

Legislative Requirements for the Disposal of Seafood Waste (draft copy)

EU legislation on the disposal of animal by-products has and will continue to have major implications for the seafood industry. One effect of particular concern has been the ban on the use of landfill as a disposal route for most animal by-products and the additional inclusion of shell from shellfish as an animal by-product. To address industry concerns and develop a way forward Seafish established a Waste Working Group in April 2004 which brought together the various sectors of the seafood industry, the waste disposal and utilisation industries and industry regulators.

One of the actions initiated by this group has been to produce this guidance. Its aim is to provide informal, non-statutory guidance on the recovery and disposal of seafood waste by endeavouring to provide answers to some of the questions being posed by the industry. The advice given in this document was updated in December 2005 to reflect developments in the legislation. Seafish would like to thank the regulatory bodies for their help in producing this document to ensure the information contained is as accurate as possible, however the regulatory requirements can be complicated and subject to change and before taking any action based on this guidance it is recommended that advice be sought from local government enforcement officers or the regulatory contacts given in the contacts table.

Regulation 1774/2002 of the European Parliament and the Council laying down health rules concerning animal by-products not intended for human consumption applied in member states from May 2003. This Regulation is commonly referred to as the EU Animal By-product Regulation (EU ABPR). The aim of the legislation is to prevent any risks to public or animal health from animal by-products. The regulations control the collection, transport, storage, handling, processing and use or disposal of animal by-products. The EU ABPR is administered and enforced in England by the Animal By-Products Regulations 2005 (ABPR). Parallel legislation applies in the devolved regions.

Those animal by-products that are discarded as waste are subject to concurrent controls under the Waste Framework Directive (Council Directive 75/442/EEC (as amended)) (WFD). The WFD sets out a range of controls including permitting, registration, inspection and record keeping requirements, the purpose of which is to ensure that waste is recovered or disposed of in ways which do not endanger human health or cause harm to the environment. Controls include the issue of permits to businesses, registration of carriers of waste, inspection of premises and record keeping. The treatment and storage of raw fish and former foodstuffs discarded as waste may require authorisation from the enforcement bodies responsible for the region (see contacts table).

Following the process of devolution, domestic legislation is increasingly made on a separate basis in England, Wales, Scotland and Northern Ireland. This guidance is intended to apply throughout the UK; however, the government departments and agencies responsible for enforcement will depend on the geographic location of the business. Relevant contacts in the devolved regions are given in the contacts table.

This document is not a definitive interpretation of the law, which only the courts can provide. It is the responsibility of the individual business to ensure compliance with the law.

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1. What is waste?

The EU Waste Framework Directive defines waste as;

"..any substance or object.....which the holder discards or intends or is required to discard."

There is no definitive list of what is and is not waste. Whether or not a substance is discarded as waste - and when waste ceases to be waste - are matters that must be determined on the facts of the case and the interpretation of the law is a matter for the Courts. It rests, in the first place, with the producer or holder of a substance to decide whether it is being discarded as waste and the Environment Agency is responsible, as a "competent authority", for the enforcement of waste management controls in England and Wales. Examples of seafood waste could be fish frames or unsold fish which had previously been intended for human consumption.

Further information on the definition of waste is available on the Department's website at <http://www.defra.gov.uk/environment/waste/topics/index.htm>.

Defra set out its views on the relationship between the EU ABPR and the WFD in a letter with associate annexes sent to the United Kingdom Renderers Association on 14th January 2004. A copy of the letter is available on the Defra website at www.defra.gov.uk/corporate/consult/ppc-amend/index.htm

2. What is an animal by-product?

Animal by-products are defined as 'entire bodies or parts of animals or products of animal origin not intended for human consumption'. This includes both cooked and uncooked fish, shellfish and other products of animal origin that are not intended for human consumption. An indication that a food was no longer intended for human consumption could be when a product is removed from sale because it has passed its 'use-by' date or is no longer intended for human consumption because of damage, contamination or is surplus to requirements for any other reason.

