



The Scottish
Government

The Review of the Animal By-products Regulations (EC) No. 1774/2002

**The Review of the
Animal By-products Regulations
(EC) No. 1774/2002**

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The Scottish Government
St Andrew's House
Edinburgh
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Interested Parties

3 December 2008

Dear Sir/Madam

Consultation on the Review of the Animal By-Products Regulation (EC) No. 1774/2002

I am writing to invite views on the European Commission's proposal to replace the Animal By-Products Regulation 1774/2002/EC, which lays down health rules for the use and disposal of animal by-products not intended for human consumption.

This consultation applies in Scotland only. Parallel consultations are being undertaken in England, Wales and Northern Ireland.

Responding to this consultation paper

We are inviting written responses to this consultation paper by **25 February 2009**. Please send your response to:

ian.murdoch2@scotland.gsi.gov.uk

or

Ian Murdoch
The Scottish Government
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As the Scottish Government is committed to a greener Scotland we would prefer to receive your reply by email.

This consultation can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is. This may be your local public library.

The Scottish Government now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how to handle your response, particularly whether it can be made public. Please complete and return the **Respondent Information Form** along with your comments. This will ensure that we are clear about your wishes. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

What happens next?

Where respondents have given their permission, responses will be published in association with a report on the consultation. This will be available on the Scottish Government consultation web pages by 25 March 2009. Before publication all responses will be checked for potentially defamatory material. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made of this service.

Yours faithfully

ANDREW L TAYLOR

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(EC) No. 1774/2002**

3 December 2008

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Introduction

The Animal By-products (ABP) Regulation 1774/2002/EC lays down rules for the use and disposal of animal by-products not intended for human consumption. The Regulation has a very wide scope covering all animal products including meat, fish, milk and eggs when they are not intended for human consumption and other products of animal origin including hides, feathers, wool, bones, horns, hoofs. It also covers carcasses of fallen stock on farms, pet animals, and wild animals where they are suspected of being diseased. It regulates the use of ABPs for example as feed (including pet food), fertiliser or for technical products and lays down rules for their transformation through composting and biogas and their disposal via rendering and incineration. It also prevents catering waste being fed to livestock

It was introduced in 2002 in response to a number of crises affecting the safety of public and animal health as regards products of animal origin - in particular linked to Transmissible Spongiform Encephalopathies, dioxin contamination, and outbreaks of Classical Swine Fever and Foot and Mouth Disease - and consolidated, simplified and replaced 19 previous legal acts. It introduced stricter rules concerning the approval of certain premises, the channelling and traceability of ABPs and introduced controls based on risk categories for different types of ABP in order to guarantee the safety of final products intended for feed or technical uses.

In 2005 the Commission submitted a report to the European Parliament and Council reflecting on the experience of implementing the Regulation (EM 13808/05 of 21 November 2005). The report stated that although the legislation was working well and generally met its overall objectives, there were areas where changes need to be considered in order to update the legislation and to provide legal certainty, simplify it and thus reduce administrative burden.

Following extensive consultation, the Commission has now produced a proposal to recast the Regulation with the intention of meeting better regulation principles, to improve and make the measures more effective and efficient, and reduce the unnecessary burden for operators whilst ensuring protection of public and animal health and food safety are not undermined. Although it does not envisage any changes to the basic principles and structure of the Regulation, the proposal attempts to address a number of issues where the Commission has identified problems with the existing regulation, namely:

- (i) the lack of clarity in the scope of the Regulation. Specifically it is not clear when products are no longer considered as ABPs, and so the requirements of the Regulation cease to apply, nor the extent to which ABP from wild game is covered;
- (ii) the categorisation of ABPs is not always proportionate to the risk they pose;
- (iii) some of the premises that fall into the scope of this Regulation have to undergo a double approval (under the ABP legislation and under other sector legislation); and
- (iv) the fact that current regulation does not consider some important issues as regards derogations (e.g. impact on ABPs for research, natural disasters etc).

The Commission has undertaken extensive consultations on their proposals to recast the Regulation both internally and with Member states, third countries and stakeholders since 2005. These comprised an Inter-Services Commission working group (with other Commission Directorates), consultation with the European Food Safety Authority (EFSA) for scientific advice on a number of areas, a number of working groups with Member States' experts in 2006, bilateral discussions with major trading partners, and meetings with the major European Associations with an interest related to the food chain and animal and public health (ABP producers, processors, traders, users and consumers). Finally, the Commission held a general on-line consultation with all interested parties in Spring 2007.

The Scottish Government has consulted with stakeholders in writing twice in 2006, as part of the response to the Commission's on-line questionnaire issued in 2007, and by participating in ad hoc meetings with key stakeholders at various intervals from 2005 to date. The proposal that is the subject of this consultation was issued on 10 June 2008.

We would now welcome your views on this final proposal, in particular the questions set out in this document, and on the partial impact assessment.

The Commission's proposal will be of interest to a many diverse sectors. This includes (but is not limited to) the livestock and farming community, the ABP collection and disposal industry (renderers, incinerator operators, etc), the catering and food manufacturing/retailing industry, the pharmaceutical industry, the cosmetic industry, pet food manufacturers, zoos, seafish and shellfish industries, those producing and using biodiesel, pet horse owners and the wild game sector. Enforcement authorities, Government Departments and non-Governmental organisations will also have an interest.

