

Final Business and Regulatory Impact Assessment

Title of proposal

Review of the Animal By-Products (Identification) Regulations 1995 and potential transfer of provisions to the Animal By-Products (Enforcement) (Scotland) Regulations 2011

Purpose and intended effect

- **Background**

The Animal By-Products (Identification) Regulations 1995 (ABPI) are a national measure which were introduced principally to prevent fraudulent diversion of animal by-products (ABPs) unfit for human consumption to the human food chain with a consequent threat to public health. However, some provisions are now out of date or covered by subsequent EU legislation on ABPs/Food Hygiene so the regulations need to be reviewed and updated with redundant provisions removed and possible transfer to domestic legislation implementing the EU legislation on ABPs.

- **Objectives**

The 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.

- **Rationale for Government intervention**

Now that there is specific EU legislation 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, it is necessary to review the ABPI measures (made under the national Food Safety Act in the absence of suitable EU provisions) with a view to removing existing duplication and out of date terminology and transferring updated provisions to the Animal By-Products (Enforcement) (Scotland) Regulations 2011 (ABPES). 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. The potential for deregulation should also be examined which, if it can be done safely, could produce savings in resources for businesses and enforcement bodies.

In order to appraise the costs and benefits of these options before consultation, it has been necessary to estimate various costs with the intention of asking industry to provide more accurate figures (for staining etc.) in the consultation exercise. The measures do not warrant a large investment in terms of research costs to quantify the costs and benefits. In particular the risks of illegal activity taking place and causing food poisoning incidents have not been quantified as this would require a disproportionate effort and cost.

For Government inspection costs central records are kept of FSA inspection costs under the ABPI. However, these are only split into figures for England/Scotland/Wales and do not show costs against individual provisions in the ABPI. Obtaining this would take a

disproportionate amount of staff time as it would involve sorting a very high volume of individual returns. As Animal Health Veterinary Laboratories Agency (AHVLA) and Local Authorities (LAs) inspect plants and premises as part of wider visits covering other policy areas it is difficult to obtain precise figures for the inspection and enforcement costs relating specifically to staining. However, reasonable attempts have been made to estimate these figures.

This ties in with the we live longer, healthier lives strategic objectives of the Scottish Government's National Outcomes. By continuing to stain ABPs we will help prevent the illegal diversion of food that is unfit for human consumption entering the food chain which in turn will help reduce food poisoning related illnesses.

Consultation

- **Within Government**

In 2009 the Food Standards Agency (FSA) decided with Government that the requirement to update the broader ranging domestic legislation on ABP controls to implement the new EU ABP Regulation provided a useful opportunity to consider transferring certain ABPI provisions to a new Scottish Statutory Instrument (SSI), principally to streamline ABP controls by having them in a single piece of legislation. It was agreed to pursue this issue once the Scottish Government (SG) had brought a new SSI into force, to avoid delaying the introduction and allow an initial consultation with the industry on their views. The replacement ABPES came into force in March 2011, along with similar SIs in England, Wales and Northern Ireland. A joint Government/FSA led Project Board was set up in June 2011 to take the review of the ABPI forward, including consulting stakeholders on proposals for updating the ABPI.

- **Public Consultation**

In order to obtain an initial idea of how the industry would feel about revising or revoking the ABPI, when the SG consulted stakeholders in August 2010 about wider proposals to implement the new ABPES in Scotland, it 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?”

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. 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.

The initial views received appear to support 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 would appear to be not favoured by industry. SG, jointly with the FSA, therefore want to carry out a more comprehensive 12 week written consultation on options to review the ABPI in order to obtain more detailed views and cost/benefit information from the industry.

- **Business**

Industry representatives were included in the public consultation carried out by SG in August 2010. Currently the following businesses in GB must stain 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)

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

Options

In summary, the 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 and 3 ABPs, but possibly allow other dyes to be used, and remove duplicated provisions on staining in ABP premises, storage, segregation and labelling. SG would not need to amend the ABPES;
- Option 2: The FSA would revoke the ABPI entirely. This would remove the requirement for Food Business establishments to stain Category 2 and 3 ABPs. However, staining in ABP premises would continue to be required under the ABPES which would also continue to cover provisions on storage, segregation and identification. SG would not need to amend the ABPES;
- Option 3: SG would amend the ABPES 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.

Summary of Options and Key Costs and Benefits relative to Baseline

(Note: A more detailed table comparing costs and benefits of Options 1-3 is at **Appendix 1**. Appendix 1 reproduces cost/benefit data from paragraphs below to make direct comparison easier.)

