

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
WINDSOR FRAMEWORK**

COM(2023)201FINAL + ANNEXES 1-2

SEC(2023)162 FINAL: OPINION OF THE REGULATORY SCRUTINY BOARD

SWD(2023)97 FINAL: IMPACT ASSESSMENT

SWD(2023)98 FINAL: IMPACT ASSESSMENT EXECUTIVE SUMMARY

**A PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL AMENDING COUNCIL DIRECTIVES 2001/110/EC RELATING TO
HONEY, 2001/112/EC RELATING TO FRUIT JUICES AND CERTAIN SIMILAR
PRODUCTS INTENDED FOR HUMAN CONSUMPTION, 2001/113/EC RELATING
TO FRUIT JAMS, JELLIES AND MARMALADES AND SWEETENED CHESTNUT
PURÉE INTENDED FOR HUMAN CONSUMPTION, AND 2001/114/EC RELATING
TO CERTAIN PARTLY OR WHOLLY DEHYDRATED PRESERVED MILK FOR
HUMAN CONSUMPTION**

**SUBMITTED BY THE DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL
AFFAIRS**

9 JUNE 2023

SUBJECT MATTER

1. Amendments are proposed by the EU Commission to various EU directives controlling the marketing of honey, fruit juice, jams, and preserved milks. These form part of a package of seven EU directives known colloquially as the Breakfast Directives. These directives lay down rules on the composition, labelling and processing of these foodstuffs with the aim of protecting the interests of consumers, providing a level playing field for trade and ensuring their authenticity. The EU proposals put forward changes to adapt these rules on the basis of technological development, stakeholder input, alignment with other EU rules in the food area and to take into account developments in international standards on the same subject matter. Specifically, changes are proposed to four Directives: Directive 2001/110/EC relating to honey; Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption; Directive 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption and Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption.
2. The four directives were implemented into Domestic Legislation in England, Scotland, Wales, and Northern Ireland.

3. This Explanatory Memorandum (EM) outlines the expected changes and impacts of this proposal to Great Britain and Northern Ireland. These changes will apply in Northern Ireland under the Windsor Framework but not in the rest of Great Britain unless the UK Government and Devolved Administrations decide to adopt similar changes.
4. There are several changes proposed across each of the four areas and the key measures are summarised below. Some of the more minor changes assessed to be non-controversial are not listed.
5. The key proposed amendments to 2001/110/EC relating to honey will include:
 - a. Making mandatory changes to the origin labelling of blended honey. Currently, honey which has been blended with honey from more than one country may be described as being a 'blend of EU and non-EU honey's', or 'a blend of non-EU honeys', or 'a blend of EU honeys'. The England regulations similarly state blended honey may be described as a 'blend of honeys from more than one country'. The proposed change would mean a honey label would have to declare the countries of origin of the different honeys in the blend. This would not include a requirement to provide the percentages of each honey origin that compose the blend.
6. The key proposed amendments to 2001/112/EC relating to fruit juices and certain similar products intended for human consumption will include:
 - a. Fruit juice is not permitted to have sugar added to it. A previous temporary derogation to allow businesses to be able to label their products to indicate 'no fruit juices contain added sugars' is being made permanent.
 - b. Introduction of a new reduced sugar fruit juice and fruit juice from concentrate category (if it meets a minimum 30% sugar content reduction compared to the standard product) along with associated new definitions and new technological processes to be used to achieve the removal of sugar.
 - c. Allow use of term coconut water as well as coconut milk and setting of a minimum Brix level (a measure of sugar content) for these products.
7. The key proposed amendments to 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption will include:
 - a. An increase in the minimum fruit content for jams from 350g of fruit per 1000g of finished product to 450g; and an increase in the minimum fruit content for extra jam from 450g of fruit per 1000g of finished product to 550g. The proposed changes increase the amount of fruit used in jam making, and reduce the amount of free sugars (added sugar) but the overall minimum sugar content would be maintained.

- b. Distinguishing between citrus marmalade and marmalade enabling the latter description to be used for all non-citrus fruits.
 - c. Removing the existing reduced sugar provisions to align with general rules on reduced sugar claims set out in the Nutrition Claims Directive (1924/2006) which requires a 30% reduction in sugars compared to a standard product.
 - d. Allowing concentrated citrus fruit juice as ingredient.
8. The proposed amendment to 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption will include:
- a. Making some minor changes to treatments to allow lactose free dehydrated milks to be produced.