Views and comments are invited by **25 February 2009** on the Commission's proposal, the questions posed in this consultation document, and the associated Partial Regulatory Impact Assessment.

References in this consultation paper to "the ABPR" means the current Animal By-Products Regulation (EC) No. 1774/2002, which lays down health rules as regards animal by-products not intended for human consumption.

For convenience, the text of the 2002 Regulation can be found at:

<http://www.scotland.gov.uk/Publications/2003/11/18453/28580>

The Commission's proposal can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0345:FIN:EN:PDF>

Consultation Questions

All interested parties are invited to submit their views on any of the matters addressed in this paper, particularly in relation to the questions below. The Government's initial assessment of the impact can be found in the Partial Regulatory Impact Assessment, and in relation to the questions below you may find it useful to cross refer your comments to the schedule of economic impacts of the RIA document.

When responding to the consultation please comment on the likely costs and benefits, giving supporting evidence wherever possible. Please also suggest any alternative methods for reaching the objective and highlight any possible unintended consequences of the proposal, and any practical enforcement or implementation issues.

Scope

Q1: The Commission is seeking to clarify the point at which ABPs become **finished products** (Article 46.2(a)). Such ABPs if treated or tested in a way which ensured remaining risks were minimal would then not be subject to ABPR rules. This would potentially affect several sectors including pharmaceuticals, oleochemicals, pet food manufacturers and tanneries. Do you wish to comment on the likely impact of this proposal?

Q2: The Commission has proposed that where **wild game** is processed in approved game handling establishments, the disposal of ABPs should be controlled under the regulation (Article 2.2(a) and (b)). Do you have any views on this proposal?

Q3: Do you wish to comment on the Commission's proposal that **sea fish** showing signs of disease must be brought ashore for disposal? (Article 2.2(g)). We welcome information from those likely to be affected as to costs (e.g. alterations needed to shipboard design to accommodate such provisions).

Q4: Do you wish to comment on the proposed introduction of controls on the use of catering waste for the manufacture of derived products and in particular **used cooking oil** (UCO) for manufacturing **biodiesel** (Article 2.2(f)(iii)), or of its potential impact?

Q5: The Commission proposes to relax the controls on how **shellfish shells** can be used, once the soft tissue has been removed (Articles 2.2(e) and 21(f) Do you have any views on the impact of this proposal?

Q6: Do you wish to comment on the proposal that establishments which only handle **small quantities** of ABP would be able to dispose of these outside of the control of the ABPR? (Article 28.1(d) and 28.4(c)). Do you have any suggestions for how this might be applied?

Categorisation of ABPR

Q7: Do you wish to comment on the proposal to **reclassify certain ABPs** from category 2 to 3 (Article 13), where the risk is low, thereby increasing the scope for their usage (e.g. blood from young ruminants, and ruminants which have passed a TSE test, day-old chicks, invertebrates and casein, which can then be used for various purposes such as pet food and fish food and cosmetics)?

Approval of plant

Q8: Do you have any views on the proposals to remove the need for approval under the ABPR for plants that are currently approved under other food/feed/technical sector legislation - and replace this requirement with a **registration** process (Articles 6 to 9)?

Derogations

Q9: Do you have any views on the extension of the derogation on burial and burning of **fallen stock** in areas where access is impractical, or there are health and safety risks of collection? (Article 28.1(c))

Q10: Views are invited on the relaxation of the ABPR to allow imports of certain high risk material for **research** purposes. The ABPR currently prohibits the import of such material (Article 26.1 and 28.2(d)). Do you wish to comment on this proposal?

Q11: Do you have any comments on the proposal that **zoos** would be permitted to feed certain category 1 material to zoo animals? (Article 27.2 and 3).

Q12: Do you have any comments on the proposed increased scope for use of Category 2 (and possibly Category 1 material) for **pet food**? (Article 22(e)(ii) and 35.2(c))

Q13: The current regulation allows certain **former foodstuffs** to be disposed of to landfill under national rules. It is possible that these provisions will not be continued under the proposal (Article 13(e)). Your views are sought on this and the impact on business.

Burial of fallen stock, including horses

Q14: The Commission are proposing to **define horses** as farm animals (article 3.3(b)) - their carcasses will then have to be disposed of in line with ABPR. This measure will prevent the burial of pet horses. Do you wish to comment on this proposal?

Interaction of the ABP regulation and Waste Incineration Directive with regard to the burning of tallow

Q15: Do you agree with the reference to the Waste Incineration Directive (WID) having been removed from the ABPR, and provision made in certain circumstances for ABPs (including **tallow**) to be used as a fuel for combustion? (Articles 19(f), 20(h), 21(g)).

Q16: Could the **assessment of costs and benefits** in the Partial Regulatory Impact Assessment be improved. If so, how?

Devolution

This consultation applies in Scotland only. Parallel consultations are being undertaken in England, Wales and Northern Ireland.

In this paper “the Government” should be taken to read the UK Government.

Who will be affected?

A list of those organisations and individuals to whom this consultation document has been sent is provided in Annex A.

