

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

COM(2023)201 FINAL + 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

ADOPTION OF DIRECTIVE (EU) 2024/1438 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

4 June 2024

SUMMARY

1. Amendments are being made 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 prescribe reserved descriptions and set out 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 product authenticity.
2. Specifically, Directive (EU) 2024/1438 makes changes to 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.
3. This Explanatory Memorandum (EM) outlines the key changes. It has been prepared during a pre-election period and must be caveated that it has not been subject to Ministerial approval. An updated EM can be provided after Parliament returns, following further engagement with stakeholders and analysis of implications.

SUBJECT MATTER

4. **Honey** - Amendments to the Honey Directive seek to facilitate food chain transparency and harmonise labelling across Member States through introducing country of origin labelling for different honeys used in a blend in descending order, based on weight, including the percentage each country represents.
5. **Fruit Juices** - The amendments to fruit juices provisions seek to provide for technological innovation creating a completely new category of reduced sugar fruit juices, with associated new specifications still to be brought forward through separate implementing rules. They also seek to increase consumer clarity on the content of fruit

juices, creating new categories to indicate where juices contain at least 30% less sugars and allowing producers to indicate on the label that fruit juices cannot contain added sugars. They also authorise how concentrated fruit juice can be used, permit protein from sunflower seeds as an authorised ingredient for clarification purposes and allow the term coconut water as a synonym for coconut juice.

6. **Jams & Jellies** - The changes increase mandatory fruit content for jams and jellies and permit the optional use of the term 'marmalade' in lieu of 'jam' to account for linguistic differences, alongside authorising the term "reduced sugar jam".
7. **Preserved Milks** - Changes to rules around preserved milks relax the criteria designated for products sold under the English term "evaporated milk" to align with international standards. This also has the effect of removing any difference with the criteria set out for condensed milk so that the terms can be used completely interchangeably. The changes also authorise treatment to reduce the lactose content of dehydrated milk products to adapt to evolving consumer needs.
8. The original four directives were transposed into domestic legislation in England, Scotland, and Wales and are now assimilated law. They were also transposed in Northern Ireland. Subject to the democratic mechanisms contained within the Windsor Framework, it will be the case that the amended EU measures adopted will apply in Northern Ireland to the extent they amend or replace provisions in Annex 2 of the Framework. However, these changes will not apply to or affect the movement, or placing on the market, of goods moved through the Northern Ireland Retail Movement Scheme (NIRMS).

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. Ministers in Scotland, Welsh Ministers and Northern Ireland Executive Ministers have responsibility for FCSL in their respective administrations.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. The consideration of these new rules will be of interest to all four UK nations. 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) covering Wales and Northern Ireland regarding FCSL policy and legislation.
12. This EM was shared with officials in Northern Ireland. Initial comments from officials in the Devolved Administrations were received in relation to the proposals as published in April 2023 and which focused on the importance of representatives from Defra, FSA (covering Wales and Northern Ireland) and Food Standards Scotland continuing to work together constructively towards achieving consensus on the way forward in light of the changes and any implications for the whole UK market and ways to address any challenges.

LEGAL AND PROCEDURAL ISSUES

13. **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.
14. **Voting Procedure:** Ordinary legislative procedure
15. **Timetable for Adoption and Implementation:** The Directive was adopted on 14 May 2024 and will enter into force on the twentieth day following its publication in the Official Journal of the European Union (i.e., 13 June 2024). Any new measures will need to be transposed by 14th December 2025 and applied, if mandatory, from 14th June 2026.

POLICY IMPLICATIONS

16. A full overview of the implications can be provided following the pre-election period. A factual summary of changes across the four directives are detailed below.

Honey

17. Changes to the Honey Directive will mean that honey producers will be required to declare the countries of origin of the different honeys in the blend, with the label providing the percentages of each country of origin contained in the blend. Stakeholder engagement and research to date has evidenced that the honey industry in Northern Ireland is primarily made up of small and medium sized enterprises producing single source honey - and that very few, if any, businesses blend honey. This labelling requirement will additionally not apply for honey, blended or not, moved from GB to NI under the Northern Ireland Retail Movement Scheme (NIRMS).
18. Furthermore businesses will have the option to indicate the percentage on the label only for the four largest shares, if they represent more than 50% of the weight of the blend. For packages of less than 30 grams, the names of the countries of origin may be replaced by a two-letter ISO code.
19. The current labelling requirements allow flexibility for honey packers to source honeys from different countries throughout the year whilst bulk printing a run of identical labels to reduce costs e.g. "blend of EU and non-EU honeys". The provision to extend full country of origin labelling with percentages, alongside the option to use ISO codes for packages of less than 30g provides more detailed information on origin and amount of the honeys in the blend.

Fruit Juice

20. The changes for fruit juice include the introduction of new categories of reduced sugar fruit juice and fruit juice from concentrate (where naturally occurring sugars have been reduced by at least 30%) along with specified new definitions, conditions and new technological processes for these new products which fruit juice manufacturers may wish to develop. Use of the term coconut water as a synonym for "coconut juice" will also be allowed and a minimum Brix level (a measure of sugar content) will be set for coconut juice.
21. Businesses will also be allowed to label their products to indicate 'fruit juices contain only naturally occurring sugars' on the label in the same field of vision as 'fruit juice' and 'fruit juice from concentrate'.