3. Are all animal by-products waste?

There is a distinction between products which the Animal By-Products Regulations 2005 (ABPR) requires to be disposed of or recovered as waste and those intended for further uses as products. It is possible that some raw meat and fish will be classed as intended for further use, for instance where it is consigned for use in an approved pet food plant or turned into fishmeal.

4. Are there different types of animal by-products?

Animal by-products are classified according to risk, with category 1 material carrying the most risk and category 3 the least risk to animal or human health.

5. What categories apply to seafood?

Category 1 material includes,

- Animal by-products containing residues of prohibited substances such as algal toxins, PCBs or dioxins that exceed limits set for products intended for human consumption.

Category 2 material includes,

- Animal by-products presenting a risk of other diseases.
- Mortalities for reasons other than slaughter for human consumption.

Category 3 material includes,

- Animal by-products from processors, including shell from crustacea and bivalve molluscs
- Former foodstuffs
- Some catering waste

6. How can each category be disposed of?

- Category 1 material must be directly disposed of as waste by incineration or rendering followed by incineration at an approved incineration plant approved in accordance with the provisions of the Waste Incineration Directive or by rendering to the EU pressure-rendering standard (133°C/20 mins/3 bar pressure) followed by burial in an appropriately authorised landfill site.
- Category 2 materials must be directly disposed of as waste by incineration or rendered and then disposed of by incineration or co-incineration, or rendered to the EU pressure-rendering standard for use in organic fertilizers/soil improvers or other technical uses (e.g. oleochemical products). Resulting material may also be used as organic fertilizer or soil improver or transformed in an approved biogas or composting plant or disposed of in a landfill site.
- Category 3 materials in addition to the disposal routes allowed for category 1 and 2, may also be used in the production of feeds, petfoods and various technical products, following appropriate treatment in approved processing plants or directly to approved pet food and technical plants. The Animal By-Products legislation prohibits intra-species recycling, although, feed produced from wild caught fish can be fed to farmed fish after processing.
- As catering waste is only controlled in limited ways by the ABP Regulation it can go to an appropriately authorised landfill site. See Q.9. Since the developments on the disposal of former foodstuffs, the EC Commission has determined that member states can ascertain which former foodstuffs can be safely disposed of to landfill. This does not extend to raw meat and raw fish. See Q.10.

7. How should fish farm mortalities be disposed of?

Mortalities for reasons other than the intentional slaughter for human consumption are classed as category 2 and must be disposed of by the disposal routes approved for this category. There is a national fallen stock scheme for terrestrial livestock which operates under a state-aided voluntary subscription system and which will be extended to allow fish farmers to arrange for their farmed fish waste to be collected and disposed of in compliance with the ABPR. However, before this can happen, arrangements need to be agreed on adapting arrangements for fish farms and identifying disposal outlets willing to take the material. Until then fish farmers must make their own arrangements for disposal of mortalities in accordance with the regulation.

All fish farmers in the UK will be eligible for participation in the scheme on payment of an annual subscription fee. Payments for the costs of collection and disposal of fallen stock under the scheme will be funded by contribution from farmers and the UK government. The UK Government contribution is set at a percentage of the invoiced costs for each farmer of the total cost of collection and disposal of fallen stock. This is currently fixed at 50% but is subject to change. Further details of the availability of this scheme will be made in due course.

8. Can seafood waste be disposed of at sea?

Under the Animal by Products Regulation disposal at sea is not a permitted route for disposal. However, seafood waste from fishing operations or fish processing carried out at sea is not caught by the Regulation.

Specific types of waste from shore-based processing can only be returned to the sea if it fulfils a technical purpose for which it has been approved under the ABPR. Once this use has been approved as a technical use a license must be sought from the environmental regulator (sea) for the region in which the activity is to take place (see contacts table).

There are fees to cover the costs of initial risk and environmental assessment and further fees for subsequent environmental monitoring should a license be approved. Approval requires consideration of all alternative means of disposal ashore and also the potential effect on the marine environment. Licenses are unlikely to be issued where alternative land based utilisation or disposal routes are available.

