
 - Finance
 - Expertise



Science and Evidence

- Analytical Services
 - Range of testing
 - Accessibility
 - Capacity
 - Reliability
 - Speed & accuracy
 - Resilience
 - Value for money



FSA Strategic Plan 2010-15

- Proactive rather than reactive
 - Horizon scanning
 - Intelligence gathering
 - Imported food controls
 - UK food production



Summary

- Opportunity to review current provision of analytical services
- Importance of working in partnership with stakeholders
- Public health protection and consumer confidence paramount




Q&A following the FSA presentation

- Lab capacity: consider contingency arrangements for emergency controls, both technological and volume capacity
- The FSA is putting in place a system to ensure that messages about emergencies get to Brussels quickly, but is also thinking more widely about how to deal with emergencies
- Are safety and diet-related themes really incompatible? The concept of sustainable development is one of indivisibility: a benefit in one area is not traded for a cost elsewhere in the system. So people want to be able to buy food that is good for their health (including safety and nutrition) and that is simultaneously good for the environment, animal welfare and their other 'interests in relation to food' which the Agency is bound, by law, to protect. They should not have to choose between benefits.
- UKFSS: double data entry is a problem and a relatively expensive one to fix
- EU qualifications – each country has its own local interpretation of the necessary qualifications: Germany's are well developed, Austria is developing its own, other countries have other versions.
- In Germany they charge for failed samples – a manufacturer will be penalised for a failed sample, which raises considerable revenues.

- What should be the relative focus on things we don't know about (eg the next Sudan 1) and the things we do know about?
 - Use HACCP approach to ensure whole production chain is safe, not just end product
 - But also look at new and emerging issues
- Epidemiology of mycotoxins is very difficult: it is impossible to assign simple benefits (eg liver cancers prevented, or lives saved) to the gate keeping role that PAs have in preventing food contaminated by mycotoxins entering the country, because of the very difficult epidemiology
- The FSA should be kept up at night by the possibility of a loss of capacity and capability to go from sampling right through to the witness box: how can we ensure that minimum standards are achieved across the board?
- What is the FSA doing about the possibility of re-exporting dangerous substances for subsequent import
 - There are big ethical issues around this; around ensuring international standards for food safety
 - But we recognise that the international legislation is inconsistent
 - And the definition of 'dangerous' is not completely stable
- What happens when the number of PA labs / Official Control Laboratory function drops below a critical mass in terms of being able to deal with emergencies as well as the more mundane issues such as food fraud (watering down milk, reducing the proportion of fish in fish pie)? And are we now perilously close to that critical limit in terms of current capability?

The workshop process: Group work


The 3 scenarios were introduced. Each was imagined to be the situation 10 years into the future.



FOOD STANDARDS AGENCY

Group work: using three scenarios as a tool to stimulate discussion about risks and benefits.


The FSA requires Local Authorities to carry out risk-based intelligence-led sampling. However the widening global food market means that food issues are ever more complex, there is pressure to act fast as issues emerge and an increased need for surveillance of food imports to ensure they are safe. Food testing is becoming more complex and expectations on analysts higher: what does this mean in terms of Local Authority requirements for a modern day analytical service?



FOOD STANDARDS AGENCY

Scenario 1 – Do Nothing

The scenario is that all the organisations involved have been unable to act to resolve the problems with the numbers of Public Analysts. The number of PAs has fallen below 20 and the majority are over the age of 55. The number of people either with or studying for the MChemA is 50, but the proportion successfully completing the course remains low. Local Authorities must still process chemical analyses through PA laboratories. The number of food analysts has also fallen but food examiner levels are more steady.



FOOD STANDARDS AGENCY

Scenario 2: Loosen restrictions on who samples what.

The scenario is that we have opened up food and feed sampling & analysis to a much wider pool of expertise from which LAs can draw for analysis of "Official Control" of food and feed samples. The MChemA is just one of many qualifications to be a Public Analyst. This option has also allowed a wider range of laboratories to be able to carry out food and feed analyses directly for LAs.



**FOOD
STANDARDS
AGENCY**

Scenario 3: Move to EU-wide laboratories and expertise

In this scenario the Food Safety (Sampling and Qualifications) Regulations 1990 have been revoked. We have decided to let the market decide where LAs should go to for sampling and signing off for certificates of analysis– most have chosen to use official control labs and analysts in other EU countries, which have built analytical systems that conform to the EU legislation. A few labs specialising in certain analyses remain open in the UK. Most analysis is conducted by EU “super-labs” with state-of-the-art equipment servicing many Member States. Food examiners are using a similar system.



