

Streamlining/updating Provisions of the Animal By-Products (Identification) Regulations 1995

Consultation document

Date: 27 September 2012

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Part I - Scope of the Consultation and Basic Information

Topic of this consultation:	Streamlining/updating provisions of the Animal By-Products (Identification) Regulations 1995 (as amended) (ABPI).
Scope of this consultation:	The principal aim is to seek views on (a) the requirements for staining certain Animal By-Products (ABPs) at Food Business establishments (i.e. slaughterhouses, cutting plants, game handling establishments and cold stores) and ABP premises (i.e. Collection Centres), and on (b) the revocation of certain ABPI provisions to remove duplication with other legislation. It does not cover the staining of Category 1 Specified Risk Material which is covered by separate legislation on TSEs.
Geographical scope:	England only. The Devolved Administrations are responsible for consulting separately on proposals for Scotland, Wales and NI.
Impact Assessment:	A consultation stage Impact Assessment for Great Britain has been prepared and is attached.
To:	All stakeholders with an interest in the ABP staining requirements of the ABPI. A list of those organisations and individuals to whom this consultation document has been sent is available on our website here: http://www.defra.gov.uk/consult/open/ Additional copies of this document may be made without seeking permission.
Bodies responsible for consultation:	Defra (Animal By-Products Team) jointly with the FSA (Animal Feed and Animal By-Products Group)
Duration:	8 weeks from 27 September – 21 November 2012
How to respond:	Please send your response by email to abp.team@defra.gsi.gov.uk or post to Debbie Bailey at: Defra, ABP Team, Area 5B, 9 Millbank, c/o 17 Smith Square, London, SW1P 3JR. Please state whether you are responding as an individual or on behalf of an organisation. For the latter please make it clear who the organisation represents and, if applicable, how the views of members were collected.
Enquiries:	Email Debbie Bailey at Debbie.Bailey@Defra.gsi.gov.uk or Tel 020 7238 1665 (address as above).

Part II - Background to Current Situation

General Background:

1. The national **Animal By-Products (Identification) Regulations 1995 (ABPI)** were made under the Food Safety Act 1990 to help combat fraud in the meat industry by requiring **Food Business establishments** (i.e. slaughterhouses, cutting plants, game handling establishments and cold stores) and **certain ABP premises** (i.e. Collection Centres – see below) to stain certain animal by-products (ABPs), and comply with rules on their segregation, storage and labelling, to help prevent their illegal diversion to the human food chain. ABPs potentially carry food borne organisms such as Salmonella, Campylobacter and E. coli, as well as other pathogens which could harm human or animal health. 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. (NB: the staining of Category 1 Specified Risk Material is covered separately by the TSE (England) Regulations 2010, not the ABPI – see below.)
2. The Food Standards Agency (FSA) currently holds overall responsibility for the ABPI, and since devolution in 2000, each UK country has maintained its own version of the regulations. In Great Britain the ABPI are currently enforced by the FSA Operations Group in **slaughterhouses, cutting plants** and **game handling establishments** and by Local Authorities (LAs) in **cold stores**. Inspectors from the Animal Health and Veterinary Laboratories Agency (AHVLA) register and inspect **ABP premises** (i.e. **Collection Centres** such as hunt kennels and knackers yards which collect ABPs for feeding to certain animals under Article 18(1) of Regulation 1069/2009) but involve LAs if prosecution might be needed.
3. However, since the introduction of the ABPI in 1995 the European Commission has introduced much 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. This was achieved initially by Regulation (EC) 1774/2002, which was subsequently reviewed and replaced by the **current Regulation (EC) 1069/2009 and its implementing Commission Regulation 142/2011** (together the “ABPR”) whose main purpose is to ensure that ABPs are used, processed and disposed of safely. The ABPR are implemented in England by the **Animal By-Products (Enforcement)(England) Regulations 2011 (the ABPEE)** and by similar regulations in Scotland, Wales and Northern Ireland, which are all made under the European Communities Act 1972. 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.
4. This means that there is now duplication of provisions and conflicting terminology between the ABPI and the ABPEE etc. and some minor duplication with EU Food Hygiene Regulations 852/2004 and 853/2004. For example, the EU ABPR classifies ABPs differently by comprehensively allocating each 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. Although not an exact match, the ABPs as identified by the ABPI broadly equate to certain Category 2 ABPs (as per Article 9 of Regulation 1069/2009) and those Category 3 ABPs (as per Article 10 of Regulation 1069/2009) that have “changed through decomposition or spoilage so as to present an