The placing on the seabed of clean mollusc shell as 'cultch' for aquaculture spat collection is considered to be a technical use and is also exempt from licensing after registration with the environmental regulator (sea) responsible for the region in which the activity is intended to take place (see contacts table). [Presumably this will need an approval under the ABPR as a technical use?]

9. Can I dispose of seafood waste to landfill?

Raw seafood waste cannot go to landfill. Catering waste and from 1 January 2006 some former foodstuffs can continue to go to an appropriately authorised landfill site (see Q.10)

10. What are former foodstuffs?

Former foodstuffs are products of animal origin that are no longer intended for human consumption from food retailers, food manufacturers, wholesalers, and distributors. This would include certain types of waste from a production process if it is no longer intended for human consumption.

There was an EU derogation which permitted former foodstuffs which did not require cooking before consumption to go to landfill without further treatment.

From 1 January 2006 the rules will change and member states will have the competence to determine which former foodstuffs can be safely disposed of to landfill. Raw meat and fish are not included in this Regulation.

This will effectively divide former foodstuffs into three categories.

- former foodstuffs that were previously permitted to go to landfill, but which member States consider to pose a risk to public and animal health if they are disposed of to landfill, such as sashimi (or sushi containing sashimi). These products will continue to be covered by the ABPR and have to be disposed of in the same way as raw meat and raw fish;
- former foodstuffs which the member State considers can be safely disposed of to landfill, such as cooked prawns, dressed crabs, lobsters and cooked ready to eat mussels ; and
- Former foodstuffs which the Member State considers can be safely disposed of to landfill or by other means, and which can also safely be fed to animals (to which rigorous separation requirements must be maintained).

This differs from the previous derogation in that raw fish that was intended to be eaten raw, such as sashimi could go to land fill without further processing. Under the new rules all raw or partially cooked fish must be processed before it can be sent to landfill.

Defra have produced detailed guidance on former foodstuffs including a full list of products which need further processing or do not need further processing before being disposed of to landfill. This is available on the Defra website at http://www.defra.gov.uk/animalh/byprods/FormerFoodstuffs/former_foodstuffs.htm

It is likely that most former foodstuffs which are disposed of or consigned to a recovery operation will be waste and subject to waste management control.

11. If a product becomes a former foodstuff before the cooking process stage, can I continue to process it so it can go to landfill without further treatment?

No. However, in some manufacturing processes, (such as bakeries), it is common practice to 'bake off' waste arising from the production process to stabilise it prior to disposal. This practice will be an acceptable form of pre-treatment at those

establishments where it is currently taking place and provided: (a) the waste arose during the production process; (b) it is cooked on the same premises; and, (c) the same cooking standards are used as for products intended for human consumption (i.e. in line with food hygiene legislation).

12. How do I separate raw waste from former foodstuffs waste?

Operators wishing to remove former foodstuffs not permitted to landfill before sending former foodstuffs that are permitted to landfill must ensure that their local authority is satisfied with their procedures for separation.

More rigorous controls will be needed if permitted products are to be fed to animals. It is an offence to allow cattle, sheep, goats, pigs or poultry to have access to animal by-products (or any material that has been in contact with animal by-products) without appropriate treatment because of the risk of spreading disease.

13. I produce small quantities of waste, how can I dispose of this?

Small quantities of waste can be stored until accumulation of sufficient quantity for collection. You could arrange for a joint collection with other local businesses producing small quantities to achieve a viable quantity for collection. Any practices for storage and transport must be in accordance with ABPR and waste management controls.

14. How can used packaging be disposed of?

Packaging from seafood which requires further treatment before going to landfill, can go to landfill providing that the animal by-product has been removed.

There are many rendering and incinerator companies who can process packaged material.

Packaging containing material permitted to landfill does not need to be emptied before disposal to landfill.

15. Is catering waste classed as a former foodstuff?

No, catering waste is defined as 'all waste food including used cooking oil originating in restaurants, catering facilities and kitchens, including central kitchens and household kitchens'.