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First group session

Consider the scenario you’ve been assigned:

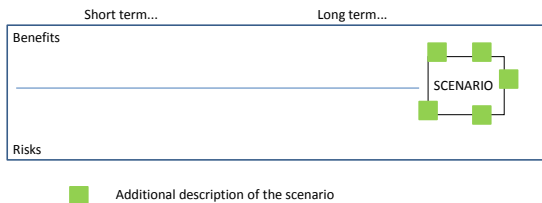
Blue group -> scenario 1
Red group -> scenario 2
Green group -> scenario 3

- What else could you add to it?
- What would the world look like?
- Add post-its as necessary
- Don’t judge good or bad at this stage, just fill in a bit more (plausible) description

(10 mins in total – till 12.15)



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■ Additional description of the scenario



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First group session (cont’d)

Finally gather together in large group and see if any of the post-its can be grouped together (create new post-its as necessary)

Identify two people to remain behind for the first part of the post-lunch session

15 minutes – to 13.00
Then break for lunch: 13.00-14.00



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■ Additional description of the scenario

■ Risks and benefits on the timeline



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AGENCY**

First group session (cont’d)

Then split into smaller groups to discuss the issues we have raised (on separate sheets), and answer the key questions about the short- and long-term risks & benefits for this scenario

- discuss the issues, use that discussion to inform your analysis of the ST and LT risks and benefits
- write each risk/benefit on a post-it (legibly!)
- add to the timelines where appropriate

Half an hour – to 12.45



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Third group session

- Two people remain behind from the previous session to explain
- Move to the scenario you haven't yet worked on
- Read the questions set for the scenario then challenge, critique, add, rewrite, regroup the post-its

30 minutes: to 15.00

Break for coffee



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Second group session

- Two people remain behind from the morning's session to explain
- Move to a different scenario:
 - Gold group -> scenario 2
 - Purple group -> scenario 3
 - Orange group -> scenario 1
- Read the questions set for the scenario then challenge, critique, add, rewrite, regroup the post-its

30 minutes: to 14.30



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Plenary session and wrap-up

- Brief presentation of the three final scenarios risks and benefits
- What are the key themes emerging from this process?
- What might this process have missed?
- What else could be added to preparations for the consultation?

- Wrap up
- Close by 16.30 sharp.

The Scenarios

Scenario 1: Do nothing

The scenario is that all the organisations involved have been unable to act to resolve the problems with the numbers of Public Analysts. The number of PAs has fallen below 20 and the majority are over the age of 55. The number of people either with or studying for the MChemA is 50, but the proportion successfully completing the course remains low. Local Authorities must still process chemical analyses through PA laboratories. The number of food analysts has also fallen but food examiner levels are more steady.

Summary of views from the workshop

Scenario 1a: Do nothing, because there has been no resolution to the current problems

This is the pessimistic view of the scenario, which is likely if there is no political imperative to change and which will be OK until there is an Official Food Control crisis. Stakeholders are deadlocked, and enforcement places emphasises public health at the expense of other food standards and fraud. There is reduced targeted sampling based on risk assessment, but this is not properly understood so sampling levels tend to be based on budget considerations. There will be fewer PA labs (as low as 10?) and probably fewer than 50 people going through the system for the MChemA. Local Authorities may be reconfigured, so sampling may be regionalised; they may have made the choice not to sample anything

because of falling budgets. The danger with this is that relying on a system such as UKFSS (UK Food Surveillance System) to provide information and intelligence demands a sufficiently wide base of samples and depth of analysis. With restricted and diminishing budgets authorities tend to spend on regionally co-ordinated projects, which means less variety and less intelligence.

Risks of scenario 1a

Costs of analytical services (system costs). With fewer labs providing a service there is reduced competition between the labs, or even no choice. This leads to monopoly price hikes, fewer samples being tested and increased charges for LAs.

Consumer and legitimate business interests (food fraud). Consumer confidence will be affected: standards will not be met, industry identifies the weaknesses in reduced levels of testing, and we may not be able to deal with the unknown unknowns of public health. The scenario creates a greater opportunity for fraud, a lesser capacity to detect it, and the possibility that unscrupulous traders can take advantage. This will happen if there is no agreement on the level of risk, and if trust in food diminishes because nobody appears to be responsible.