22. Availing of these new changes will be at the discretion of food businesses and creates an option to produce and market reduced sugar fruit juice. It is our current understanding that the European Commission intends to adopt delegated acts at a later date clarifying rules on the physical, chemical, organoleptic and nutritional characteristics of these new categories of reduced sugar products.
23. The amendments to the Directive on fruit juices and fruit nectars aim to provide businesses with greater flexibility and reflect the growing demand for reduced-sugar products. The introduction of new categories of reduced sugar fruit juice (as either fruit juice or fruit juice from concentrate), reflects the development of new technology and processes to remove naturally occurring sugars, such as membrane filtration and yeast fermentation.

Jams

24. The changes to the Directive increase the minimum fruit content for jam and jelly from 350g of fruit per 1000g of finished product to 450g (100g increase); and an increase in the minimum fruit content for extra jam or extra jelly (the use of this term extra is reserved for products manufactured with a higher quantity of fruit compared to 'jam') from 450g of fruit per 1000g of finished product to 500g (50g increase). UK minimum fruit content rules are the same as EU standards before these changes. It also increases the amount of fruit required for jam making, in turn, reducing the amount of added free sugar needed to reach the minimum 60% overall sugar content. There is also a new requirement for jams and jellies which use the term "reduced sugar" to meet the conditions set out in the Nutrition Claims Directive 1924/2006, requiring a 30% reduction in sugars compared to a standard product.
25. Annex 2 also allows concentrated citrus fruit juice as an acidifying agent in jam, extra jam, jelly and extra jelly.
26. Under the new requirements products made using citrus fruits (currently defined as marmalade) will be required to use the reserved description 'citrus marmalade', or the name the citrus fruit or fruits used, in order to distinguish from other products made from non-citrus fruit labelled marmalade (see point below).
27. The Directive provides the option for businesses to use the term 'marmalade' instead of the reserved description 'jam' to take into account societal practices where such terminology is commonplace. The EU states that the new changes aim to support fruit growers and encourage healthier choices by requiring the production of jams with higher fruit content and lower free sugars although the overall sugar content remains the same.
28. It is our current understanding that jam producers in Northern Ireland are small artisan manufacturers. The Food Standards Agency will be conducting further engagement to better understand any implications, including if these jam producers are already producing jams above the current minimum fruit content and already meeting the new minimum requirements.

Preserved Milks

29. The changes for preserved milks are technological, making changes to authorised treatments to allow reduced lactose dehydrated milks to be produced. These lower the minimum levels of milk solids and fats for products sold under the designation evaporated milk to align with the international codex standard.

30. The amendments relax the criteria designated for products sold under the English term “evaporated milk” to align with the international codex standard. This also has the effect of removing any difference between the criteria set out for evaporated milk and that for condensed milk so that the terms can be used completely interchangeably.
31. The amendments also authorise treatment to reduce the lactose content of dehydrated milk products to adapt to evolving consumer needs. Neither amendment would necessitate industry changes as both involve a relaxation of existing requirements.

IMPACT ON UK INTERNAL MARKET MOVEMENTS

32. The existing directives being amended by the Breakfast Directives are disapplied by Annex I of Regulation (EU) 2023/1231. This means that goods can move from Great Britain to Northern Ireland via the Northern Ireland Retail Movement Scheme without having to meet these new standards. Movements under the scheme will therefore be entirely unaffected by the Directive.
33. Moreover, in line with the Government’s commitment to ensuring Northern Ireland traders have unfettered access to the rest of the UK internal market, these measures will not have any impact on the movement of qualifying Northern Ireland goods from Northern Ireland to Great Britain. Such goods will also continue to benefit from the market access principles set out in the United Kingdom Internal Market Act 2020 and enjoy unfettered access.
34. Defra will continue to discuss the amendments in Directive (EU) 2024/1438 with the Devolved Administrations under the Food Compositional Standards and Labelling Common Framework to further assess and understand the implications for the UK and as part of its commitment to carry out periodic review and legal requirements to carry out Post Implementation Reviews of legislation to ensure legislation remains relevant and fit for purpose.

CONSULTATION

35. Introduction of the Commission amendments follows the ordinary co-legislative process by the European Parliament and Council. No formal consultation has taken place across the UK at this stage.
36. In August 2023, the FSA informed Northern Ireland stakeholders about the potential updates to the “Breakfast Directives” when they were at proposal stage. The proposals have evolved over time, with the FSA conducting analysis as certainty emerged. The FSA is now engaging directly with stakeholders on the final legislation to inform our consideration of implications for Northern Ireland.
37. Moreover, Defra, the Food Standards Agency, Food Standards Scotland and DAERA engage with the agri-food sector on a regular basis. They also maintain open communication channels to share information about developments relating to these commodities.
38. The potential application of this Directive in Northern Ireland was raised with the European Commission through the mechanisms for information exchange established under the Windsor Framework.

ANNEX A

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO 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

COM(2023) 201 FINAL 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

DEFRA EM DATED: 09 JUNE 2023

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
SCRUTINY NOT COMPLETED (OUTCOME AGENDA 41 6/9/23)	SENT FOR EXAMINATION TO THE PROTOCOL ON IRELAND/NORTHERN IRELAND SUB-COMMITTEE (CHAIR'S SIFT NO 37; 23/6/23)