

**EXPLANATORY MEMORANDUM TO**  
**THE HONEY (ENGLAND) REGULATIONS 2015**

**2015 No. 1348**

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

**2. Purpose of the instrument**

2.1 This instrument implements the provisions of Directive 2001/110/EU relating to honey (the EU Honey Directive) as amended by Directive 2014/63/EU and replaces the Honey (England) Regulations 2003 (S.I. 2003/2243) (the 2003 Regulations), as amended. This ensures that we are complying with our EU obligations in England in relation to the transposition of the amended Directive and ensures consistency in the minimum quality of the products regulated by the Regulations and the correct use of product names so that consumers are not misled.

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

3.1 None

**4. Legislative Context**

4.1 This instrument implements the provisions contained in the EU Honey Directive as amended. A transposition note accompanies this explanatory memorandum and can be found at Annex 1.

4.2 The instrument replaces the 2003 Regulations, as amended and, in doing so, revokes those Regulations, the Honey (Amendment) (England) Regulations 2005 (S.I. 2005/1920) and the amendments made to the 2003 Regulations by the Food Information Regulations 2014 (S.I. 2014/1885).

4.3 The proposal for the EU Honey Directive was cleared by the EU Scrutiny Committee before the Directive was originally adopted. A number of Working Party discussions took place during 2013 with simultaneous discussions in the European Parliament. The House of Lords and House of Commons Scrutiny Committees cleared this proposal from scrutiny. The compromise deal was adopted by the EP's Environment committee on the 19 March 2014 and was formally adopted at the EP Plenary session in April 2014. The amendment to the Honey Directive was published in the Official Journal of the European Union on 3 June 2014.

**5. Territorial Extent and Application**

5.1 This instrument applies to England only.

5.2 Scotland, Wales and Northern Ireland are introducing their own separate but parallel instruments to similar timescales.

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

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

## **7. Policy background**

- What is being done and why

7.1 The Honey (England) Regulations are being updated to reflect the latest EU Directive that amends the EU Directive on Honey. Additionally, as part of the Red Tape Challenge (RTC) commitment, the Honey Regulations were identified as a piece of legislation that would benefit from simplification and consolidation to benefit businesses involved in the production and marketing of honey.

The instrument will:

- Revoke and replace the Honey (England) Regulations 2003, resulting in the revocation of two existing SIs as well as revoking provisions relating to the 2003 Regulations contained in the Food Information Regulations 2014: these will be replaced with one instrument
- transpose the EU Honey Directive, as amended by Directive 2014/63/EU.

The objective is to bring the honey provisions together into one SI and provide for an essential labelling change so that the correct terminology is used on honey labels which should now refer to the European Union (EU) rather than the European Community (EC) when describing the origin of blended honey using one of the indications provided for in Article 2(4) of the EU Honey Directive.

The Regulations are also updated to take account of the amendment of EU Honey Directive by Directive 2014/63/EC which provides clarity on the issue of the status of pollen by making it clear that, from a food regulation perspective, pollen is not to be considered an ingredient of honey and that honey is a single ingredient product rather than a product that contains pollen as one of its ingredients..

The status of pollen as an ingredient was considered by the Court of Justice of the European Union in Case C-442/09, Karl Heinz Bablok and Others v Freistaat Bayern (2011 ECR I-07419). Following that case, Directive 2014/63/EU amended the Honey Directive to make it clear that pollen, as a natural constituent of honey, is not to be considered an ingredient for the purposes of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers. Regulation (EU) No 1169/2011 contains horizontal food labelling rules that apply to all foods, including honey. The change made by Directive 2014/63/EU makes it clear that honey is to be regarded as a natural and single ingredient food and does not require pollen to be listed as an ingredient. This allows producers to continue to market honey as they have done in the past.

- Consolidation

7.2 The new Regulations consolidate all existing rules on honey into one new set of Regulations. This will see the number of regulations on honey decrease to one, making it easier for industry and enforcement authorities by having all the domestic honey rules for England together in one set of Regulations.