SCRUTINY HISTORY

9. The Parliamentary scrutiny history relevant to this EM is contained in Annex A.

MINISTERIAL RESPONSIBILITY

10. The Secretary of State for Environment, Food and Rural Affairs is responsible for food compositional standards and labelling (FCSL) food law in England. Scottish Ministers, Welsh Ministers and Northern Ireland Executive Ministers have responsibility for FCSL in their respective nations.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. The subject matter of this EM relates to food law which is a devolved matter in the UK. This EM was shared with officials in the Devolved Administrations. Initial comments received focused on the importance of representatives from Defra, FSA Northern Ireland, FSA Wales and Food Standards Scotland continuing to work together constructively addressing the expected impacts of the proposals for the whole UK market. Specific input has been reflected in the body of this document.
12. Through the UK-wide Food Compositional Standards and Labelling Provisional Common Framework, which has been developed to maintain a consistent and co-ordinated policy approach across the UK, the consideration of these new rules will be of interest to all four UK nations, including UK internal market (UKIM) aspects.
13. The Food Compositional Standards and Labelling Provisional Common Framework sets out arrangements for co-operation between officials in Defra, Food Standards Scotland, and the Food Standards Agency (FSA) regarding FCSL policy and legislation.
14. Under the Food Compositional Standards and Labelling Provisional Common Framework, Defra will continue to liaise and work with FSA Wales, Food Standards Scotland, and FSA in Northern Ireland to develop and agree Food Compositional

Standards policy and legislative changes for businesses and consumers across the UK.

LEGAL AND PROCEDURAL ISSUES

15. Legal Base: Article 37 of the Treaty establishing the European Community (Amsterdam consolidated version) is the legal basis of the four Directives subject to this revision. Article 43 TFEU (Treaty on the Function of the European Union) is the corresponding legal basis for amending those Directives.

16. Voting Procedure: Ordinary legislative procedure

17. Timetable for Adoption and Implementation: The Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. If the amendments are approved Member States and Northern Ireland will be required to transpose the proposals within 18 months and there will be a 24-month transition period and an allowance for stocks to be exhausted.

POLICY IMPLICATIONS

18. Initial General Assessment: The government has not yet fully assessed these proposals. The proposals contain a number of technical changes to the EU rules which we need to investigate further and discuss with stakeholders, particularly those businesses that will be affected: this is determined by where businesses wish to produce and market their products; arrangements in NI and whether the UK decides to adopt similar rules. However, a brief assessment of the initial merits or otherwise of the proposals is given below.

19. Honey: The proposal to extend full country of origin labelling to blended honey provides consumers with more detailed information on origin in all the honeys in the blend. In practice this could mean that businesses will need to amend their labelling more often than now when their honey blend changes.

20. Fruit Juice: The most significant change is the introduction of a new category of reduced sugar fruit juice (as either fruit juice or fruit juice from concentrate). This is using new technology and processes to remove naturally occurring sugars, such as membrane filtration and yeast fermentation. These juices offer potential advantages on the grounds of health and improved consumer choice.

21. Jams: The changes will encourage the production of jams with higher fruit content and lower free sugars although the overall sugar content remains the same. Although taking a slightly different approach this is broadly in line with previous UK Government proposed measures to reduce the sugar content of jam in line with reducing sugar intake.

22. The changes would also remove the special provisions afforded to the term 'marmalade'. The term would be extended to allow its use for jams in accordance with national practices in the EU (*mermelada* is the term commonly used to describe jam across the EU). This could be confusing for UK consumers as the term marmalade and jam are not interchangeable in the UK and have differing requirements.

23. Preserved Milks: The changes adapt rules to international Codex standards.

The Implications for the Application of EU Law Under the Windsor Framework

24. The terms of the Withdrawal Agreement and Windsor Framework provides that limited areas of EU law will continue to apply to, and in, the UK in respect of Northern Ireland. These proposed regulations are listed in Annex 2 of the NI Protocol and therefore the EU's proposal, if adopted, will apply in NI.

25. The proposals could lead to some regulatory divergence between affected products placed on the GB market and those placed on the EU and Northern Ireland markets. From Autumn 2023, the Windsor Framework will allow for UK marketing standards to apply for goods moved via the agrifood green lane and placed on the NI market. Therefore, GB goods moving via this route will not need to meet these new requirements. The framework also guarantees unfettered access for Northern Ireland Businesses to the UK market.

26. Defra will discuss the proposals with the Devolved Administrations under the Provisional Food Compositional Standards and Labelling Common Framework to further assess and understand the implications of these proposed changes to the UK and as part of its commitment to carry out Post Implementation Reviews of legislation to ensure it relevant and fit for purpose.

CONSULTATION

27. The Commission proposals will follow the ordinary co-legislative process by the European Parliament and Council before their publication and entry into force. No consultation has taken place across the UK at this stage. However, the intention is to engage with UK interested parties to assess the merits of the proposals and reach a view on whether it is in the best interest of the UK to consider similar changes.

