

Statutory Instrument 1990 No. 2463

The Food Safety (Sampling and Qualifications) Regulations 1990

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STATUTORY INSTRUMENTS

1990 No. 2463

FOOD

The Food Safety (Sampling and Qualifications) Regulations 1990

Made	4th December 1990
Laid before Parliament	11th December 1990
Coming into force	1st January 1991

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Health, and the Secretary of State for Wales, acting jointly, in relation to England and Wales, and the Secretary of State for Scotland in relation to Scotland, in exercise of the powers conferred on them by sections 4(1), 27(2) and (5), 30(9), 31(1), (2)(c), (d), (e), (g) and (h) and 49(2) of the Food Safety Act 1990[1] and of all other powers enabling them in that behalf, after consultation in accordance with section 48(4) of that Act with such organisations as appear to them to be representative of interests likely to be substantially affected by the Regulations, hereby make the following Regulations:-

Title, commencement and interpretation

1.—(1) These Regulations may be cited as the Food Safety (Sampling and Qualifications) Regulations 1990 and shall come into force on 1st January 1991.

(2) In these Regulations-

"the Act" means the Food Safety Act 1990;

"owner" means-

(a) in the case of goods in transit, the consignor (or, if he does not have an address in Great Britain, the consignee);

(b) in the case of goods from a vending machine-

(i) if the machine is marked with the name and address of its owner, and that address is in Great Britain, that person;

(ii) in any other case, the occupier of the premises on which the machine stands or to which it is affixed;

(c) in any other case, the person appearing to the authorised officer to be the owner of the sample when he procured it;

"qualified" means qualified for the purposes of the Act.

(3) In these Regulations, any reference to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations.

Sampling to which these Regulations do not apply

2. These Regulations shall not apply to any sample taken under the provisions of the Regulations listed in Schedule 1.

Qualifications of analysts

3. A person shall be qualified to be a food analyst or, subject to regulation 5(1), a public analyst if he possesses a Mastership in Chemical Analysis awarded by the Royal Society of Chemistry.

Qualifications of food examiners

4.—(1) A person shall be qualified to be a food examiner if-

- (a) he possesses a qualification listed in Part I of Schedule 2, and
- (b) subject to paragraph (2) below, he has carried out examination of food over a period or periods amounting in the aggregate to at least three years in one or more of the laboratories set out in Part II of that Schedule.

(2) In calculating the qualification period in subparagraph (1)(b) above, no account shall be taken-

- (a) of any period spent as an undergraduate in a laboratory specified in paragraphs 10 to 13 of Part II of Schedule 2, or
- (b) of any period before 1 January 1985 in a laboratory specified in paragraph 14 of Part II of Schedule 2.

Disqualifications

5.—(1) No director, owner or employee of a food business, or partner in a food business, shall act as a public analyst for the area in which such business is situated.

(2) No director, owner or employee of a food business, or partner in a food business, shall analyse or examine any sample which he knows was taken from that business.

Procedure where a sample is to be analysed

6.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers that it should be analysed shall (subject to paragraph (4) below) forthwith divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer shall divide the sample into parts by putting the containers into three lots, and each lot shall be treated as being a part.

(3) The authorised officer shall-

- (a) if necessary place each part in a suitable container and seal each container;
- (b) mark each part or container;
- (c) as soon as it is reasonably practicable to do so, give one to the owner and give him notice that the sample will be

analysed;

- (d) submit one for analysis; and
- (e) retain one for future submission under regulation 7.

(4) If the authorised officer is of the opinion that division of the sample into parts is either not reasonably practicable or likely to impede a proper analysis, he shall as soon as it is reasonably practicable to do so give to the owner notice that it will be analysed and shall submit it for analysis.

Submission of retained sample

7. An authorised officer who has retained part of the sample shall submit it to the Government Chemist (or such other food analyst as the Government Chemist may direct) for analysis if-

- (a) he and the owner so agree (which agreement may include who is to pay the analysis fees), or
- (b) a court so orders.

Procedure where a sample is to be examined

8. An authorised officer who has procured a sample under section 29 of the Act and who considers that it should be examined shall-

- (a) if necessary place the sample in a suitable container and seal the container;
- (b) mark the sample or container;
- (c) as soon as it is reasonably practicable to do so, give notice to the owner that the sample will be examined; and
- (d) submit it for examination.

Certificates

9.—(1) Where a sample procured under section 29 of the Act has been analysed or examined, the owner shall be entitled on request to be supplied with a copy of the certificate of analysis or examination by the enforcement authority.

(2) The certificate given by a food analyst or examiner under section 30(6) of the Act shall be in the form set out in Schedule 3.

Revocation

10. The Public Analysts (Scotland) Regulations 1956[2] and the Public Analysts Regulations 1957[3] are hereby revoked.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on
3rd December 1990.