The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at: [Scottish Government consultations \(http://www.scotland.gov.uk/consultations\)](http://www.scotland.gov.uk/consultations)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

List of Consultees

Agriculture and Horticulture Development Board
Agricultural Industries Confederation
All Divisional Veterinary Managers in Scotland
All Scottish Faith Groups
All Scottish Local Authorities
All Scottish Political Parties
Annan CBS
Argent Energy (UK)
Arla Foods UK
Association of Deer Management Group
Association of Public Analysts of Scotland
Association of Scottish Shellfish Growers
BASC Scotland
Blackface Sheep Breeders' Association
Blair Drummond Safari Park
Bluefaced Leicester Sheepbreeders Association
British Cattle Veterinary Association
British Deer Farmers Association
British Deer Society
British Goat Society
British Horse Society Scotland
British Hospitality Association
British Medical Association (Scottish Branch)
British Veterinary Association (Scottish Branch)
Buccleugh Hunt Kennels
Campbeltown Creamery Ltd
Caledonian Cheese Company Ltd
Cattle Health Certification Standards
CBI Scotland
Central Famers Ltd
Cheviot Sheep Society
Consumer Focus Scotland
Copland Environmental Services
Crofters Commission
Dairy UK - Scotland
Deer Commission for Scotland
Department of Veterinary Pathology
Dundas Chemical Co (Mosspark) Ltd
East of Scotland Farmers Ltd
Ecolibrium (Environmental Science & Management)
Edinburgh Zoo
Eglington Hunt Kennels
Falkirk College of Technology
Federation of Small Businesses
Fife Foxhounds
First Milk
Fraser & Fraser Vets (Ltd)

FRS Marine Laboratory
Glanbia Foods Ltd
Glasgow Zoo
Graham's Dairies
Grayshill Knackery
Hamilton Irvine
Hannah Research Institute
Highlands and Islands Livestock Ltd
Highland Wildlife Park
The Highland Horn Company Ltd
The Independent Farming Group
Institute of Auctioneers and Appraisers Scotland
Institute of Waste Management (Scottish Branch)
Jedforest Hunt Kennels
Lanark and Renfrew Hunt Kennels
Lauderdale Hunt Kennels
Macaulay Land Use Research Institute
MacSweens of Edinburgh
McIntosh Donald Ltd
McKechnie Jess Ltd
Meadows Veterinary Centre
National Beef Association of Scotland
National Fallen Stock Company
National Farmers Union Scotland
National Livestock Traders and Producers Association
National Sheep Association of Scotland
North Country Cheviot Sheep Society
North Highland College (Thurso)
Oran Group
Orkney Creamery
Orkney Fishermen's Society
Quality Meat Scotland
R H Miller (Agriculture) Ltd
Road Haulage Association
Robert Wiseman Dairies
Rothesay Creamery
Rowett Research Institute
Royal (Dick) School of Veterinary Studies
Royal Environmental Health Institute of Scotland
Royal Highland & Agricultural Society of Scotland
Royal Infirmary of Edinburgh
Royal Society for the Protection of Birds Scotland
Royal Zoological Society of Scotland
S & C Murphy
SAC Veterinary Science Division
S B & Co
Scottish Agricultural College
Scottish Agricultural Organisation Society Ltd
Scottish Association of Master Bakers
Scottish Association of Meat Wholesalers

Scottish Association of Young Farmers' Clubs
Scottish Beef Cattle Association
Scottish Centre for Inspection and Environmental Health
Scottish Chambers of Commerce
Scottish Consumer Association for Natural Food
Scottish Crookmakers Association
Scottish Egg Producer and Retailers Association
Scottish Enterprise
Scottish Environment Protection Agency
Scottish Federation of Meat Traders Association
Scottish Fishermen's Federation
Scottish Fish Merchants' Association
Scottish Food and Drink Federation
Scottish Food Trade Association
Scottish Gamekeepers Association
Scottish Grocers' Federation
Scottish Licensed Trade Association
Scottish Meat Industry Liaison Group
Scottish Natural Heritage
Scottish Raptor Study Groups
Scottish Rural Property and Business Association
Scottish Salmon Producers' Organisation
Scottish Trade Union Congress
Scottish Training Industries Ltd
Scottish Utility Breeds Clubs
Scottish Water
Sheep Veterinary Society
Shetland Abattoir Co-operative Ltd
Shetland Flock Book Trust
Shetland Livestock Marketing Group Ltd
Shore Veterinary Centre Ltd
Society of Border Leicester Sheep Breeders
Splits Technologies
Streamline Shipping Group
Sutherland Agricultural Society
Tombuie Smokehouse
Torrylinn Creamery
Transport and General Workers Union
United Auctions Ltd
United Fish Products Ltd
United Molasses
Veterinary Laboratories Agency
Waste Recycling Scotland
Waste Reduction Europe Ltd
Western Isles Aquaculture Association
Westray Processors Ltd
Wholesale Grocers Association of Scotland
Wilson & Sons
West Coast Sea Products Ltd
WR2 Ltd

Regulatory Impact Assessment of a EC Proposal in Respect of Animal By-Products Not Intended for Human Consumption

Objective

The European Commission (EC) is now proposing amendment to the Regulation in order to address:

- (i) a lack of clarity in the regulation's scope;
- (ii) the categorisation of Animal By-products (ABP), which is not always proportionate to the risks they pose;
- (iii) the requirement for some premises to have to undergo double approval (I.e. under ABP and other Regulations);
- (iv) some issues for derogations (e.g. for research, disasters) not addressed in the current regulation.