Loss of capacity and expertise. With fewer samples taken, problems will be missed, knowledge and experience (local and legal/court) will be lost, and the breadth of service will be reduced. The PA service will become more commercialised, so quality may fall and there may be a risk of conflicts of interest and disconnection between production of results and their interpretation. It will be difficult to control the quality of sub-contracted work, and there will be no capacity to deal with new areas (eg imported food).

Health and health costs. There will be an increased rate of food borne illnesses, increasing the overall costs to the NHS and reducing GDP through increased illness.

Commercial costs. The public health consequences of this scenario will result in a loss of confidence in food safety/standards with implications for the reputation of LAs, the FSA and the food industry and for consumer confidence. Supplier costs will increase because of a lack of confidence in raw materials; the costs of recall will rise, there is likely to be increased fraud, a reduction in minimum standards and reduced levels of acceptability. Recruitment and retention will be a problem across the board, and there will be reduced capacity to take enforcement action successfully through to prosecution when this is necessary.

Lack of strategic planning. As background: consumers need protection from food fraud as well as safety issues, but the link between sampling/analysis and public health/consumer protection is not effectively made. As a result of this scenario there is no investment in people/labs, no forward planning, and a loss of critical mass of expertise and labs; leading to a potential collapse of the current system. The outcomes of this are:

- Increased cost of analysis owing to lack of competition
- Fewer labs to field candidates and train them for the MChemA
- Loss of capacity to address emergencies or do horizon scanning research/method development
- UK does not meet EU requirements for food control nor statutory responsibilities
- Loss of self sufficiency of each lab
- No representative sampling means that real risks are not evaluated

In short, this scenario leaves everything to chance, and risks a possible collapse in **consumer and industry confidence in the system** as food and feed enforcement may be seen to be in disrepute in the eyes of consumers in the UK and the rest of Europe.

Scenario 1b: Do nothing, but make the system more co-ordinated and focused.

In this scenario the current system has been perfected – it's the controlled landing rather than the crash landing. There is less need for end product testing and sampling: compliance is tested in other ways. There is a nationally co-ordinated system of PA labs under the FSA's strategic lead so that all types of analysis can be covered: the FSA has championed a move to real risk-based sampling whose framework has been agreed between LAs and PAs and which includes shared intelligence and centres of excellence in the different types of food safety hazards. The regulations have been revised to reflect properly the statutory instruments to which they apply: they have been updated rather than completely changed and the Food Examiner issue has been resolved. The numbers of PAs and labs really required in the UK has been reviewed – we could have a good service similar to today's, with fewer labs (say, 5). UKFSS could be compulsory for Local Authorities: one option is that an approach which is risk-based and intelligence-led but supported by UKFSS would create efficiencies with a greater focus on labelling while nutritional analyses are done commercially. Personal relationships are maintained between LAs and PAs; and within LAs, senior managers and councillors appreciate how carrying out effective food sampling and analysis achieves 'outcomes' to secure funding.

The big issues such as toxicity, recalls and food poisoning are dealt with by enforcement; the rest by industry via a system of HACCP-based self-enforcement.

Benefits of scenario 1b

The big benefit from this scenario is that it is less hassle than seizing the nettle and ensuring that the transition to a soft landing is actively managed (amongst other potential nettles). In terms of **Local Authority co-ordination**, better strategic direction from the FSA implies a better use of public money because the overall approach is properly risk-based and intelligence-led, with better targeted sampling.

In terms of the **operation of labs**: LAs can still choose which labs to use – some labs may develop expertise and become centres of excellence for certain tests / foods (this expertise may also lie in EU labs). Fewer labs are subject to greater scrutiny of standards of delivery and are exposed to market forces so only the fittest survive. There is more consistency in results as the range of tests increases, and better efficiency and overall value for money in testing and analysis. This approach would also encourage better strategic planning.

Scenario 2: Loosen restrictions on who analyses what

The scenario is that we have opened up food and feed sampling & analysis to a much wider pool of expertise from which LAs can draw for analysis of "Official Control" of food and feed samples. The MChemA is just one of many qualifications to be a Public Analyst. This option has also allowed a wider range of laboratories to be able to carry out food and feed analyses directly for LAs.