FINANCIAL IMPLICATIONS

28. Not Applicable

Mark Spencer

**THE RT. HON. MARK SPENCER M.P.
MINISTER OF STATE FOR FOOD, FARMING AND FISHERIES
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COM(2023)201 +supporting documents

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVES 2001/110/EC RELATING TO HONEY, 2001/112/EC RELATING TO FRUIT JUICES AND CERTAIN SIMILAR PRODUCTS INTENDED FOR HUMAN CONSUMPTION, 2001/113/EC RELATING TO FRUIT JAMS, JELLIES AND MARMALADES AND SWEETENED CHESTNUT PURÉE INTENDED FOR HUMAN CONSUMPTION, AND 2001/114/EC RELATING TO CERTAIN PARTLY OR WHOLLY DEHYDRATED PRESERVED MILK FOR HUMAN CONSUMPTION

EM 12625/19: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE EXERCISE OF THE POWER TO ADOPT DELEGATED ACTS CONFERRED ON THE COMMISSION PURSUANT TO DIRECTIVE 2000/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 JUNE 2000 RELATING TO COCOA AND CHOCOLATE PRODUCTS INTENDED FOR HUMAN CONSUMPTION, COUNCIL DIRECTIVE 2001/110/EC OF 20 DECEMBER 2001 RELATING TO HONEY, COUNCIL DIRECTIVE 2001/111/EC OF 20 DECEMBER 2001 RELATING TO CERTAIN SUGARS INTENDED FOR HUMAN CONSUMPTION, COUNCIL DIRECTIVE 2001/112/EC OF 20 DECEMBER 2001 RELATING TO FRUIT JUICES AND CERTAIN SIMILAR PRODUCTS INTENDED FOR HUMAN CONSUMPTION, COUNCIL DIRECTIVE 2001/113/EC OF 20 DECEMBER 2001 RELATING TO FRUIT JAMS, JELLIES AND MARMALADES AND SWEETENED CHESTNUT PURÉE INTENDED FOR HUMAN CONSUMPTION

DATE DEFRA EM SIGNED: 16/10/2019

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
NOT IMPORTANT CLEARED (AGENDA FOR REPORT NO 2; 23/10/2019)	CLEARED (ENERGY AND ENVIRONMENT) AT CHAIRMAN'S SIFT 1757 - 24/10/2019

EM 13957/12: PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE 2001/110/EC RELATING TO HONEY

DATE DEFRA EM SIGNED: 11/10/2012

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED AS NOT LEGALLY OR POLITICALLY IMPORTANT REPORT 13 17/10/2012	LEARED BY MINISTERIAL CORRESPONDENCE 25/7/2013 LB TO DH

EM 14046/10 PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE 2001/112/EC RELATING TO FRUIT JUICES AND CERTAIN SIMILAR PRODUCTS INTENDED FOR HUMAN CONSUMPTION

DATE DEFRA EM SIGNED: 13/10/2010

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
CLEARED BY LETTER ON 02/11/2011	FORWARDED TO SUB-COMMITTEE D - 19/10/10 RELEASED FROM SCRUTINY BY LETTER 16/2/2011

EM 7231/04 - PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 2001/113/EC RELATING TO FRUIT JAMS, JELLIES AND MARMALADES AND SWEETENED CHESTNUT PURÉE INTENDED FOR HUMAN CONSUMPTION

DATE FSA EM SIGNED: 01/04/2004

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
REPORT NO: 17 DATED: 21/04/2004 OUTCOME: NIC	SIFT: 1177 DATED: 20/04/2004 CLEARED

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EM 8164/96: SIMPLIFICATION OF THE VERTICAL DIRECTIVES ON FOOD: 7 PROPOSALS FOR COUNCIL DIRECTIVES ON COCOA, CHOCOLATE PRODUCTS, CERTAIN SUGARS, HONEY, FRUIT JUICES AND SIMILAR PRODUCTS, CERTAIN PARTLY OR WHOLLY DEHYDRATED PRESERVED MILK, COFFEE EXTRACTS AND CHICORY EXTRACTS, FRUIT JAMS, R JELLIES AND MARMALADES AND CHESTNUT PUREE ALL INTENDED FOR HUMAN CONSUMPTION

EM DATED 15/07/1996 - SUPPLEMENTARY EM'S (2ND) 23/10/1996 (3RD) 14/03/1997 (4TH) 10/11/1997 (5TH) 10/05/1999

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
REPORT NO. 26, 01, 18, 06, 09, 19, DATED: 17/07/96, 30/10/96, 19/03/97, 12/11/97, 03/12/97, 12/05/99 OUTCOME: C+F+G, C+F+G, C+F+G, C+F, C+E, LPIC,	SIFT NO. 897, 899, 917, 934, 995 DATED: 22/07/96, 24/10/96, 20/03/97, 10/11/97, 11/05/99