FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

The Honey (Scotland) Regulations 2015

Date:	May 2015
Stage:	Final
Source of intervention:	EU
Type of measure:	Directive
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1. Title of Proposal

The Honey (Scotland) Regulations 2015.

2. Purpose and intended effect

(i) Objectives

The purpose of these proposals is to revoke and replace the Honey (Scotland) Regulations 2003, as amended, with the Honey (Scotland) Regulations 2015, in order to:

- Transpose Commission Directive 2001/110/EU as amended by Directive 2014/63/EU relating to honey.
- Enable the enforcement of and provide penalties for non-compliance with the requirements of the revised EU Directive.

(ii) Background

Directive 2001/110/EC of 20 December 2001 on honey lays down rules on the names, product descriptions, definitions of honey and compositional criteria for honey.

It provides the following definition of Honey -

'Honey is the natural sweet substance produced by Apis mellifera (bees) from the nectar of plants or from secretions of living parts of plants or excretions of plant sucking insects on the living parts of plants which the bees collect, transform by combining with specific substances of their own, deposit, dehydrate, store and leave in honeycombs to ripen and mature'.

Annex I of this Directive lays down reserved descriptions that must be used which relate to the source from which the honey is obtained (e.g. blossom, honeydew), and/or the processes by which it is extracted (e.g. drained, extracted) and also the way it is presented (e.g. comb, chunk honey). Annex II lays down detailed specifications honey must comply to in terms of its composition and also set out some general quality criteria for honey. In addition, the Directive contains some specific labelling requirements including a requirement for country of origin labelling on honey where appropriate. If individuals or businesses involved in the honey trade use one of the reserved descriptions then the particular type of honey must be made according to the defined compositional criteria.

Honey consists essentially of different sugars, predominantly fructose and glucose, as well as other substances such as organic acids, enzymes and solid particles derived from honey collection. Directive 2001/110/EC limits human intervention that could alter the composition of honey and thereby allows for the preservation of the natural character of honey. In particular, it also prohibits the addition of any food ingredient to honey, including food additives, and any other addition other than honey. In addition, it prohibits the removal of any constituent particular to honey, including pollen, unless such removal is unavoidable in the removal of foreign matter. Those requirements are in line with the Codex Alimentarius standard for honey.

The general food-labelling rules laid down in Directive 2000/13/EC have been revoked and replaced by Regulation (EU) No 1169/2011[1] on the provision of food information to consumers also known as (FIC). FIC is enforced through the Food Information

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1425028263554&uri=CELEX:02011R1169-20140219

(Scotland) Regulations 2014 which came into force on 13 December 2014. The purpose of the FIC is to harmonise general food labelling and nutrition information rules for prepacked foods across the EU.

We understand that as a single ingredient food; prepacked honey will not be required to carry nutrition information from December 2016.

Commission Directive 2014/63/EU amends Directive 2001/110/EC as follows:

- To clarify the relevant labelling requirements for honey which originates in more than one Member State or third country by replacing the reference to 'EC' by a reference to 'EU'

- To recognise that pollen, being a natural constituent particular to honey, should not be considered an ingredient of honey.

- To include a transitional measure which allows honey products which are placed on the market or labelled before 24 June 2015, in accordance with Directive 2001/110/EC to continue to be marketed until stocks are exhausted.

The FIC defines 'ingredient' as any substance used in the manufacture or preparation of a food and still present in the finished product, even in altered form. That definition implies a deliberate use of a substance in the manufacture or preparation of food. Taking into account the natural character of honey, pollen, being a natural constituent particular to honey shall not be considered an ingredient, within the meaning of Article 2 (2)(f) of Regulation (EU) No 1169/2011 of the products defined in Annex I of Directive 2001/110/EC.

This Business and Regulatory Impact Assessment (BRIA) sets out the options considered in order to change legislation in the light of the revised EU Directive.

(iii) Rationale for Government intervention

The rationale for intervention is to clarify changes in labelling requirements for Honey which will allow Scottish industry to compete on an equal basis with the rest of Europe in line with the Scottish Government's productivity and participation targets.

Specifically, Government intervention is considered necessary because the requirements of the revised Directive need to be implemented into Scots law. It is proposed to do this through a Scottish Statutory Instrument.

3. Consultation

(i) Within Government

The consultation package was discussed with Scottish Government (SG) officials from the Health and Social Care Directorate and the Agriculture, Food, Drink and Rural Communities Directorate.

(ii) Public Consultation

A shortened 6 week public consultation was carried out in Scotland from 27 March to 8 May 2015. Similar consultations have been held in England and Northern Ireland.

(iii) Business

Two businesses involved in the blending of honey were telephoned and emailed directly during the public consultation period to discuss the likely impact of the changes proposed in the SSI on their businesses. Only one business provided some informal comments in relation to labelling costs.

4. Options

The options considered are:

OPTION 1: Do nothing – do not provide for the implementation of the EU Directive 2001/110/EC as amended by Directive 2014/63/EU.

OPTION 2: Provide for the implementation of EU Directive 2001/110/EC as amended by EU Directive 2014/63/EU.