16. How do I dispose of used cooking oil?

Waste cooking oils from catering premises can no longer be used in animal feed. The collectors of waste cooking oil will now be expected to supply it to either biodiesel producers, the olechemical industry or for it to be burned as waste in an incineration plant or co-incineration plant approved in accordance with the provisions of the Waste Incineration Directive. Waste cooking oils from food manufacturing can continue to be used in animal feed. Further information can be found on the FSA website at

<http://www.food.gov.uk/news/newsarchive/2004/nov/wastecookoil>

17. How can I dispose of catering waste?

Catering waste is only covered in a limited way under the legislation. For example the Animal By-Products Regulation introduced an EU wide ban on feeding catering waste to animals. In addition, if catering waste is destined for composting or biogas, these premises have to be approved under the Animal By-Products Regulation.

Catering waste may therefore continue to be disposed of to an appropriately authorised landfill site. Amongst many changes the Landfill Directive requires the reduction of biodegradable waste to landfill. A response to this has been the introduction of the Waste Implementation Programme and in Scotland the Strategic Waste Fund. Both programmes aim to increase the diversion of biodegradable municipal waste to more sustainable waste management practices.

Landfill tax was introduced in 1996 to encourage the diversion of waste from landfill in favour of more sustainable waste management practices, such as minimisation, reuse, recycling/composting and energy recovery. The Government subsequently committed to increase the rate of tax by at least £3/tonne each year until it reaches £35/tonne (from £15/tonne in 2004-05). The additional revenues will be used to fund programmes to support business in improving its resource efficiency, including waste minimisation and diversion from landfill, through the Business Resource Efficiency and Waste (BREW) Programme

<http://www.defra.gov.uk/environment/waste/brew/index.htm>). The EU Landfill

Directive also requires a significant reduction in the volume of biodegradable municipal waste disposed of to landfill by 2020. This has led to the introduction of a number of measures, including landfill allowance schemes, Defra's Waste Implementation Programme and, in Scotland, the Strategic Waste Fund.

18. Can cooked waste from processing go to landfill?

Waste from the production of products which do not require cooking before they are eaten can go to an appropriately authorised landfill site. This would apply to cooked waste from crabs, cockle and whelk processing, but not uncooked material. Raw material, such as shells derived from raw seafood cannot be disposed of to landfill.

19. Do all technical plants need to be approved?

Technical plants must comply with the requirements and be approved under the Animal By Products Regulation. However, there is a general approval in place for the following

Clean mollusc and crustacean shell from which all of the flesh has been removed can be used for,

- The production of aggregates
- Use in gardens
- The construction, maintenance or repair of footpaths
- Used in the drainage of land
- Ornamental use

- For fish and shellfish by-products caught or landed in the UK, they can be used as a lure on hooks or in pots.

Part II of the Environmental Protection Act 1990 require that the application of some waste animal by-products (treated in accordance with the ABPR) to land for recovery must be undertaken in accordance with the conditions of a waste management licence. In specific circumstances, it may be possible to apply wastes to land under a registered exemption from waste management licensing controls. The exemptions are provided in The Waste Management Licensing Regulations 1994 (as amended) Wastes may be granted exemption from licensing only where their application to land results in benefit to agriculture or ecological improvement and include and gut contents, wash waters and sludges (with or without treatment) from fish preparation plants and shells from shellfish processing.

The operator wishing to land spread must register this with the competent authority responsible for the region in which the activity is intended to take place (the Environment Agency in England and Wales, the Scottish Environment Protection Agency in Scotland or the Environment and Heritage Services in Northern Ireland). There will be a fee for this registration. (see contacts table)

20. Is approval required for shells used to package the seafood product?

No, shell such as crab carapace and scallop shell, used to present the product for human consumption and sold to the consumer with the product, is included under the fish hygiene legislation requirements.

21. Where can I store waste awaiting collection?

Animal by-products should be collected and disposed of without undue delay. Arrangements will need to satisfy local government enforcement officers, who should be contacted for advice. The general requirements are,

- The waste should be kept in such a way as to avoid any deterioration in quality or escape into the environment.
- During storage waste should be stored and labelled in a way that it could not be construed as being for sale or supply for human consumption.
- The waste must not pose a contamination risk to foodstuffs on the premises or the environment.
- Different categories of waste should be stored separately or if mixed should be treated as all being of the highest risk category.

