

## **BEES AND THE LAW by Andrew Beer Talk to NLB on Wednesday 8<sup>th</sup> October 2014**

### What You Need to Know

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1. Who owns your bees?
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### **1. Ownership of bees in your hive**

At one time there was legal doubt whether or not a beekeeper remained the owner of bees foraging away from a colony or nucleus, and beyond the beekeeper's control. These doubts appear now to have been removed. The determination is very important. For example if a beekeeper is seeking damages against a farmer for poisoning the beekeeper's bees, the claim cannot succeed if the beekeeper were no longer their owner at the time of the poisoning.

### **2. Swarms.**

There is much confusion, in my experience, as regards the ownership of swarms. There is also a perception held by some that a beekeeper whose bees swarm has an absolute right to follow them and take them from wherever they go. Finally, collecting swarms may involve risks not only to others and their properties but to the beekeeper himself.

#### Ownership of Swarms

##### Background Note.

In earlier times, for all but the very rich, cane sugar and similar crops were unaffordable luxuries, so a swarm or colony provided a vital source of sweetness for the beekeeper and his family. Until the widespread introduction of the moveable frame hive, enabling the beekeeper to adopt swarm prevention measures, the acquisition of swarms was the only means of establishing and maintaining apiaries. The emergence of a swarm was therefore a major event in village life. Servants were kept on the lookout for each swarm as it emerged and pandemonium ensued as soon as it did. Bells were rung, drums were tanged (beaten), mirrors shone for a dual purpose: to induce the swarm to settle where a beekeeper could catch it and, as a general warning to the then many fellow beekeepers, that its former owner wanted it back!

What did the law make of all this? More pertinently, what is the legal position today? The law can conveniently be summarised in the Swarm Ownership Indicator below.

Swarm Ownership Indicator

Situation	Owner	Why?
A. Bees in your hive; your colony shows evidence of swarm plans e.g. larvae in queen cells but no swarm has emerged.	You	Those in hive belong to you.
B. Bees out of the hive on "colony business" – not in swarm.	You	Their intention is to return to the hive.
C. Bees in swarm and you did not see them emerge.	No one. Your ownership is lost when the swarm emerges [but may be regained – see E below].	Bees have reverted to wild state over which you have no control, and nor does anyone else.
D. Bees in swarm and you saw them emerge.	No one but your right to follow them starts. You can become the owner of the swarm if you can take it under E or F below.	A beekeeper who sees his swarm emerge has a right to follow them (see below).
E. Bees in swarm described in C or D have landed - i) on your land. ii) on somebody else's private property.	i) You if you catch them and to the extent that they remain under your control. ii) You if you are allowed access and you catch them, as above. N.B. If someone else takes them, whether the property owner or a person authorised by the property owner does so, he/she becomes the owner.	(i) and (ii). Control gives you ownership
F. You have successfully followed and collected the swarm described in D.	You.	Based originally on Roman Law a beekeeper who keeps his swarm in view and collects it, can claim it. But if the swarm settles on private land, the right to follow and claim is lost.
G. Swarm has got away, living wild anywhere, including your land.	No one.	No one controls it.

Access:

Problems entering neighbouring land to collect swarms.

(a) Swarms on Private Property.

'Private Property' means any land of any kind to which the general public does NOT have right of entry whatever its use and whoever the owner, e.g. householder, company or government department e.g. H M Treasury.

Beekeepers do not have a right to enter private property to collect swarms. A beekeeper's so-called "right" to follow and collect a swarm from where it landed, if that land is another's private property, has long been rejected by the English Courts. That means that if your swarm lands, for example, in your neighbour's garden, you have no right, whatever the temptation, to collect it without your neighbour's consent. If your neighbour refuses, that should be the end of the matter. If your neighbour decides to keep it or offer it to someone else, again, you have no right to be compensated. Fortunately, consent is rarely refused; more usually it is a case of your neighbour, nowadays, urging you to remove "your bees" from "my land".

