

Explanatory Memorandum to The Animal By-Products (Enforcement) (Wales) Regulations 2014

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Animal By Products (Enforcement)(Wales) Regulations 2014.

Alun Davies AM
Date:5 March 2014

Description

1. These Regulations revoke, in relation to Wales, the Animal By-Products (Identification) Regulations 1995 (SI 1995 No.614) and revoke and remake the Animal By-Products (Enforcement) (Wales) (No.2) Regulations 2011 (SI 2011 No.2377 (W.250)).

Legislative background

2. These Regulations are made under section 2(2) of the European Communities Act 1972. A designated Minister can rely on the powers contained in section 2(2) to implement EU obligations. The Welsh Ministers are designated for the purposes of section 2(2) in relation to measurers in the veterinary and phytosanitary fields for the protection of human health by the European Communities (Designation) (No.2) Order 2008 (SI.2008/1792).
3. The Regulations are made under the negative resolution procedure of the National Assembly for Wales.

Purpose & intended effect of the legislation

4. The Animal By-Products (Identification) Regulations 1995 (ABPI) were made under the Food Safety Act 1990 to help combat fraud in the meat industry. These Regulations require food business establishments (i.e. slaughterhouses, cutting plants, game handling establishments and cold stores) and certain Animal By-Product (ABP) premises (i.e. Collection Centres) to stain certain animal by-products. They also require them to comply with rules on their segregation, storage and labelling, to help prevent their illegal diversion to the human food chain. Permanent, clearly visible staining was considered to be an effective and practical way to identify ABPs and help ensure their separation from meat (including edible offal) intended for human consumption.
5. The Food Standards Agency (FSA) currently holds overall responsibility for Animal By-Product Identification (ABPI).
6. Since the introduction of the ABPI in 1995 the European Commission has introduced far more stringent and comprehensive controls on ABPs in order to protect public and animal health in the wake of the BSE crisis and the 2001 Foot and Mouth Disease outbreak in the UK.
7. This was achieved initially by Regulation (EC) 1774/2002. It was subsequently reviewed and replaced by the current Regulation (EC) 1069/2009 and its implementing Commission Regulation 142/2011 (together the "ABPR"). The Regulations' main purpose is to ensure that ABPs are used, processed and disposed of safely. The ABPR are implemented in Wales by the Animal By-Products (Enforcement) (No.2) (Wales) Regulations 2011 (ABPEW) and by similar regulations in

England, Scotland and Northern Ireland, which are all made under the European Communities Act 1972.

8. In addition, the EU Food Hygiene Regulations 852/2004 and 853/2004 now contain wider provisions to ensure food safety than were in force in 1995. This means that there is now duplication of provisions and conflicting terminology between the ABPI and the ABPEW and some minor duplication with EU Food Hygiene Regulations 852/2004 and 853/2004. Therefore, these Regulations seek to remove that duplication but also retain the staining requirement currently contained within the ABPI. The 2014 Regulations revoke and replace ABPEW and revoke the ABPI almost entirely, incorporating only the staining requirement from the those regulations into the 2014 Regulations.

Consultation

9. A short, eight week, consultation took place in Wales from 7 January 2013 to 4 March 2013. The detailed summary of findings has been published. These findings supported the Welsh Government's proposal of incorporating the provisions in to the ABP Regulations.

<http://wales.gov.uk/consultations/environmentandcountryside/updating-animal-by-prod-regs-95/?status=closed&lang=en>

Regulatory Impact Assessment (RIA)

A Defra UK Regulatory Impact Assessment was prepared on an England, Wales and Scotland basis. No significant impact on business, charities or voluntary bodies is expected. No significant impact on the public sector is expected.

The text of the RIA is as follows:

IA No: DEFRA 1453 Lead department or agency: Defra jointly with Food Standards Agency (FSA) Other departments or agencies: Devolved Administrations for Scotland and Wales	Impact Assessment (IA)		
	Date: 27/2/2013		
	Stage: VALIDATION IA		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		

What are the policy objectives and the intended effects?