	Option 1	Option 2	Option 3
Description	FSA keep responsibility for ABPI but update provisions	ABPI revoked	ABPI revoked but transfer of provisions to ABPES
Costs	1. Small one-off familiarisation costs to industry and government	1. Small one-off familiarisation costs to industry. 2. Additional annual costs to government for supervising handling of ABP in absence of staining. 3. Increased risk of illegal activity leading to outbreaks of food borne illness.	1. Small one-off familiarisation costs to industry and government
Benefits	1. Annual efficiency savings accruing to industry and government from easier to follow, more coherent legislation.	1. Cost saving to industry from not having to stain certain ABP.	1. Annual efficiency savings accruing to industry and government from easier to follow, more coherent legislation. (with benefits expected to be larger than option 1)

- **Option 0 – Do Nothing**

Under the baseline of “doing nothing” the FSA would keep responsibility for the ABPI and not update regulations. This would maintain the following activities and consequences for Government, industry and the public.

Government bodies undertake the following activities to enforce the ABPI

- a) The **FSA** Operations Group inspect slaughter houses, cutting plants and game handling establishments and take enforcement action if necessary (annual costs are approximately £0.5m in GB, nearly all for slaughterhouses and cutting plants);

- b) **LAs** enforce at cold stores (annual costs are absorbed in normal working instructions so are minimal);
- c) The **AHVLA** inspect Collection Centres (CC) (mostly hunt kennels but also some other premises e.g. knackers yards). AHVLA may also collaborate with LAs to take enforcement action if necessary (annual costs for AHVLA are approximately £10,773 - £21,546 for around 1,470 visits to all GB CCs requiring 16 - 32 working days of VO time; annual LA costs are absorbed in normal working instructions so are minimal)

These enforcement bodies also enforce similar provisions on segregation, labelling and storage and staining in ABP premises under the EU ABP Regulation/ABPES (and equivalent SIs in England and Wales). They cover the same establishments/ABP premises as above with the AHVLA additionally inspecting cold stores.

Industry i.e. all slaughterhouses, cutting plants, cold stores and game handling establishments are required to carry out the following activities:

- a) Stain Category 2 ABPs with colouring agent Black PN or Brilliant Black BN (E151, colour index 197 No 28440) (unless they are mixed with Category 2 gut content/manure – the standard, permitted, practice at many red meat slaughter houses)
- b) Comply with rules on segregation, storage and labelling which duplicate rules they must also comply with under the ABPES and equivalent SIs for England and Wales

ABP premises (i.e. collection centres e.g. hunt kennels and zoos) are also required to stain Category 2 ABPs which are intended for feeding (e.g. to hounds) with the above colouring agent Black PN or Brilliant Black BN. This goes further than the requirements under EU ABP Regulations 1069/2009 and 142/2011 (Annex VI, Chapter II, Section 1 paragraph 4) and ABPES etc, which provide 3 “treatment” options for Category 2 ABPs including denaturing with a solution of an unspecified colouring agent.

The consequences for the Government (i.e. SG, FSA, AHVLA and LAs) of “doing nothing” would be inefficient by maintaining 2 sources of confusion for Government inspectors/enforcers and industry operators, arising from:

- a) Out of date, duplicated and possibly ambiguous provisions and terminology in the ABPI compared to the ABPES/EU ABP Regulation above, and
- b) The fact that ABP provisions are in two sets of legislation made under different primary legislation and held by different Departments which have different responsibilities.

In addition, as Regulation 142/2011 includes provision for national rules to mark ABPs to ensure they are properly identified in accordance with the EU ABP Regulation it is now unnecessary for staining requirements in slaughterhouses, cutting plants, cold stores and game handling establishments to be covered by the ABPI under the Food Safety Act.

However, a benefit is that the requirement to stain as an anti-fraud measure maintains the controls Government has considered necessary for protecting human health (from food borne organisms e.g. salmonella, campylobacter, enterobacteriaceae, e coli) and mitigates against the risks of incurring costs associated with dealing with potential disease

outbreaks/health scare. Government has a reasonable level of confidence that the measures provide the above assurances as compliance in premises is generally good and on average there are just two convictions a year under the ABPI.