Even with consent, care is still needed. First, go onto your neighbour's land and see what equipment will be required and work out a plan of action. In particular, do you need to walk across flowerbeds? Or trim branches? Are there children around? Is damage likely? Warn that the collection may NOT go according to plan. That seemingly easy swarm may take flight and end up anywhere, including down the neighbour's chimney. Then discuss and agree and clear your plan with your neighbour. Once agreed, execute and complete the plan efficiently and leave the neighbour's land as you first agreed.

Oh yes, and don't forget honey! No beekeeper, in my view, should ever collect a swarm without offering a jar of honey in return. Works wonders for P.R. I regularly give jars of honey to my neighbours in anticipation of the swarms which may later land on their properties and get consent "up front". Bribery, if you like, but they love the honey! One of the great advantages of a swarm landing on private property, rather than in a public place (discussed later), is that on private property the swarm collection can usually be organised with the minimum of disturbance to the owner, certainly if the general public is safely out of the way.

#### (b) Swarms in Public Places.

By public places I mean places to which the general public has access or which he uses, for example public roads, streets and lanes, communal places and parks. The first rather obvious point is that if the general public can use these places, then so can we beekeepers. The problem is that whilst the general public may want to use, say, a road to get from A to B, we may, to get swarms, need perhaps to bring ladders, block pavements, restrict traffic, pedestrian and vehicular, which may cause serious interruption for as much as a full day.

Whilst the powers to do these things are enjoyed by, for example, the police, they are certainly not vested in us beekeepers. These shortcomings are not likely to be a serious setback in rural areas where the ways of the countryside are still embraced (for example tolerance to the regular escape of sheep or cattle from their fields). In my village I have occasionally had to block off a section of pavement and caused churchgoers to use a side entrance to our church, without the slightest complaint. In such cases, the boot is now on the other foot, one becomes "Mr Bee", on call to deal with any swarm, bee problem (usually bumble bees) and the like, and complaints come your way if you don't deal with swarms rather than if you do!

It is a different story in towns and cities, in urban environments where bees and beekeepers may not be understood and congestion of traffic and humanity may be extreme.

Swarms, as we all know, will land almost anywhere and are as likely to plump for the under-chassis of an omnibus in Oxford Street, London, W1 as a low-hanging branch in nearby Regent's Park. Extracting a swarm in these conditions is always going to be riskier in terms of obstruction and swarm recovery, leaving the beekeeper with perhaps only two options. You require either the police and maybe other statutory bodies, to provide a safe working environment, or, less satisfactorily, you withdraw. If the police do get involved, do not forget to point out to them that the "incident" may require up to a day to clear, or at least until nightfall, when you should be able to get the whole swarm housed in your collection box and taken away.

#### (c) Summary.

Our willingness to collect swarms makes us popular with the public and the authorities alike. The fact that we do not enjoy specific and sufficiently extensive rights to do this is, therefore, invariably immaterial and perhaps our only concern should be this – What are the risks?

**RISKS:**

Collecting swarms, like any other beekeeping activity, involves risks. What are they?

**(i) Risks to others.** If you are a swarm collector, you owe a duty of care to those who foreseeably may be affected by your actions. The level of care is that of a competent swarm collector. If you fail to meet that standard then you will, in principle, be liable to anyone injured. As a practical matter, of course, the major risk is that bystanders may get stung with serious or perhaps fatal consequences. The Golden Rule is, therefore, to insist that the public are kept well away until the swarm has been caught and safely removed. Remember that whilst as beekeepers we want to save swarms (for the wider variety of genes they may carry in particular), unless you are confident you can complete the collection safely, leave well alone. The bees may, regrettably, have to be destroyed but that is better than your being sued for your efforts.

Note:

It is understood that the British Beekeepers' Association ("BBKA") currently maintains Public and Private Liability Insurance subject to a limit of indemnity of £10 million. The insured include members of the BBKA and area Associations. Like all insurance policies, the insurance is subject to conditions. It is not possible to state (and I do not state) whether or not any particular activity, or person, would (or would not) be covered by the policy. However, two points are worth stressing. First, if you fail to carry out a swarm collection (or any beekeeping activity) with the care and skill expected from a competent beekeeper, insurers may avoid any claim wholly or in part. Secondly, it can reasonably be expected that insurers in the event of a poor claims record may either increase the cost of insurance or alter the conditions of cover; further reasons to be very careful.