Option 2 is the preferred option.

Sectors and groups affected

- **Farm shops and beekeepers selling home produced honey**

Farm shops and beekeepers selling home produced honey will need to familiarise themselves with the new rules and make the necessary changes to ensure they remain compliant with the law.

Table 1: UK retail value sales of sweet spreads by type 2011-13

	2011 (£m)	Market Share (%)	2012 (£m)	Market Share (%)	2013 (£m)	Market Share (%)
Jam	117	31	118	30	119	29
Honey	**103**	**27**	**107**	**28**	**112**	**28**
Peanut butter	50	13	56	14	61	15
Marmalade	57	15	56	14	55	13
Chocolate/nut spreads	43	11	46	12	54	13
Fruit/cheese curds	6	2	6	2	7	2
Total	**376**	**100**	**389**	**100**	**408**	**100**

Source: Mintel/based on IRI Group InfoScan

Table 1 shows that Honey has the second largest market share in the UK sweet spread sector, representing almost a third of total sweet spread sales from 2011-2013.

- **Retailers**

Interdepartmental Business Register data (2010) estimates that there are 53,070 UK food and drink retailers, of which 99 per cent are micro and small sized businesses. Of the total number of retailers, over 4,800 of the businesses operate in Scotland. Table 2 provides a regional breakdown of retailers in the UK.

Table 2: Retailers in the UK by regional breakdown

	Micro	Small	Medium	Large	Total
Scotland	**4,423**	**354**	**25**	**8**	**4,810**
England	40,387	3,236	232	70	43,925
Wales	2,294	184	13	4	2,495
Northern Ireland	1,692	136	10	3	1,840
UK	48,795	3,910	280	85	53,070

We do not have specific figures on the number of retailers in Scotland involved in the Honey trade.

- **Benefits**

Option 1 – Do nothing

There are no benefits to industry or consumers but there would a benefit for the Public Sector since there would be no familiarisation costs incurred.

Option 2 – Provide for the implementation of Directive 2001/110/EC as amended by EU Directive 2014/63/EU.

Industry

The purpose of the Directive is to harmonise compositional and labelling requirements across the EU which provides benefits to industry by ensuring a level playing field for all EU businesses involved in the honey trade.

Public Sector

This option does not directly benefit the regulator.

Consumers

We anticipate that the changes to the regulations should benefit consumers by clarifying the relevant labelling requirements for honey by updating the reference to 'EC' by a reference to 'EU'. The EU requirements maintain long standing compositional requirements for honey to help protect consumer interests.

- **Costs**

Option 1 – Do nothing

There are no costs to industry or consumers. However, The Commission has powers to apply financial sanctions to the UK where, following infringement proceedings for a breach of EU law, the Court of Justice has found that delivery of Official Controls, are inappropriate or inadequate. Such financial sanctions may comprise of both a daily penalty (of up to circa €700,000 per day so as to induce the remedy of the breach) and a lump sum (based on assessment of the effects of the breach for which the minimum

is currently €9,446,000). Scotland would be required to pay a percentage of any UK fine if the infraction related to a devolved matter.
Fines are extremely rare and the European Commission works hard with Member States to avoid financial penalties wherever possible.

Option 2 - Provide for the implementation of Directive 2001/110/EC as amended by EU Directive 2014/63/EU.

(i) Familiarisation costs

Stakeholders, businesses and individuals involved in the honey trade, will need to read and become familiar with the replacement Regulations. We estimate that it will take one production manager approximately 1 hour to read and become familiar with replacement Regulations including annexes. The average hourly rate is up rated by 30% to take account of overheads in line with standard cost model methodology to around £25[2]. One stakeholder representing beekeepers in Scotland responded and agreed with this estimate of one hour for familiarisation. However, they indicated that since their members are all volunteers and do not charge for their time, no monetary costs for familiarisation with the regulations are involved.

(ii) Labelling Costs

There are a number of drivers that can result in the need for labelling changes; legislative requirements are one of four main sources:

- change in legislation;
- marketing driven;
- product reformulation; and
- voluntary inclusion of information.

Research by Campden BRI shows that as a percentage of all the drivers contributing to re-labelling, on average 14% will stem solely from implementing new legislation. This indicates that changing labels in response to new Regulations will often be incorporated at the same time as other changes are made such as product refreshes and redesigns. Therefore in the majority of cases, labelling changes as a result of legislation do not create any substantial costs on their own, as they are implemented as part of labelling changes initiated through commercial decisions.

Table 3: Label change cost

Extent of change	Average cost (£/Stock Keeping Unit)	Trimmed mean (£/Stock Keeping Unit)
Minor change	£1,810	£1,800
Major change	£3,800	£3,300
"minor" change: only text on a single face of the label and no packaging size modification is required to accommodate this. "major" change: text as well as layout and/or colours and/or format and/or multiple faces are affected, or packaging size modification is required. Trimmed mean: A trimmed mean is calculated by discarding a 5% of the lowest and the highest scores and then computing the mean of the remaining scores.		