John Selwyn Gummer

Minister of Agriculture, Fisheries and Food

Stephen Dorrell

Parliamentary Under Secretary of State for Health

4th December 1990

David Hunt

Secretary of State for Wales

3rd December 1990

Ian Lang

Secretary of State for Scotland

4th December 1990

SCHEDULE 1

Regulation 2

PROVISIONS TO WHICH THESE REGULATIONS DO NOT APPLY

The Poultry Meat (Water Content) (Scotland) Regulations 1983

S.I. 1983/1372

The Milk-based Drinks (Hygiene and Heat Treatment) Regulations 1983

S.I. 1983/1508

The Milk and Dairies (Heat Treatment of Cream) Regulations 1983

S.I. 1983/1509

The Milk-based Drinks (Scotland) Regulations 1983

S.I. 1983/1514

The Cream (Heat Treatment) (Scotland) Regulations 1983

S.I. 1983/1515

The Poultry Meat (Water Content) Regulations 1984

S.I. 1984/1145

The Natural Mineral Water Regulations 1985

S.I. 1985/71

The Materials and Articles in Contact with Food Regulations 1987	S.I. 1987/1523
The Milk and Dairies (Semi-skimmed and Skimmed Milk) (Heat Treatment) (Scotland) Regulations 1988	S.I. 1988/2190
The Milk (Special Designations) (Scotland) Order 1988	S.I. 1988/2191
The Milk and Dairies (Semi-skimmed and Skimmed Milk) (Heat Treatment and Labelling) Regulations 1988	S.I. 1988/2206
The Milk (Special Designation) Regulations 1989	S.I. 1989/2383

SCHEDULE 2

Regulation 4

QUALIFICATIONS OF FOOD EXAMINERS

PART I

ACADEMIC QUALIFICATIONS

1. A first degree (with honours) in microbiology (irrespective of the title of the degree).
2. A degree of Master of Science, provided that-
 - (a) the degree was awarded following an examination instead of a thesis,
 - and
 - (b) at least one paper in the degree was in microbiology.
3. A Diploma in Bacteriology awarded by the University of London or the University of Manchester.
4. Membership of the Royal College of Pathologists in medical microbiology.
5. Fellowship of the Institute of Medical Laboratory Sciences if that Fellowship has been gained after passing the examinations in medical microbiology set by that Institute.
6. The degree of Mastership in Chemical Analysis awarded by the Royal Society of Chemistry.

7. Fellowship or Membership of the Institute of Food Science and Technology.

8. The graduateship of the Institute of Biology gained after passing the examinations in the Institute's theory paper in microbiology.

9. In paragraphs 1 and 2 of this Schedule, "degree" means a degree awarded by a body recognised for the purposes of section 214 of the Education Reform Act 1988[4] (which relates to bodies empowered to award degrees in the United Kingdom) or by a university in the European Community.

PART II

LIST OF LABORATORIES

1. The Laboratory of the Government Chemist.
2. A laboratory owned by a Government Department.
3. A laboratory in a health service hospital as defined in section 128 of the National Health Service Act 1977[5].
4. A laboratory in a health service hospital as defined in section 108(1) of the National Health Service (Scotland) Act 1978[6].
5. A laboratory provided by the Secretary of State under section 5(2)(c) of the National Health Service Act 1977[7].
6. A laboratory of a Public Analyst.
7. A laboratory owned by the British Food Manufacturing Industries Research Association whose registered office is The Laboratories, Randalls Road, Leatherhead, Surrey.
8. A laboratory owned by the Campden Food and Drink Research Association whose registered office is at Chipping Campden, Gloucestershire.
9. A laboratory owned by the Flour Milling and Baking Research Association whose registered office is at Chorleywood, Hertfordshire.

10. A laboratory of a university in the United Kingdom.
11. A laboratory of an institution treated under section 132(6) of the Education Reform Act 1988 as an institution within the Polytechnics and Colleges Funding Council.
12. A laboratory of a grant aided college within the meaning of section 77(5) of the Education (Scotland) Act 1980[8].
13. A laboratory of the Scottish Agricultural College.
14. Any laboratory to which a food authority has submitted, between 1 January 1985 and 1 January 1990, a sample procured under the Food Act 1984[9] or the Food and Drugs (Scotland) Act 1956[10]

(Schedule 3 omitted)

Notes:

- [1] 1990 c. 16. back
- [2] S.I. 1956/1162. back
- [3] S.I. 1957/273. back [4] 1988 c. 40. back
- [5] 1977 c. 49; section 128 was amended by paragraph 77(d) of Schedule 1 to the Health Services Act 1980 (c. 53) and section 26(2)(c) of the National Health Service and Community Care Act 1990 (c. 19).
back
- [6] 1978 c. 29; section 108(1) was amended by paragraph 19(22)(b) of Schedule 9 to the National Health Service and Community Care Act 1990 (c. 19). back
- [7] 1977 c. 49; section 5(2)(c) was amended by section 1(1) of the Public Health Laboratory Service Act 1979 (c. 23). back
- [8] 1980 c. 44. back
- [9] 1984 c. 30. back

[10] 1956 c. 30. back

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the qualifications necessary to be a public analyst, food analyst or food examiner for the purposes of the Food Safety Act 1990. They prohibit specified persons from carrying out analyses or examinations.

They also specify 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.

They prescribe the form of certificate to be used by analysts and examiners in making their reports.

The Regulations also revoke the Public Analysts (Scotland) Regulations 1956 and the Public Analysts Regulations 1957