unacceptable risk to public or animal health” (as per Article 14 (d) of Regulation 1069/2009). Furthermore, the EU ABPR has its own rules on the storage, segregation, labelling of ABPs, to ensure different risk categories are kept separate and are used/disposed of appropriately. Regulation 142/2011 covers (Annex VI, Chapter II, Section 1, paragraph 4) the staining of Category 2 ABPs in Collection Centres and also (Annex VIII, Chapter II, paragraph 1(b)) permits Member States to provide for “marking” of ABPs which remain in their territory. Notably the latter provides an alternative legal basis to the Food Safety Act to require staining in Food Business establishments.

5. Therefore it is now necessary to review the ABPI provisions with a view to removing duplication and out of date terminology and possibly transferring updated provisions to the more appropriate ABPEE (and equivalent SIs in Scotland, Wales and Northern Ireland). 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 examine the potential for deregulation which, if it can be done safely, could produce resource savings for businesses and enforcement bodies.

6. A **Consultation Stage Impact Assessment** has been completed and is attached. This outlines the Government’s three proposed policy Options and states why Option 3 is preferred. Each Option is supported by estimated costs and benefits for each of Government, Industry and the Public. Your attention is drawn in particular to the figures provided in Section 6 which are estimated, notional figures to assist consultation. However, it would be desirable if firmer figures were available for the Final Stage IA to allow informed final decisions to be made and your assistance here will be very valuable. For example, we hope that respondents will be able to provide more accurate figures etc. on their current costs of staining and comment on our cost estimates for “familiarization” and “efficiency savings”.

7. In summary the **three policy options** set out in the Impact Assessment are:

- Option 1: the FSA would keep but update the ABPI. It would retain the provision for Food Business establishments to stain certain Category 2 and 3 ABPs but possibly allow other dyes to be used, and remove duplicated provisions on storage, segregation and labeling, and staining in ABP premises. Defra would not amend its ABPEE;
- Option 2: the FSA would revoke the ABPI entirely. This would remove the requirement for Food Business establishments to stain certain Category 2 and 3 ABPs. However, staining at collection centres would continue to be required under the ABPEE which would also continue to cover provisions on storage, segregation and identification. Defra would not amend its ABPEE;
- Option 3: Defra would amend the ABPEE to revoke the ABPI but take over the provision that requires Food Business establishments to stain and possibly allow other dyes to be used. Duplicated ABPI provisions on storage,

segregation and identification, and requirements to stain at collection centres, would be removed (as already covered by the ABPEE).

8. Prior to consultation, the Government favours **Option 3** because it should maintain the same level of protection to human and animal health by continuing to require Food Business establishment to stain but also streamline controls by removing duplication and having one instead of two Statutory Instruments.

Government Objective:

9. The Government's overall objective for this review and consultation 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.

Previous Consultation:

10. In order to obtain an initial idea of how the industry would feel about revising or revoking the ABPI, Defra asked the following question when it consulted stakeholders in July 2010 about wider proposals to implement the new EU Regulation on ABPs: **"Do you consider that the provisions of the Animal By-Product (Identification) Regulations 1995 (as amended) should be retained, in full or in part?"**

11. The general view was that physical staining of ABPs was an important measure to deter fraud and should be retained. Most respondents did not comment on other provisions covering storage, segregation and labelling.