22. Can I store animal by-products on a separate site pending collection?

Where animal by-products do not go directly to their final destination for treatment, the intermediate premises (the central depot or distribution site in the case of backhauling) must be approved by the competent authority responsible for the region in which the activity is intended to take place (see contacts table). As a

minimum requirement the intermediate plant would need to be able to store the material in a covered space, which could be cleaned and disinfected and have proper pest control procedures. In general a separate building, or part of a building, would be required. Temperature control may also be required depending on the operating procedures of the plant. Any change of use for this purpose may require prior planning permission.

23. Who can I contact about waste collection?

Waste processors may operate a collection service but they must be registered by the competent authority responsible for the region in which the activity is intended to take place (see contacts table). These can provide details of such facilities in your locality. Also see Defra website at <http://www.defra.gov.uk/animalh/by-prods/FormerFoodstuffs/collectors.htm>

Whatever waste collection arrangements you have, you should make contingency plans for disposal of waste in an emergency such as freezer breakdown.

24. How should animal by-products be transported?

By-products must be sealed in new packaging or in covered leakproof containers and clearly labelled according to its category e.g. 'category 3 material – not for human consumption' or 'category 2 not for animal consumption'. Records must be kept of the transportation of animal by-products for at least 2 years. The original commercial document (as specified in ABPR) should accompany the material to its destination and then be retained by the recipient. Copies should be kept by the person dispatching the material and by the transporters. See Q. 26

25. Can animal by-products and food intended for human consumption be transported together?

Yes, but best practice is to transport animal by-products and foodstuffs for human consumption in separate vehicles. If this is not practical, then controls should be in place in accordance with the Food Hygiene Regulations to prevent contamination of the foodstuffs for human consumption. This could be done using physical separation. Arrangements would need to satisfy the local environmental health services who should be contacted for advice.

26. Am I responsible for the waste once it leaves the production site?

If you import, produce, carry, keep, treat or dispose of controlled waste, you are under a duty of care to ensure that the waste is handled and disposed of safely. You must prevent the waste causing pollution or harming anybody. You must store waste safely and ensure it cannot escape from your control. If you give waste to someone else, you must be sure they are authorised to take it and can transport, recycle or dispose of it safely. You must also ensure that a transfer note is completed on transfer. If you break this law, you can be fined an unlimited amount. Further information can be obtained at <http://www.defra.gov.uk/environment/waste/management/doc/index.htm>

27. What if the unwanted products are still intended for human consumption through another outlet?

If you wish to return raw meat and fish to distribution centres with the intention of redistribution for human consumption, the ABP regulations will not apply. Food Hygiene Legislation will apply to ensure the safety of the foodstuffs.

28. Who enforces the legislation?

The waste management controls are enforced largely by the Environment Agency in England and Wales, by the Scottish Environment Protection Agency in Scotland and the Environment & Heritage Services in Northern Ireland.

The Animal By-products Regulations are enforced by Trading Standards. ABPR premises are approved by the State Veterinary Service.

Contacts for further advice can be found on the next page.

CONTACTS FOR FURTHER ADVICE

ENVIRONMENTAL REGULATOR

England	www.environment-agency.gov.uk 08708 506 506
Wales	www.environment-agency.gov.uk 08708 506 506
Scotland	www.sepa.org.uk 01786 457700
Northern Ireland	www.doeni.gov.uk 028 9025 4754

ENVIRONMENTAL REGULATOR (SEA)

England	www.mceu.gov.uk Eastern Sea 0207 238 6742 or 6617 Southern Sea 0207 238 2100 or 6685
Wales	www.mceu.gov.uk Western Sea 0207 238 6619 or 2039
Scotland	www.frs-scotland.gov.uk 01224 876544
Northern Ireland	www.doeni.gov.uk 028 0254751

ABP REGULATOR

England	www.defra.gov.uk 08459 335577
Wales	www.countryside.wales.gov.uk 02920 825111
Scotland	www.scottishexecutive.gov.uk 0131 556 8400
Northern Ireland	www.dardni.gov.uk 0289 052405