The objectives of the proposal are to adjust the regulatory framework to respond to the risks posed by animal by-products, improve legal clarity and adapt requirements in line with the advancements in science and technology. This will make ABPs controls more effective and efficient, reducing unnecessary burden for operators, whilst ensuring that the protection of public and animal health and food safety are not undermined.

Background

The current ABP - Regulation 1774/2002/EC was introduced in 2002 in response to a number of crises affecting the safety of public and animal health as regards products of animal origin - linked in particular to Transmissible Spongiform Encephalopathies, dioxin contamination, and outbreaks of Classical Swine Fever and Foot and Mouth Disease. The Regulation consolidated, simplified and replaced 19 previous legal acts.

It also introduced stricter rules for the approval of certain premises, the channelling and traceability of ABPs and controls based on risk categories for different types of ABP in order to guarantee the safety of final products intended for feed or technical uses.

Scope of the ABP Regulation

The ABP Regulation controls the use and disposal of animal by-products (i.e. entire bodies, parts of animals and products of animal origin) not intended for human consumption. The regulation has a very wide scope covering all animal products including meat, fish, milk and eggs when they are not intended for human consumption and other products of animal origin including blood, hides, feathers, wool, bones, horns and hoofs. In addition, it covers carcasses of fallen stock on farms, pet animals, and wild animals where they are suspected of being diseased.

It also controls the use of ABPs for example as feed (including pet food), fertiliser and for technical products and lays down rules for their transformation through composting and biogas and their disposal via rendering and incineration. It also prevents catering waste being fed to livestock.

Rationale for Changes

In 2005 the Commission submitted a report to the European Parliament and Council reflecting on the experience of Member States in implementing the regulation. The report stated that although the legislation was working well and generally met its overall objectives, there were areas where changes need to be considered in order to update the legislation and to provide legal certainty, simplify it and thereby reduce administrative burdens. It also raised the issue that the Regulation needed to be updated to reflect new information which has emerged since the adoption of the Regulation. For example, the products and industries in relation to ABP was wider ranging than foreseen by the legislators at the time of the adoption of the Regulation; and further information on the risks posed by certain ABP material, and the effectiveness of treatment standards in producing a “safe” product, has now become available.

The Commission considered retaining the current rules unchanged or adopting non-regulatory tools but concluded that a regulatory review was most likely to provide effective solutions. Following extensive consultation, the Commission has produced a proposal to recast the regulation by addressing the identified shortfalls, in particular:

- Clarity of scope
- Proportionate categorisation of ABPs
- Double approvals
- Derogations

These themes and the specific proposals within them are set out below.

Commission Timescales

Discussions in Council under the French Presidency began in July, with three further Council working groups planned before the end of 2008. A report to Council from the Presidency is expected by the end of the year. The proposal has been sent to the European Parliament and a rapporteur from the Environment Committee has been appointed to consider the dossier, but the Committee has not yet considered it and will not do so until later this year. In early September Commission working groups also started looking at the implementing rules for the proposal. However, since the implementing rules are incomplete, we will have to await further clarification before we can determine the likely impact they will have on the proposed Regulation: e.g. the conditions for registration of establishments approved under other legislation, and the derogation for small quantities of ABP. Negotiations on these implementing rules will be important for determining the eventual impact of the proposal on ABP operators.

Consultation by the Scottish Government

The Scottish Government has consulted with stakeholders in writing twice in 2006, as part of the response to the Commission on-line questionnaire issued in 2007, and by holding ad hoc meetings with key stakeholders at various intervals since 2005.

This partial Regulatory Impact Assessment will accompany a full consultation now that the final proposal has been issued.

The Scottish Government's Initial Position

At this early stage, the Scottish Government's preferred approach is to support the Commission's proposals whilst seeking to negotiate improvements. The proposal provides a more risk-based approach to controls on the use and disposal of ABPs and the Government agrees with the Commission that this could not be achieved by a more piecemeal approach to amending the existing Regulation.

This is an assessment of the impact of the proposal for a Council Regulation, but it should be noted that there are a number of issues where the appropriate controls will only be clear when implementing rules are agreed by the Commission. For example, the proposed Regulation would make possible a derogation from the usual controls where only small quantities of low risk ABP's are involved. At present, the draft implementing rules are silent on the circumstances under which this derogation might be applied and the extent to which a derogation will permit lesser controls to be applied. It may be considered appropriate to derogate from the ABP requirements in closely defined circumstances or more widely. It is therefore difficult, at this stage of the discussions, to determine the likely impact of the future controls.

The UK will be seeking to achieve improvements to the Commission's proposals for both a Council Regulation and for implementing rules which are consistent with better regulation policy.

The proposal does not make changes to the basic principles and structure of the Regulation. A detailed analysis of each of the four main areas identified above by the Commission and the UK's initial views on the Commission's proposed approach to them are set out below. Two areas of particular importance to the UK are also analysed further (the burning of tallow and disposal of fallen stock).