Summary of views from the workshop

(Below is the 'scenario description' – though note that much of this description related to risks)

In the short term, LAs will continue to use PA (MChemA) for official control purposes, but downward pressure on budgets will reduce LA spend: those who currently run labs may stop subsidising them leading to a sudden loss of capacity (from which there is no going back). There may be more competition overall (more labs/experts), but this may lower expertise because there is a wider spread of work. It may also lead to a lack of co-operation and sharing of expertise; under the current system PAs ensure standards irrespective of costs, and this may change as competition drives down the cost of services, and as cost and bottom line become more important. Whether commercial food labs will bid for PA work is not clear, as the work is too difficult and margins too low – this comment came from someone who runs a commercial food lab.

Training needs are unclear under this scenario: whether they are restricted to a large number of small fields of expertise, whether a 'qualified person' has to cover a minimum scope (which may cause problems with inter-laboratory competition rather than co-operation). The scenario doesn't say whether there is a hierarchy of qualifications, whether they will also include competence in evidence/legal proceedings and what are the implications of 'official control' of food by an 'unofficial analyst'. The danger is that one-sided, incomplete advice will be given. However the equivalent qualifications in other EU Member States will need to have been clarified, and one "post-it" notes that it is not practical to merge the qualifications of a PA and a Food Examiner.

The net result may be a lack of willingness to go to court to give evidence. Non-HPA food examiners are an example – current legal requirements for qualifications need to be supplemented (HPA SOP: with input by PAs) to enable the issue of competent interpretation of the law to be addressed. It is not clear whether having other labs would address this, and whether it would in fact generate legal problems if evidence in court relating to official controls is allowed to be given by someone with a potentially lower qualification.

On the more positive side, labs may specialise in different analysis, so LAs may have contracts with different labs depending on the desired analysis. More labs may generate more samples, but an alternative viewpoint is that there will be procurement problems under this scenario: tendering of local authority contracts is a slow process and doesn't lend itself to switching suppliers.

Benefits of scenario 2

Increased capacity (numbers) and flexibility (expertise/diversity/turnaround). There could be a 2-tier lab system, one for enforcement and one for non-enforcement samples (though this may have implications for FSA returns). Response times could be more flexible to client needs, and it would allow laboratories with specialist expertise to be utilised (though this can happen at the moment through 'remote direction'). There would be a more unified qualification for 'official control', and it would be an advantage to have a 'one-stop-shop' approach with experts in food & feed analysis and examination in one place. The 'protective' nature of the current PA system would be reduced; and in the long term, opening up the qualification criteria would broaden the pool of expertise available (though it would need good benchmarking).

Issues with both risks and benefits in scenario 2

Competition. Greater competition and a competitive approach to the PA service may lead to more competitive and transparent pricing and a reduction in turnaround times. However cheaper isn't necessarily better: specialised analysis may not be so widely available due to cost of equipment and inability to recoup investment. A level playing field would be required (eg regulation, standards, consistent analytical processes), and there is a question about whether loosening restrictions would increase the number of labs when the market is shrinking.

Risks of scenario 2

Conflict of interest. There may be a need to separate the function of interpreting results from the analysis, though doing this decreases sample integrity and validity.

Qualifications and skills. The short-term effect will be disarray if it is not properly managed or if its introduction is not co-ordinated; leading to a lack of 'expert' opinion or expert witnesses. There is a clear risk of diluting the qualification, reducing the number of people doing the MChemA. Registration or accreditation of a 'Public Analyst' is required: it may be possible to include Food Examiner and PA in the new regime as a single entity

including technical and interpretative skills (being an expert witness would be in the qualification), but is that fit for purpose? Will it result in a loss of confidence?

Does this scenario dilute the status of a Public Analyst? Or does it simply dilute a 'perceived' value? Who decides which qualifications are suitable? And might it be possible to consider a multi-track qualification for food and non-food specialism's?

Overcapacity. There risks being a dilution of expertise and skills as too many laboratories are inputting into the system; and there may not be sufficient sampling for analysis in a specific area to be viable. If there is a large number of specialised labs there is no scope for a lab to survive if work in its area falls off. Sampling is currently following 'fashion' trends. Loss of contracts could force the market to shrink below a critical mass, and independence may be compromised if the private sector is involved. One person saw few benefits under this scenario: labs will close, enforcement would be weaker and it would be left to the FSA to enforce.