In addition, staining in establishments has the following positive effects:

- a) It maintains reputation of industry re protecting human health
- b) It helps maintain meat sales/exports (due to reputation for safety)
- c) It helps prevent industry costs and taxpayer from having to contain any public health scare

Other ABPI provisions on segregation, storage and labelling have a neutral effect as establishments must already comply with similar EU provisions under the EU ABP Regulation/ABPES etc.

A typical Food Business establishment slaughtering 800,000 poultry (chickens) a week has advised that staff resources for preparing and applying stain are negligible as this can be done quickly and easily as part of routine duties, although other views will be sought during consultation. For establishments, typically a container of stain is made up by dissolving powdered dye in water. This solution is then poured over the ABPs (using a bucket) in their collection container once it is half full and then again later when completely full to ensure complete coverage. For Collection Centres the dye solution is instead sprayed (using a garden type spray) onto the Category 2 flesh that is going to be fed to hounds or zoo animals. The legislation requires that every surface is covered in the dye. Prices for dye depend on the volumes purchased. In a poultry slaughterhouse slaughtering 800,000 chickens a week the cost is likely to be around £25/Kg. However, for a Collection Centre which will be feeding the stained ABPs to carnivores the following dye prices are typical: Granular Black: £47- £60/kg (depending on how much purchased); Liquid Black: £53 - £80/kg. Estimated costs for staining in establishments and collection centres are as follows:

- 80 poultry slaughterhouses (of which under 10 slaughter turkeys) – estimated cost of £300/week (£15,600/year) for staining in a typical establishment slaughtering 800,000 chickens/week, and an estimated £1,700/week (£88,400/year) for a typical establishment slaughtering 100,000 turkeys/week; around 840m chickens slaughtered per year in GB giving **estimated total annual costs for staining for poultry (chicken) industry of £315,000 (i.e. estimated annual cost of £15,600 for staining in a typical establishment multiplied by 840m/(800,000x52))**. Around 12m turkeys slaughtered per year in GB giving **estimated total costs for staining poultry (turkey) industry of £204,000 (i.e. estimated annual cost of £88,400 for staining in a typical establishment x 12m/(100,000x52))**.
- 262 red meat slaughterhouses - estimated average cost of £20/week (£1,040/year) for staining in a typical establishment i.e. around £272,000/year (£1,040 x 262, rounding down) for all GB red meat slaughterhouses (significantly less than poultry slaughterhouses as usual practice is to mix ABPs with manure and gut content which is permitted as an alternative to staining);
- 60 game slaughterhouses - estimated average cost of £10/week (£520/year) for staining in a typical establishment i.e. around £31,000/year (£520 x 60, rounding down) for all GB game slaughterhouses;

- 16 game handling establishments - at an estimated average cost of £10/week (£520/year) for staining in a typical establishment i.e. around £8,000 (£520 x 16, rounding down) for all GB game handling establishments;
- 616 standalone cutting plants that stain infrequently – estimated negligible cost;
- 210 Collection Centers (mostly hunt kennels preparing material for feeding fallen stock to hounds) –estimated average cost of £50 /week (£2,600/year) for Category 2 ABP to be used as feeding material i.e. around £55,000/year (£2,600 x 210) for staining in all GB Collection Centres.

The consequences for the public are to protect public health protected from food borne organisms e.g. salmonella, campylobacter, enterobacteriaceae, e coli

To summarise, “doing nothing” would keep out of date and duplicated provisions in force, which gives rise to potential conflict with the provisions of the EU ABP Regulation/ABPES and similar in England and Wales. Whilst the anti-fraud measures maintaining the controls Government deemed necessary to protect human health and mitigate against the risks of incurring costs associated with dealing with potential disease outbreaks would remain in place, there would be duplication with rules on segregation, storage and labelling under the ABPES and equivalent SIs for England and Wales. Staining requirements for ABP premises would go further than the requirements under the ABPES etc, which simply require them to ensure Category 2 APBs are denatured with a solution of an *unspecified* colouring agent. Also, the EU ABP Regulation includes provision for national rules to mark ABPs to ensure they are properly identified in accordance with the EU ABP Regulation, which would seem a more appropriate legal basis for the staining requirements in establishments rather than the Food Safety Act used by the ABPI.

“Do nothing” is therefore not favoured because the outcome would be to maintain a confusing and in part contradictory set of measures for enforcers (FSA, AHVLA and LAs) and industry operators above from (1) interpreting and applying out of date, duplicated and ambiguous provisions in the ABPI compared to the ABPES etc; and (2) the fact that ABP provisions are in two sets of legislation made under different primary legislation and held by different Departments with different responsibilities. This makes it more difficult for enforcers and operators to work to maximum efficiency and could be challengeable in the case of Government proceedings taken under the legislation.

