

**EXPLANATORY MEMORANDUM TO**  
**THE ANIMAL BY-PRODUCTS (ENFORCEMENT) (ENGLAND) REGULATIONS**  
**2013**

**2013 No. 2952**

1. 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Animal By-Products (Enforcement) (England) Regulations 2013 (ABPEE 2013) streamline legislation on animal by-product (ABP) controls by revoking and replacing the Animal By-Products (Enforcement) (England) Regulations 2011 (ABPEE 2011), consolidating amendments, and revoking the Animal By-Products (Identification) Regulations 1995 (ABPI) in respect of England. This is in response to a joint Defra/Food Standards Agency consultation in 2012 on the ABPI staining requirements for ABPs and the removal of duplicated or redundant provisions now more comprehensive EU controls on ABPs are in place under the ABPEE 2011. In order to continue to safeguard public health the ABPEE 2013 updates and takes over the ABPI requirement for Food Business establishments to stain certain ABPs to help prevent their fraudulent diversion into the human food chain.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 The 1995 ABPI were made under the Food Safety Act 1990 as a national GB measure to help combat fraud in the meat industry by requiring Food Business establishments and certain ABP premises to stain certain ABPs – which are by definition not intended for human consumption – to help prevent their illegal diversion back into the human food chain with potential serious harm to human health.

4.2 However, following the BSE crisis and 2001 UK Foot and Mouth Disease outbreak, the EU introduced much more stringent and comprehensive controls on ABPs in order to protect public and animal health. These controls have been updated and revised by Regulation (EC) No 1069/2009 and Commission Regulation (EU) No 142/2011 which are implemented in England by the ABPEE 2011 and by similar legislation in the rest of the UK. This means that the majority of the ABPI provisions on staining and the storage, segregation and labelling of ABPs are now duplicated in the ABPEE 2011. The ABPI requirement for Food Business establishments to stain is not duplicated but as Commission Regulation 142/2011 allows member states to have marking systems (such as those covered by the staining arrangements) in place this

can now be covered by the ABPEE 2013 using the powers of the European Communities Act 1972 instead of the Food Safety Act 1990.

4.3 Therefore, the ABPEE 2013 are being made to revoke those ABPI provisions which are duplicated by the ABPEE 2011, and to update and take over the ABPI requirement for Food Business establishments to stain. They will revoke and replace the ABPEE 2011, consolidate amendments and also fine tune existing offences to make enforcement more efficient for enforcement bodies.

4.4 The new regulations will put all ABP controls in one place. The replacement of two sets of regulations with just one, and the removal of confusing duplication and out of date terminology, is expected to make the legislation clearer and easier to follow for operators and enforcement bodies alike.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and will revoke the ABPI with respect to England only.

5.2 Similar legislation is being introduced by the Devolved Administrations for each of Scotland and Wales, which means that the GB-wide ABPI should be revoked in respect of GB as a whole by the end of this year. Northern Ireland has its own separate but equivalent ABPI and the Department for Agriculture and Rural Development Northern Ireland is also taking similar action to revoke, update and replace legislation this year.

5.3 The combined effect of the English regulations and the regulations to be made by the other regions will make it an offence to export stained ABPs from any part of the UK to another EU member State without the consent of the importing member State, which is a requirement of the European legislation.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The national ABPI were introduced 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 ABP premises which act as “collection centres” (e.g. knacker yards and hunt kennels which handle ABPs) to stain certain 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 of ABPs was considered to be an effective and practical way to identify them and help ensure their separation from meat intended for human consumption. However, in order to protect public and animal health the EU has now introduced

more comprehensive controls on ABPs covering much of the same ground which has given rise to duplication of provisions and conflicting terminology between the ABPI and the ABPEE 2011 as well as some minor duplication with EU Food Hygiene Regulations 852/2004 and 853/2004.

7.2 Therefore, in 2012 Defra and the Food Standards Agency carried out a joint consultation to review the ABPI, with policy objectives (1) to streamline current national legislation on staining, labelling, segregating and storing ABPs in certain Food Business establishments and ABP premises by removing duplication and out of date terminology in order to facilitate compliance by business and the work of enforcement bodies; and (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 saving for business and enforcement bodies. Introduction of the ABPEE 2013 fulfils these policy objectives by combining two SIs, removing duplicated or redundant provisions, updating terminology and streamlining retained provisions.

7.3 The changes are not politically or legally important

7.4 This exercise will consolidate amendments made to the ABPEE 2011.

## **8. Consultation outcome**

8.1 The proposed changes to the ABPI were submitted to a full public consultation in 2012, which was preceded by a more limited consultation in 2010 as part of the consultation on wider proposals to implement the updated and revised EU regulations on ABPs. A formal consultation package was published on Defra's website and letters were sent to 33 representative bodies. This public consultation aimed to seek stakeholders' views on (a) the requirements for staining certain ABPs at Food Business establishments and ABP premises and on (b) the revocation of certain ABPI provisions to remove duplication with other legislation.

8.2 Eight weeks were allowed for comment and 5 responses were received. The main interest, reflected in the comments received, was limited to the rendering sector (who dispose of ABPs) and the meat production sector (that is required to stain ABPs). The former supported the option to amend legislation as above and to retain the requirement for Food Business establishments to stain whereas the latter argued that the costs were disproportionate and the same objectives could be achieved by other means. It was decided to retain the requirement to stain on the basis that the permanent staining of ABPs, when done properly, 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 the EU regulations do contain other traceability requirements for the safe handling and disposal of ABPs these alone would be unlikely to 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 enforcement bodies.

## **9. Guidance**

9.1 The Animal Health Veterinary Laboratory Agency and the Food Standards Agency Operations group publish on-line guidance on the staining requirements. This will be updated to explain the changes to the legislation.

## **10. Impact**

10.1 No significant impact on business, charities or voluntary bodies is expected.

10.2 No significant impact on the public sector is expected.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The streamlining of legislation will either have no impact or a good impact on firms employing up to 20 people. There will only be relatively small familiarisation costs and possibly net savings as the amended legislation (for establishments and Collection Centres) permits the use of alternative cheaper dyes for staining ABPs provided their safety/efficacy can be demonstrated. There should be some efficiency savings as a single ABPEE will be more coherent and easier to follow for operators than two sets of regulations.

## **12. Monitoring & review**

12.1 The ABPEE 2013 requires the Secretary of State to keep the regulations under continuous review and to set out the conclusions of each review in a published report. The first report is required to be published before the end of the five year period from 30 November 2011.

## **13. Contact**

13.1 Debbie Bailey at the Department for Environment, Food and Rural Affairs; Tel: 020 7238 1665 or email: [Debbie.Bailey@defra.gsi.gov.uk](mailto:Debbie.Bailey@defra.gsi.gov.uk) can answer any queries regarding the instrument.