Risk of challenge. Under this scenario, LAs don't take enough samples requiring legal interpretation, leading to an increased risk of debasement of food, and more food fraud, including lack of policing of the honesty of health and nutrition claims. This would lead to increased incidents of challenge from industry, and the analysts unable to respond effectively to these challenges. The risk is that this results in LAs stopping sampling from big business, due to the risk of challenge (eg vitamin A in feed).

Consequences for Local Authorities. This scenario could lead to the loss of a 'one-stop-shop', which most LAs want. More resource could be used because of a lack of co-ordination; and since LAs are obliged by law to appoint a PA, there will be an extra burden in assessing many potential providers of a service if a variety of qualifications are opened up (also, it is unclear who would co-ordinate the analysis of the samples taken). However it also risks loosening the links between PAs and LAs and the breakdown of an important relationship. There is a risk that data on FSS would be of poor quality. The PAs are the GPs of the enforcement analysis world and still play a central role in this respect. This scenario risks a creeping debasement of food standards.

Expertise. A fragmented service and dispersed provision would result in a loss of a source of advice for LAs working with SMEs; less co-ordination and partnership working. The other risk is loss of expertise in chemistry and law in the same individual – which means a less forensically robust process and one which may lead to a loss of confidence in food enforcement generally. If sample numbers/funding is static or declining, more dispersed provision risks the co-ordination and partnership working outlined in Gwyneth's (LACORS) presentation being low or non-existent. There is a need for recent relevant experience across the broad range of techniques, which is built into the MChemA exam process and guaranteed by the award of the degree – a list of other qualifications risks losing this essential competence criterion.

Public Analysts and Agricultural Analysts. The current legal framework allows for passing samples to specialist labs, and it also recognises other qualifications (the MChemA is a benchmark). However we need a legal framework for qualifications of PA, Agricultural Analysts and Food Examiners; maybe merging some of these roles. While it would be possible to merge the PA and Agricultural Analyst provisions, the Food Examiner qualifications are too broad and need to be tightened re: recent experience. This scenario would require CPC for PA, AgA and FE roles.

Scenario 3 Move to EU-wide laboratories and expertise

The Food Safety (Sampling and Qualifications) Regulations 1990 have been revoked. The scenario is that we have decided to let the market decide where LAs should go to for sampling and signing off for certificates of analysis– most have chosen to use official control labs and analysts in other EU countries, which have built analytical systems that conform to the EU legislation. A few labs specialising in certain analyses remain open in the UK. Most analysis is conducted by EU “super-labs” with state-of-the-art equipment servicing many Member States. Food examiners are using a similar system.

Summary of views from the workshop

In this scenario, key changes are seen for **specialists**: there will be some sort of approved/ accredited EU-wide qualification and there may or may not still be a PA qualification – someone else might oversee analytical requirements. PAs are still required to decide which analyses are required and which lab is best placed to do the analysis, but there may be a loss of the current ‘holistic’ approach provided by PAs. The UK will provide the legal framework, but interpreters / reps may be based in other countries.

There will be a mix of public sector and private sector **labs**: some of the “super labs” are based in the UK and the best of them use expensive equipment, test high volumes and act at fast speed. Some labs specialise in a few hi-tech analytical methods, some conduct a broader range of analyses. However the labs are less controlled / less audited.

Other issues include the fact that there will be a free market in where to send samples and how / where to employ specialists, but this will result in a large carbon footprint associated with moving samples around the EU. There is an EU wide version of ‘FAPAS’ that is widely accepted – proficiency testing scheme; but a reduction in LA inspection and sampling

Benefits of scenario 3

Better technology / specialism. There will be:

- improved access to complex technical analysis which can be consistently carried out by experts
- access to best available technology, e.g. re dioxins
- specialised labs for different analyses
- centres of excellence

Greater consistency and coordination: super labs would increase harmony of testing methods being used, with consistent quality control and greater consistency of interpretation. Horizon scanning info can be better coordinated, particularly with access to Hamburg and Rotterdam information, providing a platform for greater global food safety

Cost savings. In this scenario there will be economies of scale, with large labs often more cost effective and more automated lines. The Food and Veterinary Office will have fewer labs to audit.

Risks of scenario 3

Fraud potential. The risk of this will increase if sampling is not properly done by labs, allowing dangerous food to be imported; or if there are any leaks of adverse results.