1. Clarifying the scope of the regulation

End of the ABP Life Cycle

The current rules are not clear in some places about when material ceases to be a controlled ABP. The legal uncertainty resulting from the lack of a clear definition of the end of the ABP life-cycle can mean inconsistent enforcement that may lead to health risks and/or distortion of competition or application of disproportionate rules when there is a negligible risk to health from the products in question.

The proposal would ensure that the end point is determined by the animal by-products being treated or tested in a way which ensures that the remaining risks are minimal, for example by treatment by heat or chemical substances or testing for the absence of bacteria or viruses. If these conditions are fulfilled, the processed animal by-product would no longer be subject to any specific health rules. Instead, under product safety rules, there would be an obligation on the manufacturer to place only "safe" products on the market (e.g. use of tallow derivatives and materials for the pharmaceutical industry).

Clearly there are burdens associated with compliance with the current ABP Regulations. In some cases, the current Regulations continue to apply to products which no longer present human or animal health risks, and such burdens should be lifted. For example, some of the oleochemical processes are considered to produce safe products which should not continue to be subject to the ABP Regulations. It is anticipated that something will be done to remove an anomaly whereby products of the biodiesel process are considered to be safe, but co-products are still subject to the requirements of the Regulations - this is welcome. The current Regulation also recognises that certain products may be considered to be safe when they have been processed to standards which meet bacteriological and virological safety criteria. It remains to be seen whether the detailed implementing rules will significantly change this approach.

The Scottish Government considers that the controls applied should be proportionate to the risk. Where it has been demonstrated that there is no significant risk, the ABP controls should be removed, and, under the implementing rules, it should be possible to exempt the rules to existing processes where there is new evidence to show that safety criteria can be achieved. The impact of this proposal cannot be assessed until the implementing rules are sufficiently clear to allow a comparison to be made between the existing and the new controls.

The Scottish Government supports these proposed changes, which will remove restrictions on processed animal by-products and so remove the burdens currently on industry, but it will need to ensure implementing rules reflect that approach.

Application to Wild Game

The Commission has proposed that where wild game is processed in approved game handling establishments, the disposal of ABPs should be controlled under the regulation, in other circumstances ABPs arising from wild game should be disposed of in accordance with good hunting practice.

The Scottish Government supports this in principle, as ABP's derived from handling wild game in game handling establishments or ABP derived from wild game supplied to the local market by hunters could potentially pose a risk to public and/or animal health. Additionally, wild game handling establishments are covered by the recently revised food hygiene legislation. This legislation contains provisions on the handling of wild game which obliges operators to ensure hygienic conditions and in particular to prevent contamination of meat from other animal material present. These changes will ensure consistency with Community food hygiene legislation, while any duplication will be avoided. However we wish to consider further whether the proposed wording is the best way of achieving that end.

2. The categorisation of ABPs is not always proportionate to the risk they pose

ABPs are classified into 3 categories; with Category 1 material being of the highest risk and Category 3 comprising materials of low or negligible risk. Materials that are not Category 1 or 3 are, by default, placed in Category 2. The following tables provide examples of ABPs in each category, and their currently allowed uses and means of disposal.

<p>Category 1 - Destruction is generally compulsory. Some derogations for pet animal disposal and for research, diagnostic and educational purposes, for taxidermy and in very limited circumstances for feeding of specified animals.</p>	<p>ABP from animals suspected of being infected with a transmissible spongiform encephalopathy (TSE), specified risk material, pet animals, zoo and circus animals, wild animals when suspected of being infected with diseases communicable to humans or animals.</p>
<p>Category 2 – Disposal by incineration either directly or following processing is main option but has certain uses e.g. may go for composting or biogas after processing, and then used as an organic fertiliser or soil improver and may also be used in an approved oleochemical plant.</p>	<p>Fallen stock, manure and digestive tract content; products of animal origin containing residues of veterinary drugs and contaminants (listed); by default any ABP not categorised as 1 or 3.</p>
<p>Category 3 – Used for pet food and a variety of technical purposes. May also be disposed of either directly or following processing as waste by incineration where there is no use.</p>	<p>ABP obtained from animals that were fit but not intended for human consumption.</p>

The Commission considers that the current classification system is not always risk proportionate for certain ABPs, which in turn has significant implications for the industries. The proposal is to reclassify certain ABPs from category 2 to 3, where the risk is low increasing the scope for their usage (e.g. blood from young ruminants, and ruminants which have passed a TSE test, day-old chicks, invertebrates and casein, which can thus be used for various purposes such as pet food and fish food and cosmetics).

The Scottish Government supports this approach. The current legislation contains no simple facility for updating the categorisation of ABP other than via the adoption of transitional measures, which do not result in a coherent legal framework. This means that the legislation is not always risk-proportionate and may to some extent impose unnecessary burdens on the manufacturing industries using these products, or indeed preventing use of ABP which are safe and of economic value.

3. Duplication of approvals for some type of premises

The Commission highlighted that the relationship between the ABP regulation and other Community sectors was not always clear and there was overlapping in some cases. This has created uncertainties on the application of different regulations to some operators. For example, certain premises that are already approved under food/feed legislation (e.g. for the production of tallow, eggs, gelatine, etc) or under technical sector legislation (e.g. on cosmetics, medicinal products and medical devices) must also be approved under the ABP Regulation. The Commission proposes to remove the need for dual approval.