## **8. Consultation outcome**

8.1 Industry were aware of the impact of the Lisbon changes and, even before the consultation, many had already made the changes to reflect the change from 'EC' to 'EU'. Industry was also aware of the pollen issue. They were heavily involved in the negotiations leading up to the adoption of Directive 2014/63/EU and fully supported the UK position throughout the process. As a result a short informal 4-week consultation was carried out with interested parties involved in the production, packing and retailing of honey in the UK. This was agreed by the Defra consultation coordinator as a proportionate approach on the basis that this was a niche market involving minimal changes that were of a technical nature and that those with an interest were already fully involved. An information document was produced to explain the detail and nature of the changes being introduced and interested parties were contacted directly via email to seek their views and opinions. Views were sought on the draft Regulations and the information document to allow interested parties to ask any remaining questions they may have had. The industry were kept up to date and consulted on matters during the period that the EU Commission was considering the Directive proposal.

Two responses to do with the detail of the drafting of the Regulations were received as part of the consultation seeking clarification on issues of interpretation, one in relation to removal of the of a provision on the “manner of marking and labelling”, and one in relation to the correct terminology for a particular plant, to both of which clear answers were provided. Another point related to the scope provisions, which has been addressed to confirm that the scope of application is the same as the previous Regulations applying to a product intended for supply to a final consumer or mass caterer. There were no concerns or objections expressed with regards to the content or drafting of the proposed Regulations.

## **9. Guidance**

9.1 For the most part the current guidance notes relating to the 2003 Honey Regulations remain relevant but these will be updated to reflect the new changes and to be in line with the smarter guidance principles. Defra is continuing with its review of all existing guidance material with the aim of reducing and simplifying the material it produces. All interested parties including enforcement authorities will be informed when the new Regulations come into force and information about the key changes will be highlighted. Updated guidance will be published online at [www.gov.uk](http://www.gov.uk) and information will be circulated directly to enforcement authorities via the Food Standards Agency.

The sanctions contained in the Regulations and the use of improvement notices were covered in the consultation information document and will be covered in the new

guidance as well as being drawn to the attention of enforcement bodies and businesses when the Regulations come into force. Where there is a failure to comply with a provision of the new Honey Regulations the enforcement authority will have the power to issue an improvement notice. The initial use of improvement notices will provide a lighter-touch enforcement regime, with the issue of an improvement notice being a proportionate early step in the hierarchy of enforcement. A food business operator will be able to appeal against such a notice to the First-tier Tribunal. A failure to comply with an improvement notice will be a criminal offence for which a fine may be imposed. There will be no maximum set for the fine; it will be for the courts to decide what amount the fine should be.

Enforcement bodies are well aware of the Improvement Notice approach from other food Regulations that have been introduced over the last 18 months.

## **10. Impact**

10.1 The changes required as a result of the Lisbon Treaty for honey labels are very minor. They only affect blended honey that is produced from several countries and requires the term 'EC' to be replaced by 'EU' when certain indications for such honey are used. The honey sector have been aware of this change for some time and industry have confirmed that the vast majority of honeys affected have already changed their labels as parts of their label updates meaning they already comply with the new requirements.

The clarification on the issue of pollen as an ingredient in honey set out in the new Directive does not require businesses to do anything different. The statement in the Directive makes it clear that pollen is not a separate ingredient in honey and therefore reinforces the general understanding on the status of pollen that existed before the European Court of Justice ruling that called it into question. This maintains the status quo and does not add burden or cost to business.

10.2 The impact on the public sector enforcement bodies is negligible as the changes are very minor.

## **11. Regulating small business**

11.1 The legislation applies to small business as it does to all businesses who are involved in the production of honey. The rules are there to provide minimum composition and standard requirements that are of benefit to the consumer and must be applied to all those operating in the sector.

## **12. Monitoring & review**

12.1 The changes set out in this instrument should ensure that the labelling of a blended honey uses the correct 'EU' identifier when using indications for blended honey that are not country-specific. . Plus the Directive 2014/63/EU changes will enable honey producers to treat honey as a single ingredient food, treating pollen as a natural constituent particular to honey and not an ingredient. Both matters will be monitored.

12.2 The Regulations contain a review clause which will require the Honey (England) Regulations 2015 to be reviewed after 5 years from the date of coming into force and the conclusions of the review to be set out in a published report.

### **13. Contact**

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