Less localised view. There will be a greater distance of sampling officer from labs, and this might jeopardise the personal relationships between LAs and lab analysts. Knowledge exchange and mutual support will be lost – there will be no interaction with environment

health officers and trading standards officers. This will lead to a loss of local decision making and ability to prioritise. Other issues to consider would be:

- Fewer samples taken and loss of enthusiasm for the difficult concept of sampling
- Remotely produced results are less readily quality assured against the local context
- May be difficult for LAs to set up service level agreements
- Need for test of competency in UK law if European super-lab is to interpret results
- Increased burden on LAs learning food law etc
- Would LAs continue to be involved? – delinking of PAs to LAs
- Extra travel time would make it harder to maintain close control over samples (sample integrity and traceability)
- Can samples be sent outside of the UK for testing? Who signs off the work? What standards apply?

Response time / capacity weakened. Under this scenario there is a potential lack of understanding about localised emergencies: turnaround might get worse if samples go to “super lab”, it may be more difficult to maintain evidence and preserve samples, and there may be too many eggs in one basket, which opens up the system to lab contamination events. Other questions that would need to be answered under this scenario include:

- How will priorities be decided upon when there are ‘emergencies’ in more than one country?
- Will there be enough capacity if there is a major incident?
- Logistical issues for time sensitive samples – micro tests still in the UK?
- Would labs offer the same range of services?
- Would the labs want to do the work / prioritise none food testing work?

Reputation / consumer confidence falls. The public perception of ‘safety’ might fall if testing is done abroad (‘Daily Mail headlines’): it is not clear who would verify the work done by labs, who would referee case work and who would test the ‘third sample’ – e.g. does Government Chemist still exist under this scenario?

Increasing costs. This scenario may be more resource-draining in the long run: it would be increasingly expensive to bring expert witnesses to UK courts, to get the sample to the PA or examiners over greater distances; and prices for analysis and other costs may vary due to euro exchange rates. There may be an increased number of samples of some foodstuffs for differing analysis. There may also be complications in legal proceedings.

Inconsistent quality of analysis. There is a need for harmonisation of methods but this will be prevented by competing super labs. Qualifications need to be consistent across the EU, but there will still be a need for specific analytical expertise for specific foods; and those qualifications need to be bench-marked. There will be less equivalence of certificates, experience, data etc under this scenario: analyses might be cheaper, but this might be at the expense of poorer quality. Different QA standards might be applied to analyses in different EU countries or because of non-uniform interpretation of ISO/IEC 17025 (UKAS is the UK body that assesses labs against these requirements?). The end result may be that PAs might find it more difficult to satisfy themselves that QA is water-tight before they go to court. Other specific issues include:

- Tests that look at ‘interpretation of colonies on microbiological plates may be inconsistent (as opposed to chemical component tests)
- Legislation might determine testing methods, but sometimes more than one method is possible, e.g. ASP in shell fish

Loss of, or weaker, ‘interpretation’ capacity. There are possible inconsistencies in the manner in which analytical data (legislative limits) is interpreted from country to country: even if analytical tests were consistent across the EU, the interpretation would vary

significantly (e.g. EU thematic group on QUID labelling showed considerable variations in interpretation of meat content and food content). Expert witness competencies need to be defined, and there will still be a need for some sort of qualification for the person interpreting science to enforce the law – the MChemA is the gold standard, but some sort of minimum qualification is essential. In addition, language barriers will lead to interpretation barriers and inconsistent interpretation of law – and would EU labs understand our legal process and requirements?

Reduction in prosecution capacity. Several specific risks arise in this scenario:

- Problem of jury / court perception of equivalence
- More unclear liability in the case of errors
- Increased use of in-house testing might reduce number of cases going to court
- Knowledge of the UK legal process by EU labs might be inadequate
- How will expert witnesses be appointed? Who would they be?
- 'PAs' in other EU countries may not be willing or able to come to the UK for court cases

Other issues to consider – from the 'parking wall'

The "parking wall" was available throughout the day of the workshop for participants to raise any points they wanted to make and that may not have been covered elsewhere during the workshop discussions.