- **Option 1 – Do minimum**

By doing the minimum, the FSA would still keep responsibility for the ABPI but go further and update the ABPI provisions. It would keep the anti fraud measures in place with maintained levels of protection to human health and reduce the likelihood of costs to Government and industry from having to deal with disease outbreaks and health scares. It would go further by updating out of date terminology (for example “definition of an ABP”), removing duplication of provisions (notably on segregation, storage and labelling) and possibly allowing establishments and ABP premises to use alternative, cheaper dyes. An updated ABPI would be more coherent and easier to follow for enforcers, albeit with some familiarisation costs to enforcers (FSA, AHVLA and LAs) and industry.

However this option would retain the same confusion from two separate pieces of legislation covering the same field which is not desirable or sensible for enforcers and

operators faced with having to interpret and comply with two pieces of legislation which are held by different Departments with different responsibilities.

Monetised costs and benefits are estimated to be as follows:

(a) Costs to Government

Inspection costs for FSA/AHVLA/LA as for Option 0 i.e. no change in these costs.

There would however be small one-off familiarisation cost (estimated) of around **£4,400** comprising:

- FSA: £4,000 to update Manual of Official Controls (MoC) + £182 for Veterinary Manager (VM) time (2 hours @ £90.99/hour)
- AHVLA: £182 to update online guidance and write to 210 CCs ([2hours] of Veterinary Officer (VO) time @ £90.99/hour)
- LA: negligible (would just forward FSA guidance to businesses)

(b) Cost to Industry

Small one-off familiarisation cost (estimated) to whole industry of around **£27,400** comprising:

- Establishments: It is estimated that it would take a typical food business manager 2 hours @ hourly rate of £12 for familiarisation with changes and dissemination of updated information to staff. There are 1034 establishments, giving a total estimated cost of **£24,816** (£24 x 1034)
- ABP premises: It is estimated that it would take a typical CC manager 1 hour @ hourly rate of £ 12 for familiarisation with changes and dissemination of updated information to staff. There are 210 Collection Centres giving a total estimated cost of **£2,520**.

(c) Costs to Public

As for Option 0 (i.e. no additional costs)

(d) Benefits to Government

Benefits to government would be the same as for Option 0 (i.e. retaining same anti fraud measures (from staining) would maintain the same level of protection to public health) but additionally there would be:

Estimated 1% efficiency savings of **£5,000** for FSA inspections/enforcement as updated ABPI would be more coherent and easier to follow for enforcers (i.e. 1% of £0.5m). This is a notional efficiency gain although we would expect to achieve such a gain. We will seek more evidence on this and other efficiency gains during the consultation.

Also, if it is eventually decided to specify the dye Collection Centres are permitted to use in guidance rather than by statute this would enable Government to respond more quickly, with less staff resources, to industry needs as it would not be necessary to amend legislation if new dyes were placed on the market which met the requirements of the EU ABP legislation.

In addition, there would be less risk of legal challenge from inconsistent legislation.

(e) Benefits to Industry

Benefits to industry would be the same as for Option 0 (i.e. retaining same anti fraud measures (from staining) would maintain the industry's reputation) but additionally there would be:

Estimated efficiency savings of **£12,400** for establishments as updated ABPI would be more coherent and easier to follow for operators (Assumes savings of 1 hour a year @ £12/hour¹ = £12,400 for 1,034 establishments). These are conservative estimates of expected efficiency savings.

Also, it may be possible to amend the ABPI to allow establishments to use a different, cheaper dye if consultation responses indicate a significant demand and product safety/efficacy can be demonstrated. At present only colouring agents Black PN or Brilliant Black BN are permitted by the ABPI but other suitable dyes may now be available (we will estimate savings once we know what cheaper dyes might be wanted from consultation).

(f) Benefits to Public

As for Option 0 (i.e. retaining same anti fraud measures (from staining) would maintain level of protection to public) no additional benefits to the public.