The Commission's proposal would still require plants handling animal by-products which are approved under other legislation to be registered under the ABP Regulation. The extent to which this approach will be beneficial to the industry and Government will depend on the details in the implementing rules. Where certain plants may in future be required to be registered under ABP Regulations rather than approved, this might, at one extreme, involve a level of control which is little different to the current requirements for approval. In the other extreme only notification that the plant is operating may be required. It is the Government's view that the implementation of this proposal should be proportionate to the risks involved. Where the controls under other legislation are sufficient to control the animal and public health risks, they should not be duplicated in ABP legislation, and simple registration would be sufficient. However, where there would be animal or public health risks arising from removal of ABP approval, there should be sufficient controls attached to registration to ensure that such risks are mitigated. The details of how this level of control will be achieved will be discussed in the context of the implementing rules.

The Scottish Government supports this in principle. Experience has shown that the relationship between the ABP Regulation and other Community sector legislation is not always clear and in some cases overlapping. As a consequence, there are legal uncertainties how the requirements laid down in different legal acts are supposed to apply to certain operators. Also, certain operators have to be approved twice by the relevant authorities for similar objectives. However, we will need to assess the details in the implementing rules to ascertain how this will impact on UK business.

4. Derogations for research, human health and safety and natural disasters

The regulation currently prevents import of high risk category 1 materials for research. The Commission proposes to remove that restriction as long as measures are in place to protect animal and public health.

In relation to fallen stock the proposal extends the derogation on burial or burning in areas where access is practically not possible (e.g. due to geographical conditions) or presents a risk to health and safety of those charged with the operation, and where there is a unacceptable discrepancy between the requirements for occupational safety and the potential risks to animal health. Similarly it argues that the derogation should be extended to areas where there is a natural disaster. There

are not expected to be large numbers of unrecoverable carcasses. Where carcasses are unrecoverable, the proposed amendment would provide legal cover for a derogation from the ABP Regulations, but the availability of this legal certainty is unlikely to alter the occurrence. A pragmatic approach to the recovery of carcasses in situations where there would be a risk to health and safety is already applied.

The Scottish Government supports this proposal. The strict rules of the Regulation on derogations need to take into account specific circumstances. The import of a wide range of ABP is sometimes necessary for research purposes. Under emergency situations, disposal of ABP through the normal channels is not practically feasible. The current rules do not provide for risk-adequate solutions to these problems.

5. Interaction of the ABP regulation and Waste Incineration Directive with regard to the burning of tallow

Clarity on the application of waste legislation to the burning of tallow is an issue of importance to the UK. Currently the ABP regulation requires incineration of tallow to be carried out in compliance with the Waste Incineration Directive (WID). The reference to WID compliance has been removed from the proposal and provision made for tallow to be used as a fuel for combustion. However, the proposal also says that where tallow is a waste it must be disposed of or recovered in an approved or registered co-incineration plant. The issue of whether it is waste is only something that can be determined only on a case by case basis under Waste legislation

The Scottish Government considers this proposal as insufficient for providing legal certainty about the circumstances when burning of tallow needs to comply with WID. It will therefore seek further clarification by the Commission.

6. Burial of fallen stock including horses

Where horses are considered as pets, the UK applies the pet animal derogation that allows them to be buried. This proposal removes that possibility by defining equidae as exclusively farmed animals.

The Scottish Government does not support the change on horses and there are indications that this view will be supported by some other Member States. Although this proposal is unlikely to significantly increase costs to pet horse owners as the cost of burial would likely offset the cost of incineration, it would carry a sentimental cost to such owners who can no longer bury their pets, which is disproportionate to the risks involved.

Current government policy is to support the ban on routine burial of fallen stock. It should be noted that it is unlikely there would be support from other Member States for any widespread relaxation of the ban and this is unlikely to be negotiable. However, the burial ban is costly for livestock keepers in the UK, and reasonable modifications to the ABP legislation which would enable livestock keepers to continue to comply with the burial ban but at a lower cost might be possible.

The Scottish Government continues to support the ban on routine burial of fallen stock. However, in order to facilitate development of alternative on-farm solutions for containment of fallen stock pending collection for disposal, the Government has proposed that some modification of the interpretation of the requirement for disposal “without undue delay” could be introduced. This would have the effect of lowering compliance costs for UK livestock keepers without compromising animal or public health.