- Government Chemist role (statutory / advisory) as an appointee of the National Measurement Office in Dept BIS.
- Intelligence led and risk based sampling is 'pie in the sky'; sampling activity is capped by budgets.
- Budgets are set by senior managers within the county council. Until this year I had to report monthly on food sampling (numbers, surveys, outcomes etc.). The report went to directorate management team (who set the budget). This year I have been asked not to provide any information on sampling as it is no longer a performance indicator. I suspect that the sampling budget will suffer next year as a consequence.
- Outcome PIs tend to be very general, e.g. reducing obesity. Unless senior managers have the time and imagination to see that sampling work can contribute to meeting this target (or take the trouble to ask more junior staff) then sampling / analysis will not be a priority area
- Not all, if any, of the recent food scares have been discovered as a result of risk-based sampling. Many problems are found 'by accident', i.e. through general monitoring, in areas where a problem might not ever have been envisaged. There is therefore a place for general monitoring.
- Public analysts are generally asked at local and regional meetings if there are any areas of 'interest' that they are aware of. In the absence of sufficient sampling over a broad area, this becomes more difficult and problem areas are more likely to be missed / over-looked.
- It seems clear that the problems are lack of political will and lack of cash. This leads to not enough sampling and analysis, too few labs and too few Pas, resulting in inadequate consumer protection. Why then are we discussing qualifications? My cynical view is that this is simply another mechanism for the FSA (and others) to avoid tackling the problem. This won't do.
- The current framework could be made to work sustainably if funding for LA enforcement (inspection, sampling, analysis, examination) were fed through the FSA.

Final plenary session: feedback on the three scenarios

Scenario 1

- The ‘good outcome / bad outcome’ scenarios were actually the pessimistic and optimistic interpretations of the single scenario, and that with a more strategic drive by the FSA and more central co-ordination of sampling we could achieve the ‘good outcome’
- But we need to step back from this and ask: what does a good food control system look like? Discussions of qualifications are a subsidiary question, and it would be good to have a similar sort of workshop where we talk about what makes a good food control system in its entirety
- It might be possible, in this scenario, for official labs to validate manufacturers’ test results

Scenario 2

- It would be relatively easy to combine the qualifications for PA and agricultural analyst, but hard to combine it with the qualifications for Food Examiner.
- This scenario looks a lot like what happened in forensic science, which led to a whole range of practitioners claiming to be forensic scientists. In order to promote public confidence, through a code and fitness to practice the voluntary Council for the Registration of Forensic Practitioners, CFRP, was established but has since ceased trading. It was partially replaced by the government funded office of the Forensic Regulator. The FSA could take a good look at that history to ensure it doesn’t make the same or similar mistakes for food & feed controls

Scenario 3

- Why does the “super-lab” have to be non-UK? UK is an EU country...
- There are two sides to this scenario: the labs and the ‘added value’ that PAs add on top of the lab work (interpretation, getting the data / evidence into a legal framework). We need to think carefully about the value that PAs add as we consider any future options.

General plenary comments

The value of an honest broker is crucial and mustn’t be lost – including their roles in interpreting data even when it’s challenging, providing support, etc

The science we’re talking about here is context-driven, so we need to maintain close relationships between those doing the analysis and those providing the interpretation within the legal framework (including the fact that they may be the same person)

Market failure in analytical services the private sector is possible – don’t discount this as we consider future options

The salami-slicing of budgets has led to a problem of self-esteem among PAs

We’d like another day looking more broadly at the whole food control system and considering a strategic vision for this.

Most labs do more than just food testing for LAs: they may also provide services related to asbestos, forensic work for coroners, etc: if PA labs disappear locally this will have a big effect on the provision of other services. Don't consider the food & feed testing services of PA labs in isolation

Also consider that the MChemA doesn't only qualify you to do food & feed testing: it also qualifies you to work under other legislation (Road Traffic Offenders Act, other Acts) – so any alteration to the MChemA would need to be very broadly discussed.

However, the current regulations set out various options in the qualifications for a Food Examiner. At the moment HPA have an SOP (QSOP 50) which is used to supplement these requirements. Following the workshop, one participant observed that no-one simply meeting the requirements in the Sampling & Qualifications Regulations will be appointed as a Food Examiner without going through the fairly extensive additional training: it may be that these extra requirements are similar to the competence demonstration required before award of the MChemA.

Concluding remarks from FSA

In summing up the day, the FSA thanked everyone for attending and for their positive approach to contributing to the workshop process, which had provided a greater understanding into the different perspectives involved. It had been very helpful to explore with stakeholders the risks and benefits of three possible future scenarios. Many interesting points and ideas had been raised, especially around the twin areas of ensuring future analytical capacity and the ability to interpret results. The Agency agreed to circulate a summary report of the workshop and the slides presented during it. Further comments would be welcomed. The FSA would consider the views of stakeholders in developing future proposals for revising the Food Safety (Sampling and Qualifications) Regulations 1990.