- (1) To streamline current national legislation on staining, labelling, segregating and storing ABPs in certain food business establishments and ABP premises by removing existing duplication and out of date terminology in order to facilitate compliance by business and the work of enforcement bodies;
- (2) To continue to protect public and animal health whilst minimising the burden of regulation, deregulating where safe to do so and aiming to achieve resource savings for business and enforcement bodies.

Will the policy be reviewed? It will be reviewed in April/2018

Does implementation go beyond minimum EU			N/A		
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:		Non-traded:

Summary: Analysis & Evidence

Policy Option 1

Description: FSA to keep responsibility for the ABPI but update provisions.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.118

COSTS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional	2013	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0.032		0	0.032

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

Streamlining the ABPI by removing duplicated provisions but retaining the requirement for food business establishments to stain ABPs (to deter fraudulent diversion of ABPs to the food chain) would give small (one-off) familiarisation costs to industry (£27,400) and government (£4,400) from, respectively, updating staff instructions and official guidance.

BENEFITS (£m)	Total Transition (Constant Price) Year		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional	2013	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0.017	0.150

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

Modest efficiency savings associated with more coherent, easier to follow legislation: £5,000 a year to government (FSA and AHVLA) and £12,400 a year to industry.

Other key non-monetised benefits by 'main affected groups'

Lower risk of legal challenge arising from inconsistent legislation. Additional flexibility for industry from allowing use of other (potentially cheaper) dyes that might become available in future, provided they can demonstrate their safety/efficacy

Key assumptions/sensitivities/risks	3.5
<p>Some uncertainty about precise scale of efficiency savings to industry and government and also costs to operators of complying with the staining requirements. Comments invited during consultation. One respondent referred to costs being an underestimate but provided no alternative figures or supporting evidence. Familiarisation costs were not disputed.</p>	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure
Costs: 0.003	Benefits: 0.012	Net: 0.009	Yes	OUT

Summary: Analysis & Evidence

Policy Option 2

Description: FSA to revoke the ABPI with no transfer of provisions.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 7.39

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price) Year	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.127	0.025	0.228

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

Going further and also removing the provision for food business establishments to stain certain ABPs by revoking the ABPI would give one-off transition costs of familiarisation with new arrangements for industry (£12,400) and one-off costs to government for notifying the sector of changes (£300). Additional costs to government (£25,000 a year) for increased supervision and monitoring to help ensure ABPs are kept separate from food for human consumption in the absence of their identification by visible black stain

Other key non-monetised costs by 'main affected groups'

Increased risk of illegal activity (diverting banned animal by-products back into the food chain) leading to outbreaks of foodborne illness. It has not been possible to measure the costs associated with this but the box on page 13 gives a sense of the scale of the costs to the public and industry.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price) Year	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		0.885	7.618

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

Cost savings to industry from not having to stain certain animal by-products under the ABPI. Para 6.12 gives a detailed breakdown of the businesses affected and estimates how much it currently costs them to stain on an annual basis.

Key assumptions/sensitivities/risks	3.5
<p>Potential increased risk of fraudulent diversion of ABPs to human food chain, with possible harm to human health/life, if this illegal activity becomes more likely in the absence of staining. Public/media sensitivities and meat product recalls following recent “contamination” incidents involving horsemeat.</p>	

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure
Costs: 0.001	Benefits: 0.885	Net: 0.884	Yes	OUT

Summary: Analysis & Evidence

Policy Option 3

Description: To revoke ABPI but transfer certain provisions to the ABPEE for England (and equivalents for Scotland and Wales)

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.139

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.032	0	0.032

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

Streamlining the legislation by revoking the ABPI but moving the provision for food business establishments to stain ABPs to Defra's ABP (Enforcement) regulations to sit with other ABP controls would give Small (one-off) familiarisation costs to industry (£27,400) and government (£4,400) from, respectively, updating staff instructions and official guidance.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		0.02	0.171

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

Modest efficiency savings associated with more coherent, easier to follow legislation in one SI rather than two under Defra's "ownership" only: £7,500 a year to government (FSA and AHVLA) and £12,400 a year to industry.