Costs and Benefits of Option 1 (at constant prices and present value (1)) £'000

	Tran (2)	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Costs												
Govt	4.4	-	-	-	-	-	-	-	-	-	-	4.4
Industry	27.4	-	-	-	-	-	-	-	-	-	-	27.4
Total	31.8	-	-	-	-	-	-	-	-	-	-	31.8
PV	31.8	-	-	-	-	-	-	-	-	-	-	31.8
Benefits												
Govt	-	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	50.0
Industry	-	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	124.0
Total	-	17.4	17.4	17.4	17.4	17.4	17.4	17.4	17.4	17.4	17.4	174.0
PV		17.4	16.8	16.2	15.7	15.2	14.7	14.2	13.7	13.2	12.8	149.8

(1) discounted at 3.5% pa

(2) Transitional (one-off) costs incurred in 2013

• Option 2

For Option 2 the FSA would revoke the ABPI with no transfer of provisions. This would therefore be the most deregulatory route. On the face of it this option appears attractive as it would remove duplicated provisions and also annual inspection costs to the FSA of around £0.5 million/year (costs to AHVLA and LAs are significantly less) as well as giving

¹ Based on standard rate for general administrator (including 30% overhead) updated to approximate rate expected to apply in 2013.

savings to establishments that would no longer have to purchase/apply dye to ABPs. (for ABP premises this saving would be less as they still have to treat under ABPES) However, this option is not favoured because removing the staining provisions could potentially impact significantly on human health/life, and consequently on costs to Government and industry, as it would be easier for those so minded to illegally divert ABPs (possibly containing salmonella, campylobacter, enterobacteriaceae, e coli etc.) to the human food chain. The box below outlines the possible scale of the costs associated with food borne illness.

Costs of food borne illness

The FSA estimates that around 1 million indigenous cases of food poisoning occur annually in the UK, causing around 500 deaths with a related economic cost of **£1.5 billion**. The estimated cost to **Scotland is £150 million per year**.

The total costs of illness includes the direct costs to the NHS and individuals in loss of earnings etc as well as the indirect costs associated with pain, grief and suffering. They do not however include the costs to business of product recalls and damage to reputation and brands that might be experienced.

Some details of the impact of food borne disease, including incidence, hospitalisations, mortality and total costs are shown by pathogen in the table below.

Estimated Impact of Indigenous Foodborne Disease in UK 2009⁽¹⁾

Estimated Impact of Indigenous Foodborne Disease in UK 2009 (1)	Deaths	Hospitalisations	New Cases	Total Cost of Illness (£m)
Campylobacter spp	100	19,771	419,391	781.4
Listeria monocytogenes	163	465	465	271.6
Salmonellas	79	1,001	27,484	207.2
Norovirus	48	192	304,483	248.5
Ecoli O157	32	554	1,461	96.6
Other bacteria/virus/etc.	24	1,166	161,582	132.3
Total	446	23,149	914,866	1737.6

Source: Food Standards Agency

(1) **Provisional figures** on estimated cases in UK for 2009, Health Protection Agency, Health Protection Scotland, Public Health Agency (NI). Estimates of unknown agents have been excluded.

The average cost of food borne illness is about £1,700 per person affected – an outbreak affecting 50 people would on average cost about £85,000. Clearly more serious outbreaks involving more people, hospitalisations and fatalities would cost more. In addition to these public health costs there may also be costs for industry to deal with high-profile food poisoning incidents (e.g. for recall and disposal of a range of products) and costs to government in managing and containing the outbreak. A confectionary company has claimed that a previous microbiological contamination incident cost it £20 million in product recalls, equipment and process review and replacement, and damage to its reputation, with an additional £1 million fine for breaches of food safety regulations. It is not possible to quantify the risk associated with the relaxation of staining measures

outlined in option 2 and therefore we cannot monetise the expected cost of a food poisoning incident associated with the proposed measures. The purpose of this box is simply to demonstrate that the costs to society of such an incident could be significant and therefore the costs of avoiding such incidents worthwhile.

The increased likelihood of public health scares could require potentially very high Government costs to bring any situation under control. In addition the Government may also have to impose greater enforcement costs if revoking the ABPI resulted in unfit meat going on the market or had to be mitigated by increased control measures in establishments to keep fit/unfit material separate in absence of staining. Staining is the easiest way of identifying ABPs and ensuring its separation from offal and meat that can be consumed. If the staining requirements were revoked, it might be possible to increase the controls to ensure that Category 2 material remains segregated in separate clearly labelled bins in slaughterhouses and cutting plants, but (a) this is likely to require greater enforcement oversight, particularly in cutting plants where there is no longer a full time official presence; and (b) it is difficult to see how unstained Category 2 material could be controlled once it has left these premises except through greater oversight throughout the chain and thus increased enforcement costs. These costs could presumably be recovered from the industry, but they would be likely to negate any cost savings to it from the use of cheaper dyes or of not using dyes at all. So, despite maintaining or even increasing controls and supervision the risks to public health of unfit material being illegally diverted into the food chain would increase.