The FSA gratefully acknowledged the contribution of Delta Partnership for facilitating the workshop.

Comments received via email

Unfortunately the Grain and Feed Trade Association (GAFTA) were unable to attend the workshop. However, they submitted the following comments.

“In the experience of members of GAFTA the analysis of samples for contaminants often produces very high levels of variability in results which indicates that only the most competent analysts with expertise in the field should be employed for analysis of official samples required by the regulations. This is particularly relevant where the repercussions for operators can be so great. The FERA (Food and environmental Research Agency) facility at Sand Hutton York is well known to GAFTA and is generally regarded as the bench mark facility for this type of work.

*Qualifications: our belief is that analysts should have the highest level of competence available ie be certified to **ISO 17025** for the applicable tests. Please note however that an analyst can achieve ISO accreditation for tests but not necessarily undertake those tests frequently or on a regular basis. This can have an effect on the results produced. So even with ISO 17025 accreditation **our advice is that analysts need to display “ongoing familiarity” with the tests to maintain a consistent high level of performance.** We recommend that FSA take this in to account when reviewing analytical qualifications.*

Although this workshop discussion is about the provision of analytical capacity rather than sampling it is important to reiterate that effective analysis requires good sampling. The grain and feed trade bases its operations on independently drawn representative samples by approved cargo inspectors who meet minimum requirements and comply with Gafta Codes of Practice. These requirements are embedded in the Gafta standard form contracts. The random drawing of sample from one part of a bulk or the surface of a bulk is not representative. Since the trade utilises representative sampling based on the drawing of incremental samples, it would certainly be possible to discuss a protocol of sampling where additional sealed sample are made available for officials to use.

*For your guidance GAFTA operates an **Approved Analysts Scheme**. Approved analysts undertake analysis of contractual samples for establishment of quality criteria and is a requirement where the parties trade on Gafta contracts. GAFTA also operates an Assurance Scheme (**The GAFTA Trade Assurance Scheme**) which has a code of practice for Analysts along the same lines as the Approved Analysts Scheme but in this case independent certification is provided by the appointed Certification Body accredited to EN 45011.”*

Attendees

Local Authorities/Enforcement
Gwyneth Rogers – LACORS
Stephen Burrows - Halton Council
Peter Scott - Vice Chair of London Food Coordinating Group
Amanda Farrell - Staffordshire Trading Standards
Jon Averbs - City of London
Sandra Westacott – Association of Port Health Authority
David Pickering – Buckinghamshire Trading Standards
Jenny Morris – Chartered Institute of Environmental Health
Eamonn Quinn - Cumbria County Council
Glenn Taylor – Hampshire Scientific Services
Public Analysts
Dr Duncan Campbell - President of Association of Public Analyst
Dr Andrew Smith - Vice President of Association of Public Analyst
Dr Andrew Mackie - Honorary Secretary of Association of Public Analyst
Paul Hancock - Association of Public Analyst
Stephen Guffog - Association of Public Analyst
Graeme Risdon - Eurofins
Learned Societies
Elaine Miller – Royal Society of Chemistry
Dr Stephen Benn - Royal Society of Chemistry
Trade representation
<u>Keneth Chinyama</u> - Food and Drink Federation
Consumer representation
Jeanette Longfield - Sustain: the alliance for better food and farming
Analytical services
Stephanie Cogan - Centre for Environment, Fisheries and Aquaculture Science (CEFAS)
Carol Phillips - Institute of Food Science and Technology
Dr Paul Berryman - Leatherhead international
Shaun White - Food and Environment Research Agency
Michael Walker - Local Government Chemist
John Abbiss - United Kingdom Accreditation Service
Barbara Hirst- Reading Scientific Services Ltd
OGD
Dr Jim McLauchlin – Health Protection Agency
FSA
Derrick Jones - FSA
Sarah Appleby - FSA
Anne Gravett – FSA
Gillian Asbury - FSA
Michelle Young – FSA
Roger Wood – FSA
Ron Cheesman - FSA
Mervyn Briggs – FSA NI
Anna Whyte – FSA Scotland
Delyth Murray-Lines - FSA Wales
Andy Damant – FSA
Nicolas Laverty – FSA
Chelvi Leonard – FSA
Bhavna Parmar – FSA
David Mortimer – FSA