Other key non-monetised benefits by 'main affected groups'

Lower risk of legal challenge arising from inconsistent legislation. Additional flexibility for industry from allowing use of other (potentially cheaper) dyes that might become available in future, provided they demonstrate their safety/efficacy

Key assumptions/sensitivities/risks	3.5
Some uncertainty about precise scale of efficiency savings to industry and government and also costs to operators of complying with the staining requirements. Comments invited during consultation. One respondent referred to costs being an underestimate but provided no alternative figures or supporting evidence. Familiarisation costs were not disputed.	

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure
Costs: 0.003	Benefits: 0.012	Net: 0.009	Yes	OUT

Evidence Base (for summary sheets)

1. PROBLEM UNDER CONSIDERATION:

- 1.1 Following the outcome of a joint Defra/Food Standards Agency (FSA) consultation last year to review the FSA's Animal By-Products (Identification) regulations 1995 (SI 1995/614) (ABPI) in the light of more recent EU legislation on animal by-products (ABPs), the Government is now proposing to revoke the ABPI to remove duplicated provisions and to update and transfer remaining provisions to Defra's Animal By-Products (Enforcement)(England) Regulations 2011 (SI 2011/881) (ABPEE) and (subject to DA agreement) to equivalent SIs for Scotland and Wales. The latter SIs enforce the directly applicable EU Regulations 1069/2009 and 142/2011 (together the "ABPR") on ABP controls and are therefore the more appropriate "home" for these provisions.

2. BACKGROUND TO THE ABPI REGULATIONS AND NEW EU LEGISLATION ON ABPS:

The ABPI:

- 2.1 The Animal By-Products (Identification) Regulations 1995 (ABPI) were introduced to help combat fraud in the meat industry by requiring food business establishments and certain ABP premises known as "collection centres" (where carcasses are skinned and eviscerated prior to using the material to feed hounds/zoo animals) to stain (with permanent black dye) certain ABPs— by definition not intended for human consumption – to help prevent their illegal diversion back to the human food chain with potential serious harm to human health (from food borne organisms potentially carried by those ABPs e.g. *Salmonella*, *Campylobacter*, *enterobacteriaceae*, *E-coli* and parasites such as *Cysticercus bovis* in cattle and Hydatid cyst in all red meat species). Such staining was considered to be a practical visible way to identify ABPs and thus help ensure their separation from offal and meat intended for human consumption and make illegal diversion more difficult. The regulations were originally deemed necessary because the then EU legislation covering ABPs (the Animal Waste Directive 90/667/EEC) did not have sufficient controls in this area to protect public health.
- 2.2 The ABPI were originally made jointly by the Minister of Agriculture, Fisheries and Food (before MAFF became part of Defra), the Secretary of State for Health and the Secretaries of State for Wales and Scotland under the Food Safety Act 1990 as a national GB measure. Since 2000, as a consequence of devolution and the creation of the FSA, Health Ministers have been solely responsible for the legislation in respect of England and Ministers for the Devolved Administrations have been responsible for Scotland and Wales. The original regulations have been amended a number of times in the wake of a number of large-scale cases of fraud (e.g. in the late 1990s where condemned chicken

carcasses were illegally diverted to food retail outlets). Northern Ireland has always maintained its own separate but equivalent ABP identification regulations which are enforced by the Department for Agriculture and Rural Development Northern Ireland. The Regulations are currently enforced in Great Britain by the FSA Operations Group in slaughterhouses, cutting plants and game handling establishments and by Local Authorities in cold stores. AHVLA inspectors approve and inspect ABP premises where ABPs are subject to staining but involve LAs if prosecution might be needed.