Businesses affected:

12. Cold stores generally do not need to stain but still have to comply with ABPI provisions on segregation, storage and labeling. However, the following businesses in GB are required to stain various Category 2/3 ABPs on a regular basis (some more frequently than others) as well as complying with provisions on segregation, storage and labelling:

- 80 poultry slaughterhouses (stain frequently)
- 262 red meat slaughterhouses (generally stain less frequently)
- 60 game slaughterhouses
- 16 game handling establishments
- 616 standalone cutting plants (stain infrequently)
- 210 Collection Centres (stain frequently)

Part III – Proposed changes: Consultation Questions

13. Please see the attached Options Paper at **Appendix A** which summarises the main ABPI provisions and gives the Government's view on whether each should be retained, amended or revoked. Please then answer the following questions where possible.

14. For ease of reference, please find at **Appendix B** Defra's (unofficial) consolidated version of the Animal By-Products (Identification) Regulations 1995 which includes amendments to date. Links to other relevant legislation are:

- [Animal By-Products \(Enforcement\) \(England\) Regulations No.2011/881](#)
- [EU Animal By-Products Regulation 1069/2009](#)
- [EU Implementing Regulation 142/2011](#)

Provision requiring certain Food Business establishments to stain ABPs (regulation 6 ABPI):

15. The Government is proposing to **retain** this provision which requires operators in **cold stores, cutting plants, game handling establishments and slaughterhouses** to stain the ABPs identified in regulation 3 (as read with regulations 4 and 5) of the ABPI. The table at **Appendix C** shows where these ABPI identified ABPs would fall under the Category 1-3 definitions of Regulation 1069/2009 and also summarises ABPs exempted from staining under the ABPI. Broadly, retaining the provision (at regulation 6) would require the following ABPs to continue to be stained:

- most **Category 2 ABPs** (unless mixed with manure/gut content as per regulation 5(2)(c) of the ABPI) including **whole poultry carcasses** dead on arrival at a slaughterhouse or rejected following pre-slaughter or post-mortem health inspections carried out at a slaughterhouse in accordance with Hygiene regulations (all other entire carcasses are exempted from staining by regulation 4 of the ABPI)
- **Category 3 ABPs** that have "changed through decomposition or spoilage" to become unfit for human consumption. (See previous paragraph 4.)

16. Under the ABPI (Regulation 2) "**stained**" means "treated with a solution of the colouring agent Black PN or Brilliant Black BN (E151, Colour Index 197 No 28440), which solution is of such a strength that the colouring on the animal by-product is clearly visible". "**Treated**" means " (a) that the solution has been applied to the whole surface of the ABP whether by immersing the ABP in the solution, spraying the ABP with the solution or applying the solution to the ABP by any other equally effective means; (b) in the case of an ABP not falling within paragraph (c) below and weighing not less than 25 Kg, that the solution has been so applied after the surface of the ABP has been opened by multiple and deep incisions, and (c) in the case of an ABP comprising an entire poultry carcass,

whether or not it has been eviscerated or defeathered that the solution has been so applied after the surface of the carcase has been opened by multiple and deep incisions.”

17. The ABPI currently only allows operators to use the colouring agent Black PN or Brilliant Black BN (E151, Colour Index 197 No 28440) for staining. However, we want to consider if there are alternative colouring agents that operators could use. We also need to decide if the legislation should specify the permitted dye(s) or instead describe what staining should achieve (especially to ensure public and animal health are protected), with advice on what dyes to use, and how, provided in guidance. The latter approach could give more flexibility.

Q1 Do you agree with the Government’s preference to **retain** this provision i.e. to require slaughterhouses, cutting plants, game handling establishments and cold stores to continue to stain the same ABPs as at present, including the requirement to stain prior to freezing (regulation 8) or moving the ABPs from the premises (regulation10)? If not, please explain.

Q2 Do you think that any of these ABPs could now be **excluded** from the requirement to stain? Please outline any particular burden the staining of those ABPs might impose and give costs if possible.

Q3 Are there any **alternative controls** to staining that you would like to be available? State how these would deter fraudulent diversion of ABPs to the food or feed chain and please provide evidence of equivalent level of protection to public and animal health.