Economic Analysis and Evidence

The Commission’s proposals give rise to a number of diverse impacts in various sectors associated with the animal by-product industries. So far these impacts have been very difficult to quantify in any detail. The Commission has experienced similar problems in quantifying its own impact assessment. These difficulties stem partly from a lack of clarity in the proposals (in many cases the Commission still need to clarify or refine the meaning of their proposals or they have to set out how the proposal will operate in detail in the implementing rules). There is also a lack of data on the volumes and price effects as the impacts tend to be on sectors where such data is not collected. In most cases the impacts are expected to be small but Defra would like to gain a better understanding of the Commission proposals through quantification and valuation of the more important impacts in order to inform its negotiating position and gauge the impacts on industry. It will seek to do this through the consultation process and by engagement with stakeholders. The following table gives more details on the effects of the proposals

Animal By-Products Regulation – EU Proposal: Impact Assessment

Schedule of Economic Impacts

Proposal	Current Situation	Affected Sectors	Costs	Benefits	Comments/Data requirements
1. Sea fish: Commission's intention is unclear but a worst case interpretation is that sea fish showing signs of disease must be brought ashore for disposal	Diseased fish disposed of at sea	Sea fishing sector	Potentially a significant increase in costs for the sector		Defra is seeking clarification from the Commission on their intention. As it stands the measure appears to be unenforceable and therefore ineffective. We welcome information from those likely to be affected as to costs e.g. alterations needed to shipboard design to accommodate such provisions
2. Catering Waste/Biodiesel: Introduction of controls on the use of used cooking oil (UCO) for manufacturing biodiesel	No controls – catering waste for such use is out of scope	Operators using UCO for the manufacture of biodiesel	Increased costs of approval and control as sector is regulated		Operators using exclusively UCO for biodiesel are currently unregulated under the ABPR and so little is known about the number of operators and scale of activity. We welcome any information from trade organisations or individual businesses that would help determine the effect of these changes

Proposal	Current Situation	Affected Sectors	Costs	Benefits	Comments/Data requirements
<p>3. Pet Horses: Horses to be defined as farm animals and their carcasses will have to be disposed of in line with ABPR</p>	<p>UK applies a derogation which allows burial of pet horses</p>	<p>Owners of pet horses</p>	<p>The costs of incineration will be offset by savings on burial costs. There might also be some loss of sentimental value from not having a pet grave</p>	<p>A small reduction in risks associated with burial</p>	<p>The actual number of pet horses buried each year unknown. We estimate that there are approx 1.35m horses in UK and that some 50,000 foals require identification each year. The number which are pets and which may be buried when they die is unknown and there are a wide range in the costs of incineration (depending on the type of service) although the difference in the basic service and the costs of burial is unlikely to be large. We would welcome further information on such costs.</p>
<p>4. Shellfish: relaxation of controls on use of shellfish shells when soft tissue has been removed</p>	<p>Various specific allowed uses and means of disposal</p>	<p>Shellfish sector</p>		<p>Potential sale of shells for productive uses</p>	<p>UK shellfish production amounts to about 160,000t pa (farmed and wild) with exports of 100,000t and imports of 60,000t. But the amount of shell material will vary by species and degree of processing (some shellfish being sold in-shell to consumers). Overall the impact is likely to be small relative to industry turnover, but we expect there to be a saving. The views of trade associations and individual businesses are invited</p>

Proposal	Current Situation	Affected Sectors	Costs	Benefits	Comments/Data requirements
<p>5. Removal of Dual Approvals: Approval under Animal By-Products Regulation (ABPR) no longer necessary for premises approved under other specific legislation</p>	<p>Certain premises that are already approved under technical sector legislation must also be approved under the ABPR</p>	<p>Cosmetics, pharmaceuticals and medical sector</p>	<p>Cost savings associated with reduced bureaucracy for those affected in the cosmetic, pharmaceutical and medical industries</p>	<p>(See cost savings)</p>	<p>The views on potential cost savings from trade organisations and businesses that may be affected are invited.</p>
<p>6. Zoo Feeding: Zoos will be permitted to feed category 1 material to zoo animals.</p>	<p>Category 2 material may be fed to zoo animals</p>	<p>Zoos</p>	<p>Costs to zoos will be reduced as will be able to feed a wider range of material</p>	<p>(See cost savings achieved at no extra risk)</p>	<p>Impact likely to be small. The Scottish Government seeking to ascertain the number of zoos likely to be affected and the scale of the impact. Zoos and aquaria are licensed by Local authorities, and central records of the numbers of premises approved, and which of these keep carnivorous species, are not kept. Any information about the likely impact of this proposal is invited.</p>

Proposal	Current Situation	Affected Sectors	Costs	Benefits	Comments/Data requirements
7. Wild Game: disposal of animal by-products from wild game processed in approved game handling establishments would be controlled under the Regulation	Such by-products are currently disposed of under Environmental Regulations	96 Approved Game Handling Establishments (AGHEs) in the UK	Some increase in costs of control and bureaucracy	Potential sale of ABP for eg pet food	There are fewer than 100 AGHEs in the UK. Their total annual throughput is about 80,000 large animals (mainly deer and boar) and about 3 million birds and rabbits. Comments are invited from AGHEs on the likely effect of this proposal.
8. Re-categorisation: Reclassification of certain by-products from category 2 to category 3 where the risk is low	The Regulation classifies ABPs according to risk with category 1 being the highest risk category and category 3 the lowest			Allows wider economic uses of by-products without increasing risks significantly	The Commission's impact assessment identifies changes to the treatment of casein, insects and ruminant blood. The effect of these changes is expected to be limited, but comments are invited from those who may be affected.
9. End products: clarification of the point at which ABPs become finished products. Such ABPs if treated or tested in a way which ensured remaining risks were minimal would then not be subject to ABPR	Use/disposal according to ABP rules	Potentially several sectors including: pharmaceuticals, oleochemicals, pet food manufacturers and tanneries		Remove some burdens on industry. There will instead be an obligation to place only safe products on the market	Difficult to assess scale of impacts in advance of detailed implementation rules, comments sought from those most likely to be affected on potential benefits