The EU ABPR and national ABPEE / DA equivalents:

- 2.3 Following the BSE crisis and 2001 FMD outbreak in the UK, the European Commission introduced more stringent and comprehensive controls on ABPs in order to protect public and animal health, first by Regulation (EC) 1774/2002, which was subsequently reviewed and replaced by Regulation (EC) 1069/2009 and its implementing Commission Regulation 142/2011 (together the “ABPR”). The ABPR has a wide ranging definition of ABPs and allocates them all to one of three “risk categories”, of which Category 1 is “very high risk”, Category 2 is “high risk” and Category 3 is “low risk” in order to manage safely their uses and disposal routes. The ABPs covered by the ABPI generally fall under Category 2 although they also include Category 3 material that has “changed through decomposition or spoilage so as to present an unacceptable risk to public or animal health”. (Category 1 ABPs are required to be stained under separate EU legislation on TSEs.) The ABPR has its own rules on storage, segregation, labelling of ABPs, to ensure those in different risk categories are kept separate and are used/disposed of appropriately, and on staining of Category 2 ABPs in “Collection Centres”. (Collection Centres are ABP premises which handle ABPs intended for feeding to certain carnivorous animals e.g. hunt kennels, zoos.) It also permits Member States to make provisions for “marking” of ABPs which remain in their territory and which would now provide a legal basis for the staining currently carried out in establishments under the ABPI using the Food Safety Act. This all means there is now duplication of provisions and conflicting terminology between the ABPI and the ABPEE and equivalent DA legislation, which are made under the European Communities Act 1972 to enforce the ABPR. There is also some minor duplication with EU Food Hygiene Regulations 852/2004 and 853/2004.
- 2.4 Therefore, in 2009 the FSA decided with Defra that the requirement for Defra and DAs to update their broader ranging domestic legislation on ABP controls to implement the new ABPR provided a useful opportunity to consider transferring certain ABPI provisions to Defra and the DAs’ SIs, principally to streamline ABP controls by having them in a single piece of legislation. It was agreed to pursue this issue once Defra and the DAs had brought their new SIs into force, to avoid delaying their

introduction and allow an initial consultation with the industry on their views. The replacement Animal By-Products (Enforcement) (England) Regulations 2011 (ABPEE) came into force in March 2011, along with similar SIs in Scotland, Wales and Northern Ireland. A joint Defra/FSA led Project Board was set up in June 2011 to take the review of the ABPI forward, and consequently in 2012 Defra and the FSA jointly consulted stakeholders (in the 8 week period 27 September – 21 November) on proposals for updating the ABPI with respect to England. Similar consultation exercises were carried out in respect of Scotland and Northern Ireland (for equivalent NI legislation) and a Welsh Government consultation in respect of Wales is due to close on 7 March 2013.

3. RATIONALE FOR INTERVENTION AND POLICY OBJECTIVE:

- 3.1 Now that there is specific EU legislation (the ABPR) in place, the main purpose of which is to ensure that ABPs are used, processed and disposed of safely in order to protect public and animal health, and industry have been consulted on their views, the Government considers that revoking the ABPI (made under the national Food Safety Act in the then absence of suitable EU provisions), would usefully remove duplication with other legislation and allow the transfer of remaining updated provisions to the more appropriate ABPEE and equivalent SIs in Scotland and Wales (which implement the ABPR). This would help simplify and clarify the legislation, enable businesses and enforcement bodies to work more efficiently and facilitate compliance by food business establishments and ABP premises. This is also an opportunity to give greater flexibility to industry by allowing the use of other, cheaper dyes should they become available in future, provided they show this can be done safely. These amendments should produce savings in resources for businesses and enforcement bodies.
- 3.2 The Government's objective is to simplify, clarify and remove duplication from existing legislation on staining ABPs, whilst ensuring that the controls in place to address the possible fraudulent diversion of ABPs to the human or animal food chains are sufficient to safeguard public and animal health and do not pose a disproportionate financial or administrative burden on the industry.

4. CONSULTATION PROCESS

- 4.1 Initially, in order to obtain a preliminary idea of how the industry would feel about revising or revoking the ABPI, when Defra and the DAs consulted stakeholders in July 2010 about wider proposals to implement the new ABPR in each of England, Wales, Scotland and Northern Ireland, they included the question:

“Do you consider that the provisions of the Animal By-Product (Identification) Regulations 1995 (as amended) should be retained, in full or in part?”