Q4 Do you agree with the estimated **industry costs** (by sector) for staining stated in section 6.12 of the Impact Assessment? If possible, please provide annual costs (split into materials and labour) of staining for your sector or establishment type e.g. (a) poultry slaughterhouses; (b) red meat slaughterhouses; (c) game slaughterhouses; (d) game handling establishments; (e) stand alone cutting plants; (f) other; and state if this is a significant burden on your overall business costs:

(specify establishment type as above, throughput and if stand alone or co-located)

Q5 Do you agree with the one-off "**familiarisation**" **costs** stated in sections 6.18, 6.22 and 6.26 of the Impact Assessment? If not, please provide your own estimates.

Q6 Do you think there would be increased **risks/costs** or **benefits** to (a) public health (b) animal health or (c) industry reputation, if the staining requirement for Food Business establishments was **revoked** entirely?

(a) **Risks/ costs** or **benefits** to public health:

(b) **Risks /costs** or **benefits** to animal health:

(c) **Risks /costs** or **benefits** to industry reputation:

Q7 Are there any other **colouring agents** (please specify) in addition to Black PN or Brilliant Black BN you would like to be available? If yes, please comment on their costs relative to current practise and, if possible, on their safety (under Health and Safety legislation) and efficacy of staining compared to the currently permitted colouring agents Black PN or Brilliant Black BN.

Q8 Do you think the **legislation** should specify (i) which colouring agent(s) are permitted or (ii) what constitutes adequate staining (e.g. “must stain with a substance that denatures product and is permanent”) with recommended colouring agents in **guidance** instead?

Q9 Do you have any comments on what constitutes “**adequate staining**” for different ABPs? (e.g. regarding dilution rates, visibility, carcass slashing etc.) (see definition above)

Q10 Do you agree that it would be more coherent to move the staining provisions for Food Business establishments from the ABPI to the **Animal By-Products (Enforcement) (England) Regulations 2011**? Can you monetise any benefit from this?

Provision requiring ABP premises to sterilise/stain ABPs (regulation 7 ABPI):

18. The Government is proposing to **revoke** regulation 7 of the ABPI as EU Regulation 142/2011 (Annex VI, Chapter II, Section 1, paragraph 4) independently requires operators of Collection Centres to ensure all Category 2 ABPs intended for supply to final users undergo one of three specified treatments. These are (i) denaturing with a colouring agent (not specified) i.e. staining; (ii) sterilisation by boiling or steaming under pressure i.e. cooking and (iii) any other handling or treatment authorised by the competent authority. To date Defra has not received requests for authorisations under (iii).

Q11 Are there any “**other treatments**” that you think should be available under (iii) above?

Q12 As a Collection Centre (state type) what are your **annual costs for staining** Category 2 ABPs for supply to Final Users for feeding purposes? What are these costs as a percentage of annual turnover?

Q13 Do you think the **legislation** should (i) specify the permitted colouring agent(s) or (ii) state what constitutes adequate staining (e.g. “must stain with a substance that denatures product and is permanent”) with recommended colouring agent(s) in **guidance** instead? (The latter would place the emphasis on the operator to show they dye used is effective)

Q14 Are there any other **colouring agents** (please specify) in addition to Black PN or Brilliant Black BN you would like to be made available? If yes, please comment on their costs relative to current practise and, if possible, on their safety (under Health and Safety legislation) and efficacy of staining compared to the currently permitted colouring agents Black PN or Brilliant Black BN.