Monetised costs and benefits are as follows:

(a) Costs to Government

Increased supervision required by FSA inspectors to compensate for loss of staining controls could cost the FSA an estimated **£25,000/year** (Assumes a 5% increase of current £0.5m)

The FSA do not routinely collect information on the costs of food or feed safety incidents, which will vary widely depending on their nature, extent and duration and which in many cases are difficult to separate from costs of normal enforcement and monitoring action (e.g. Veterinary Officer visits to farms, a feed or food business operator's normal sampling programme, local authority Trading Standards Officer visits to feed compounders, etc.).

Small one-off cost of £270 to AHVLA to update website, prepare letter and send to 210 Collection Centres to advise of the change (Assumes 3 hours of a Veterinary Officer's time @ £90.99/hour).

(b) Costs to Industry

Previous consultation has suggested that the industry view of the staining requirements positively. They consider that visibly staining ABPs (which potentially carry a number of organisms harmful to human health) with a permanent dye makes it easier to ensure those ABPs are kept separate from material destined for human consumption and thereby deters fraudulent diversion which could harm the industry's reputation. It has not been possible to estimate the risk and potential costs associated with fraudulent activity leading to major

food poisoning incidents but the box above gives an indication of the costs to industry and the public health costs.

Familiarisation costs (estimated) of **£12,400** for establishments: it is assumed that it would take a typical food business manager 1 hour @ hourly rate of £12 for familiarisation with changes and dissemination of updated information to staff. There are 1034 establishments, giving a total cost of £12,408. This would be a one-off cost.

(c) Costs to Public

Industry might pass on costs to consumers in the wake of a major food safety incident.

Increased likelihood of public health scares could lead to serious harm to public health or even death (see box).

(d) Benefits to Government

It might appear that there would no longer be annual costs of some £0.5m/year for FSA inspections, but these costs would probably actually have to increase to maintain a reasonable level of protection to public health in the absence of staining – see costs to government above.

Efficiency savings to FSA and LA enforcers from greater clarity over which SSI to prosecute under.

Negligible efficiency savings to AHVLA which would continue carrying out risk based inspections of Collection Centres still required to stain under ABPES.

Negligible efficiency savings for LAs.

Also, if it is eventually decided to specify the dye which Collection Centres are permitted to use in guidance rather than by statute this would enable Government to respond more quickly, with less staff resources, to industry needs as it would not be necessary to amend legislation. In addition, simpler legislation would mean less likelihood of legal challenge.

(e) Benefits to Industry

Industry will save the costs associated with staining animal by-product material in establishments. This will amount to around £885,000 a year.

(f) Benefits to Public

None.

Costs and Benefits of Option 2 (at constant prices and present value (1)) £'000

	Tran (2)	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Costs												
Govt	0.3	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	250.3
Industry	12.4	-	-	-	-	-	-	-	-	-	-	12.4
Total	12.7	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	25.0	262.7
PV	12.7	25.0	24.2	23.3	22.5	21.8	21.0	20.3	19.6	19.0	18.3	227.9
Benefits												
Govt	-	-	-	-	-	-	-	-	-	-	-	-
Industry	-	885.0	885.0	885.0	885.0	885.0	885.0	885.0	885.0	885.0	885.0	8,850.0
Total	-	885.0	885.0	885.0	885.0	885.0	885.0	885.0	885.0	885.0	885.0	8,850.0
PV		885.0	855.1	826.2	798.2	771.2	745.1	719.9	695.6	672.1	649.4	7,617.8

(1) discounted at 3.5% pa

(2) Transitional (one-off) costs incurred in 2013

- **Option 3**

Option 3 is to repeal the ABPI and thereby remove duplicated provisions on segregation, storage and labelling, and staining in ABP premises, but to update and transfer provisions on staining in establishments to the ABPES using provisions in the EU ABP Regulation as a legal basis instead of the Food Safety Act. This would keep the anti fraud measures in place with maintained levels of protection to human health and minimise likely costs to Government and industry from having to deal with disease outbreaks and health scares. However, as the staining provisions would be located more logically with other ABP measures in the ABPES, this streamlining should make it easier for enforcement bodies to enforce the legislation and for the industry to comply with it. There would be more certainty about meeting regulatory requirements with simpler regulation. Notably, in the aforementioned “pre-consultation” the vast majority of industry respondents made it clear that they would prefer staining provisions to remain in force to deter fraud. It would be clearer that there would be a single SSI to be used for dealing with non-compliance and taking forward prosecutions.