Proposal	Current Situation	Affected Sectors	Costs	Benefits	Comments/Data requirements
<p>10. Small Quantities: Establishments which only handle small quantities of ABP would be able to dispose of these outside of the control of the ABPR.</p>	<p>All ABPs must be disposed of in line with ABPR</p>		<p>Takes small operators out of scope and may save costs</p>		<p>The Commission has yet to come forward with a definition of small quantity so it is difficult to ascertain the number of premises affected and the potential saving in costs. Views on the possibility of using a derogation for small quantities to reduce the regulatory burden are sought, and comments are invited on the likely impact of this proposal.</p>
<p>11. Import of Category 1 Animal By-Products: relaxation of the ABPR to allow imports of certain high risk material for research purposes</p>	<p>ABPR currently prohibits the import of such material</p>			<p>Better use of material for research purposes</p>	<p>Such material has a number of potential research uses and it is difficult to assess what take up might be. Some may in any case already be being imported illegally. Comments are sought on the likely impact of this proposal.</p>
<p>12. Fallen Stock: Extension of the derogation on burial and burning in areas where access is impractical or there are health and safety risks of collection.</p>	<p>Fallen stock must be collected and disposed of in line with ABPR except in a very few specific circumstances</p>	<p>Livestock farmers</p>			<p>Uncertain impact but likely to be small as the economic impact will be driven by the numbers of carcasses which are not recoverable. However, comments on the likely impact of the proposal will be welcome.</p>
<p>13. Approval and Registration: Plants may just need to be registered</p>	<p>Plants need to be approved.</p>	<p>Current ABPR approved plants</p>		<p>Some savings in bureaucracy</p>	<p>Scale of impact will depend on what registration entails which will be set out in the implementing regulations. Comments on the numbers of businesses affected, and the potential impact of this proposal are invited.</p>

Proposal	Current Situation	Affected Sectors	Costs	Benefits	Comments/Data requirements
<p>14. Waste Controls/Tallow: Reference to Waste Incineration Directive (WID) have been removed from the ABPR and provision made for ABPs (including tallow) to be used as a fuel for combustion.</p>	<p>ABPR requires the incineration or co-incineration of tallow to be carried out in compliance with the WID</p>	<p>Rendering industry and incinerator operators</p>		<p>Burning tallow as fuel</p>	<p>Few rendering plants have implemented WID so any benefit will be from not having to comply in the future. In addition changes to the ABPR alone will not remove the need for compliance – parallel changes are also needed in waste legislation. Furthermore the issue of whether tallow is waste within the meaning of the Waste Framework Directive is something that can only be determined on a case by case basis. This proposal is not sufficient to provide legal certainty about the circumstances when burning of tallow as fuel must take place in compliance with the WID.</p>
<p>15. Derogation: increased scope for use of Category 2 (and possibly Category 1 material) for pet food.</p>	<p>Only category 3 material can be used</p>	<p>Around 150 Pet food manufacturers in the UK</p>	<p>Cost saving as more potential source material for use as pet food</p>		<p>Many pet food manufacturers may not take up material as they are concerned over reputation and image. Views on the potential impact of this proposal are invited.</p>
<p>16. Controls on placing on the market: ABPs not used for food or feed or application to land will have fewer controls applied to them</p>	<p>All ABPs have same controls applied</p>	<p>Wide variety of sectors</p>			<p>Waiting for implementing rules for clarification about how will affect current practice.</p>

We require your permission to make your response available to the public, and therefore would be grateful if you could return the Respondee Information Form along with your reply to enable us to handle your response appropriately.

We intend making all non-confidential responses available to the public in the following ways:

- In hard copy at the Scottish Government Library, **K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD**
- Copies of responses can be viewed by visiting the library or can also be provided by post. Charges for photocopies are made on a cost-recovery basis. To request copies by post and enquire about charges or make an appointment to view responses at the library, contact the Library on 0131 244 4552.
- In full or summary form on the Scottish Government consultation web pages.

We also intend to post a summary or analysis of responses received to the consultation on the Scottish Government consultation web pages.

A new email alert system for Scottish Government consultations, SGconsult (<http://www.scotland.gov.uk/consultations/seconsult.aspx>) now allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new Scottish Government consultations (including web links). SGconsult complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultations activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

This consultation, and all other Scottish Government consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

Please return this form to:

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RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Consultation title: **Review of the Animal By-Products Regulation (EC) No. 1774/2002**

1. Are you responding as: (please tick one box)

- (a) an individual (go to 2a/b)
(b) **on behalf of** a group or organisation (go to 2c)

2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

- Yes (go to 2b below)
No, not at all

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available
Yes, make my response available, but not my name or address
Yes, make my response and name available, but not my address

2c ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondees **will be** made available to the public (in the SG library and/or on SG website). Are you content for your response to be made available also?

- Yes
No

SHARING RESPONSES/FUTURE ENGAGEMENT

3. We will share your response internally with other SG policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

- Yes
No



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