Source: Developing a framework for assessing the costs of labelling changes in the UK, Defra and Campden BRI

[2] Regulatory affairs/production manager (proxy for medium and large FBOs)

We anticipate that individuals or businesses in Scotland involved in the Honey trade may not need to alter labels unless they are blending honeys from EU and/or non-EU sources. An informal discussion was held with Heather Hills in Scotland who blend honey and they indicated that they had made these labelling changes a number of years ago and that this cost was around £2,500 at the time. Lochaber Beekeepers Association indicated that it was unlikely that their members would need to amend their labels as all honey they produced in local areas and is sold locally and their members do not mix local honey with honey from other locations.

(iii) Consumers

There is no perceived financial cost to the consumer as the labelling changes are likely to be absorbed by the businesses involved in blending honey, given their relative size.

(iii) Costs to Local Authorities

Familiarisation (One-Off Cost)

There will be a one-off cost to local authorities (LA) from reading and familiarising themselves with the new Regulations. Familiarisation costs can be quantified by multiplying the time it takes for familiarisation with the wage rate of the official carrying it out. It is our assumption that it will be the Environmental Health Officer (EHO) that is responsible for familiarisation and that it will take one EHO per LA half an hour to familiarise themselves and disseminate the information to other key staff. The median hourly wage rate of an EHO is £22.82[3], which yields a total one off cost of familiarisation of £11.41 per LA. This figure is multiplied by the number of LAs (32 in Scotland) and to provide the familiarisation cost to LAs by UK location and is shown in Table 4.

Table 4: Costs of Familiarisation to Local Authorities by UK country

	Scotland	England	Wales	NI	UK
Familiarisation Cost	**£365.12**	**£4940.53**	**£251.02**	**£296.66**	**£5853.33**

No specific comments on familiarisation costs were received from Enforcement Authorities in Scotland.

5. Scottish Firms Impact Test

Due to the nature of the honey trade in Scotland, we identified and engaged directly with two businesses involved in blending honey to discuss the likely impact on their business of the proposed regulations. One business indicated that they were aware of the labelling requirements in relation to changing labels from to indicate 'EU' rather than 'EC' and they had made this change a number of years ago. The other did not provide any comments. The Scottish Beekeepers Association indicated that the proposed regulations would have little impact on amateur beekeepers. Overall, no specific concerns were raised by stakeholders in Scotland on any aspect of the new regulations.

[3] Wage rate obtained from Annual Survey of Hours and Earnings 2013 http://www.ons.gov.uk/ons/search/index.html?pageSize=50&sortBy=none&sortDirection=none&newquery=Annual+Survey+of+Hours+and+Earnings+2013+by+occupation

Median hourly wage rate of a 'environmental health professionals' was used, £17.55, plus 30% overheads, totalling £22.82.

(i) Competition Assessment

The proposed legislation will apply to all businesses and individuals involved in the UK Honey trade equally, allowing them to trade across EU Member States. It should not limit the number or range of suppliers in Scotland either directly or indirectly or reduce the ability of, or incentives to, suppliers to compete. Therefore, it is not expected to have a significant impact on competition. Using the Competition and Markets Authority competition assessment framework[4], it has been established that the preferred policy option (Option 2) is unlikely to have any material negative impact on competition. We assert that this policy will not limit the number or range of suppliers directly or indirectly nor will it limit the ability or reduce incentives of suppliers to compete vigorously.

(ii) Test run of business forms

No new or additional forms will be introduced by these proposals therefore no test run need be completed.

6. Legal Aid Impact Test

Scottish Government Access to Justice Team has confirmed that these Regulations are unlikely to have an impact on the legal aid fund.

7. Enforcement, sanctions and monitoring

(i) Enforcement

Enforcement of the new legislation on honey will be the responsibility of Local Authorities. Enforcement action is only pursued where informal action has been unsuccessful.

(ii) Sanctions

No changes are being proposed to the criminal sanctions contained in existing legislation. The enforcement provisions contained in Regulation 17 of the Honey (Scotland) Regulations 2015 lays down that the penalty on summary conviction for an offence under the Regulations is a fine not exceeding level 5 on the standard scale.

(iii) Monitoring

The effectiveness and impact of the regulations will be monitored via feedback from stakeholders, including Enforcement Agencies, as part of the ongoing policy process. Food Standards Scotland mechanisms for monitoring and review include; open fora, stakeholder meetings, surveys and general enquiries.

8. Implementation and Delivery Plan

The publication of the Honey (Scotland) Regulations 2015 will be communicated to stakeholders by means of an Interested Parties' letter. This will be done shortly after the SSI has been published on the legislation.gov.uk website.

9. Post implementation Review

A review to establish the actual costs and benefits and the achievement of the desired effects will take place in 5 years from the date the Honey (Scotland) Regulations 2015 come into force.

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284451/OFT1113.pdf The Competition and Markets Authority is now responsible for this area of work.

10. Summary and Recommendation

Option 2 - This is the preferred option. It ensures that Scottish Ministers will meet their obligation to implement agreed EU legislation.

11. Declaration and publication

I have read the impact assessment and I am satisfied (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:

Minister's Name, Title & Department:

Maureen Watt, Minister for Public Health.

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