In addition, we could consider the option of covering the requirements by guidance rather than by legislation, although this would have to be weighed up against the need for greater supervision/inspections in the absence of statutory provisions.

Although slaughterhouses, cutting plants, cold stores and game handling establishments would still be required to stain, following consultation they might have a new option of being able to use a cheaper dye. ABP premises (collection centres) might no longer have to use Brilliant Black dye to stain Category 2 ABPs - the EU ABP Regulation and ABPES do not specify which colouring agents collection centres must use to denature these ABPs.

Monetised costs and benefits are as follows.

(a) Costs to Government

Small one-off familiarisation cost (estimated) of **£4,400** comprising:

- FSA: £4,000 to updated MoC + £180 for VM time (2 hours @ £90.99/hour)

- AHVLA: £180 to update online guidance and write to 210 CCs (2hours of VO time @ £90.99/hour)
- LA: negligible (would just forward FSA guidance to businesses)

(b) Costs to Industry

Small one-off familiarisation cost (estimated) of around **£27,400** comprising:

- Establishments: It is estimated that it would take a typical food business manager 2 hours @ hourly rate of £12 for familiarisation with changes and dissemination of updated information to staff. There are 1034 establishments, giving a total cost of **£24,816**.
- ABP premises: It is estimated that it would take a typical hunt manager 1 hour @ hourly rate of £12 for familiarisation with changes and dissemination of updated information to staff. There are 210 Collection Centres giving a total cost of **£2,520**.

(c) Costs to Public

None.

(d) Benefits to Government

Estimated 1% - 2% annual efficiency savings of **£5,000 – £10,000** (say **£7,500** a year) for FSA inspections/enforcement as updated ABPI would be more coherent and easier to follow for enforcers. (i.e. 1% - 2% of £0.5m). These efficiency savings are greater than for Option 1 as ABP provisions would be in a single piece of legislation rather than two SSIs. They would therefore be easier to locate and cross referencing would not be necessary. It would also be clearer which SSI should be used for prosecution if necessary.

Efficiency savings to FSA and LA enforcers from greater clarity over which SSI to prosecute under and less possibility of challenge to enforcement/prosecution.

Negligible efficiency savings to AHVLA which would continue carrying out risk based inspections of CCs still required to stain under EU ABP Regulation.

Also, if it is eventually decided to specify the dye CCs are permitted to use in guidance rather than by statute this would enable Government to respond more quickly, with less staff resources, to industry needs as it would not be necessary to amend legislation.

(e) Benefits to Industry

Estimated efficiency savings of **£12,400** for establishments as single ABPES would be more coherent and easier to follow for operators. (Assumes savings of 1 hour a year @ £12/hour i.e. 1 hour per year per establishment = £12,400 for 1,034 establishments).

Also, establishments may have option of being able to use a cheaper dye if it is decided to permit these (this will be estimated in final Impact Assessment once we know what cheaper dyes might be wanted from consultation)

(f) Benefits to Public

As Option 0

Costs and Benefits of Option 3 (at constant prices and present value (1)) £'000

	Tran (2)	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Costs												
Govt	4.4	-	-	-	-	-	-	-	-	-	-	4.4
Industry	27.4	-	-	-	-	-	-	-	-	-	-	27.4
Total	31.8	-	-	-	-	-	-	-	-	-	-	31.8
PV	31.8	-	-	-	-	-	-	-	-	-	-	31.8
Benefits												
Govt	-	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7.5	7.5	75.0
Industry	-	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	12.4	124.0
Total	-	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	19.9	199.0
PV	-	19.9	19.2	18.6	17.9	17.3	16.8	16.2	15.6	15.1	14.6	171.3

(1) discounted at 3.5% pa

(2) Transitional (one-off) costs incurred in 2013

Scottish Firms Impact Test

The changes are potentially deregulatory for micro businesses. Nearly all 210 Collection Centres fall under the definition of a “micro business” (a workforce of 10 or fewer full time equivalents) although most Food Business establishments would not.