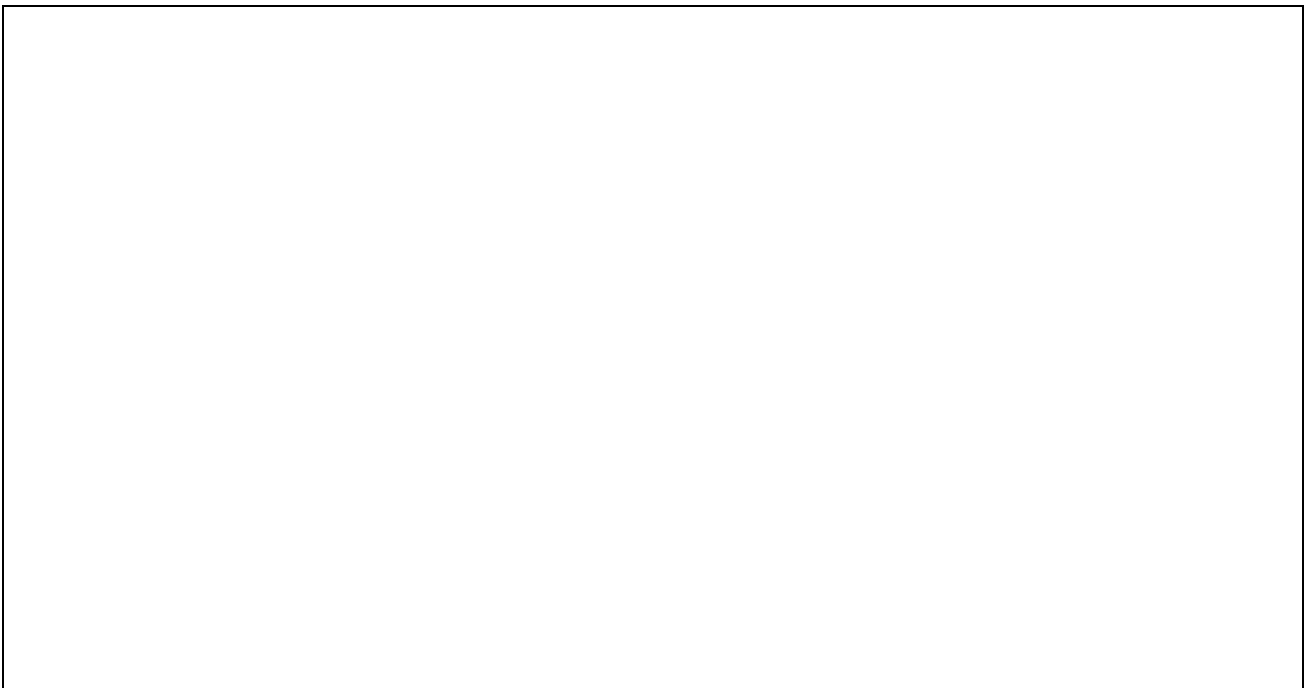
Provisions on Segregation, Storage and Labelling of ABPs (regulations 9(1), (2) and (3)(a)-(e) of the ABPI):

19. The Government will be **revoking** regulation 9 of the ABPI as these provisions are now adequately covered by EU Regulations 852/2004 (Annex II, Chapter VI, and Annex IX) and 853/2004 (Article 4 and Annex III, Sections I and II) and 142/2011 (Annex IX, Chapter II).

Q15 Do you have any **observations** related to this revocation in particular relating to unforeseen consequences? (For example, regarding permission to store ABPs in a chiller/fridge with food for human consumption provided it is in a locked, labelled receptacle – Regulation 853/2004, Annex III, Chapters II and paragraph 5 of Sections I and II would now cover this area.)



Q16 Do you have any **further general comments** related to this consultation, for example regarding other provisions of the ABPI not covered previously?



Summary of Consultation Questions:

Q1 Do you agree with the Government's preference to **retain** this provision i.e. to require slaughterhouses, cutting plants, game handling establishments and cold stores to continue to stain the same ABPs as at present, including the requirement to stain prior to freezing (regulation 8) or moving the ABPs from the premises (regulation 10)? If not, please explain.

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Q5. Do you agree with the one-off "**familiarisation**" **costs** stated in sections 6.18, 6.22 and 6.26 of the Impact Assessment? If not, please provide your own estimates.

Q6. Do you think there would be increased **risks/costs** or **benefits** to (a) public health (b) animal health or (c) industry reputation, if the staining requirement for Food Business establishments was **revoked** entirely?

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Q16 Do you have any **further general comments** related to this consultation, for example regarding other provisions of the ABPI not covered previously?

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<http://www.defra.gov.uk/corporate/consult/animal-byproducts/index.htm>

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