- 4.2 The general view given by respondents was that physical staining of ABPs was an important measure to deter fraud. Most respondents did not comment on other provisions covering storage, segregation and labelling. For England, there were 13 responses with 12 respondents in favour of retaining staining. For Wales, 3 responses were received with 2 in favour of retention. For Scotland there were 10 responses with 9 in favour of retention in full and 1 wanting at least provisions to ensure correct identification and prevent fraud. 2 respondents wanted further strengthening/extension of current ABP controls. Finally, for Northern Ireland there were 3 responses with all in favour of retaining staining.
- 4.3 These initial views received effectively supported Options 1 and 3, which would retain physical staining but remove duplicated provisions on segregation, labelling and storage. Option 2 to remove the ABPI provisions altogether for Food Business establishments was generally not favoured by industry.
- 4.4 During the next stage, Defra carried out a more detailed and comprehensive 8 week consultation in respect of England in the autumn of 2012, for which five responses were received. This time, three respondents (including two from the rendering industry) supported the Government's preference (Option 3) whereas the other two (representing the meat production industry) considered that requiring food business establishments to stain was an unnecessary burden, particularly in view of the EU traceability requirements now in place. These views have been considered against the need to ensure that the level of protection to public and animal health is not diminished when amending legislation. For the equivalent consultation for Scotland there was one response (which supported the Government's position.) The equivalent consultation for Wales will close on 7 March.

5. BUSINESSES AFFECTED:

- 5.1 Currently, under the ABPI, the following businesses in GB must stain (with colouring agent Black PN or Brilliant Black BN) Category 2 ABPs on a regular basis and comply with provisions on segregation, storage and labelling:

- 80 poultry slaughterhouses
- 262 red meat slaughterhouses (stain infrequently)
- 60 game slaughterhouses
- 16 game handling establishments
- 616 standalone cutting plants (stain infrequently)
- 210 Collection Centres -mostly hunt kennels

Collection centres are micro- businesses (10 or fewer full time equivalents) – see section 9 seeking waiver to moratorium.

- 5.2 Cold stores generally do not need to stain but still have to comply with the provisions on segregation, storage and labeling.

6. OPTIONS CONSIDERED AND APPRAISAL OF MONETISED AND NON-MONETISED COSTS AND BENEFITS OF EACH OPTION RELATIVE TO THE BASELINE OPTION 0:

6.1 In summary, options considered as part of this review are:

- Option 0: “Do nothing” i.e. the FSA would keep responsibility of the ABPI and not update it;
- Option 1: the FSA would keep but update the ABPI. It would retain the provision for food business establishments to stain Category 2 ABPs, but possibly allow other dyes to be used, and remove duplicated provisions on staining in ABP premises, storage, segregation and labeling. Defra would not need to amend the ABPEE;
- Option 2: the FSA would revoke the ABPI entirely. This would remove the requirement for Food Business establishments to stain Category 2 ABPs. However, staining in ABP premises would continue to be required under the ABPEE which would also continue to cover provisions on storage, segregation and identification. Defra would not need to amend the ABPEE;
- Option 3: Defra would amend the ABPEE and in so doing revoke the ABPI and take over the provision to require staining in food business establishments possibly allowing other dyes to be used. This would remove duplication of provisions on staining in ABP premises, storage, segregation and identification.

Following consultation, **Option 3** remains the preferred Option because it would retain the same level of protection to human and animal health by retaining the staining provision in food business establishments but also streamline the controls by removing an unnecessary separate SI along with duplicated provisions. Permanent staining of ABPs when properly done reduces the possibility of fraudulent diversion of unfit material into the human food chain by providing a clear and visible deterrent that is also relatively cheap and easy to carry out with minimal staff training. Although EU Regulations do contain traceability requirements for the safe handling and disposal of ABPs we do not consider that these alone would protect adequately against deliberate diversion into the food chain and the potentially serious consequences for human health. Should the staining requirement be removed, levels of official supervision and enforcement would have to be increased in order to maintain the same level of protection to public health, which would be costly and resource intensive for Government.