As it was already a requirement to stain ABPs under the ABPI, no face-to-face interviews with individual businesses were carried out. Moving the staining requirement to the ABPES entails no significant costs for businesses. By permitting use of cheaper dyes there could be net savings for Collection Centres. There are also some efficiency savings as a single ABPES would be more coherent and easier to follow for operators.

- **Competition Assessment**

Will the proposal directly limit the number or range of suppliers? e.g. will it award exclusive rights to a supplier or create closed procurement or licensing programmes? **No**

Will the proposal indirectly limit the number or range of suppliers? e.g. will it raise costs to smaller entrants relative to larger existing suppliers? **No**

Will the proposal limit the ability of suppliers to compete? e.g. will it reduce the channels suppliers can use or geographic area they can operate in? **No**

Will the proposal reduce suppliers' incentives to compete vigorously? e.g. will it encourage or enable the exchange of information on prices, costs, sales or outputs between suppliers? **No**

None of the options have an impact on competition. No impact on intra-community trade.

- **Test run of business forms**

There will be no specific business forms involved with the implementation of the proposed legislation.

Legal Aid Impact Test

The Access to Justice policy team have confirmed that after consideration and consultation with the Scottish Legal Aid Board, there is unlikely to be any impact on the Legal Aid stemming from the policy changes planned.

Enforcement, sanctions and monitoring

Responsibility for compliance, monitoring and enforcement of the provisions are:

- The **FSA** Operations Group inspect slaughter houses, cutting plants and game handling establishments and take enforcement action if necessary
- **LAs** enforce at cold stores
- The **AHVLA** inspect Collection Centres (mostly hunt kennels but also some other premises e.g. knackers yards). AHVLA may also collaborate with LAs to take enforcement action if necessary
- Non-compliance with the ABPES would result in a person being guilty of an offence. On summary conviction they may be subject to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 12 months or both. On conviction on indictment they may be subject to a fine or imprisonment for a term not exceeding 2 years or both.

Implementation and delivery plan

This will be implemented by an SSI and this is due to come into force on 1 December 2013.

- **Post-implementation review**

The basis of the review will be policy driven. The approach of this is a scan of stakeholder views as this is deemed to be the most appropriate mechanism for gathering this data. The new SSI will remove duplicated provisions and take over the national staining provisions for establishments with no increase in risks to animal and public health. Areas which could be improved will be highlighted for possible amendment. A formal review of the ABPES will be carried out within 10 years of it coming into force to ensure it is still fit for purpose.

Summary and recommendation

Option 3 is the preferred Option. 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.

• **Summary costs and benefits table**

<u>Option</u>	<u>Total benefit per annum: - economic, environmental, social</u>	<u>Total cost per annum: - economic, environmental, social -policy and administrative</u>
0	<ul style="list-style-type: none"> • FSA keep responsibility for the ABPI. • Maintains protection to public health. 	<ul style="list-style-type: none"> • FSA costs of approx £0.5m in GB. • LAs costs are absorbed in normal working instructions. • AHVLA costs approx £10k – £21k in GB. • No additional costs to industry or the public.
1	<ul style="list-style-type: none"> • FSA keep responsibility for the ABPI but go further and update ABPI provisions i.e. making the ABPI more coherent and easier to follow for enforcers/operators. • Efficiency savings to both Government and industry. • Maintains protection to public health. 	<ul style="list-style-type: none"> • Government costs are the same as option 0. • Industry costs would be a small one-off familiarisation to whole industry of around £27,400. • No additional costs to the public.
2	<ul style="list-style-type: none"> • Revokes the ABPI with no transfer of provisions i.e. no staining of ABPs. • Increased likelihood of public health scares could lead to serious harm to public health or even death. 	<ul style="list-style-type: none"> • No annual FSA inspections costs currently £0.5m in GB. • Increased supervisions costs for FSA estimated at £25,000. • Familiarisation costs to industry estimated at £12,400. • Risk that industry may pass on costs to consumers in the wake of a major food safety incident.
3	<ul style="list-style-type: none"> • Repeal the APBI and transfer provisions to the ABPES removing duplication in legislation. • Maintains protection to public health. • Efficiency savings to both Government and industry. 	<ul style="list-style-type: none"> • Government costs are a small one-off familiarisation of around £4,400 but would benefit from efficiency savings of £7,500 – total savings of around £3,100 • Industry costs would be a small one-off familiarisation to whole industry of around £27,400 but benefiting for efficiency savings of £12,400 – total cost £15,000. • No additional costs to the public.

Declaration and Publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Cabinet Secretary for Rural Affairs and the Environment

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