**(ii) Risks to property.** When you collect swarms, you are responsible for any damage you cause (for example for a broken window, a damaged aerial, damage to roofs or gutters, blocked chimneys). Again, don't take on a swarm collection until you have assessed the risks and are wholly satisfied that you can do it; if not, do not even try. Again, it is understood that BBKA maintains cover – but see my earlier remarks.

**(iii) Risks to yourself:** Whether you are kicking a football around the garden, walking the dog or collecting a swarm, you run the risk of injuring yourself. If you are injured whilst beekeeping you will not be able to seek compensation under the BBKA (or similar) policy. If you want or need your own insurance, you will need to take out separate cover extended, I suggest, to all your beekeeping activities including swarms. For further details of insurances maintained by BBKA, see the BBKA News, no. 221, October 2014, pp 342-344, "BBKA Member Insurance Explained". BBKA also runs a scheme under which members can separately insure hives, extractors and other equipment.

### **3. The Beekeeper and his/her Neighbours.**

Fundamental principle: every landowner can have reasonable use and enjoyment of his/her property subject to any specific restrictions e.g. in case of tenant, tenancy agreement, terms of planning permission, etc. However, a landowner cannot exercise this right [in the case of a beekeeper, the beekeeper] if to do so would unreasonably restrict his neighbour's enjoyment of his/her property. It follows that beekeeping is no different from any other activity of mankind; you look to the effect of the activity on the neighbour and if it is, or becomes, inappropriate, the law will intervene. There are few reported law cases concerning bees and neighbours but here are some cases [both from UK and overseas] which have considered liability between the beekeeper and his neighbour.

**Case Histories:****a. Cases Beekeeper Lost:**

O’GORMAN v O’GORMAN [IRELAND] 1903

Beekeeper kept twenty colonies close to his neighbour’s boundary. Neighbour kept horses close to boundary. Beekeeper disturbed his bees, sometimes deliberately, and bees went beserk, neighbour thrown by a petrified horse and killed. Beekeeper behaved unreasonably and was liable.

PARKER v REYNOLDS [ENGLAND] 1906

Beekeeper [Mr Parker] kept ten hives close to neighbour’s boundary and within twenty feet of neighbour’s house (so close that bees sometimes took a shortcut through the house on the way to forage). Neighbour [Mr Reynolds, who was also a beekeeper!] and family got badly stung. Mr Parker was required to move his hives.

ROBINS v KENNEDY & COLUMB [NEW ZEALAND] 1931

Bees kept in unreasonable number and did damage to a neighbour. Beekeeper stopped. The position would probably have been different if the beekeeper had had only a few hives. A point to note is the fact that if someone gets stung that does not automatically make the beekeeper liable. Liability occurs when the number of stings and/or disturbances to the neighbour is so great that his use and enjoyment of his property is materially affected.

**b. Cases Beekeeper Won:**

JOHNSON v MARTIN [ENGLAND] 1950

The thrust of the neighbour’s argument was that use of land for beekeeping was unreasonable and that it should be stopped. The Court found, however, that the bees in question were kept in a proper manner so the beekeeper was not liable for injury to goats on adjoining land or to their owner. The Court further confirmed that, as a general principle use of land for beekeeping was reasonable.

INGAMELL’S v PICKFORD [ENGLAND] 1986

Another case where the beekeeper kept his bees in a perfect manner but his neighbour had been stung on average two stings per year. Action by neighbour failed because her use of her property was not sufficiently disturbed by just two stings per year.

**Taking a Practical Approach**

The expense of going to Court is likely to be prohibitive, whatever the outcome. Good relations with neighbours, as well as the good name of beekeeping, demand that beekeepers get on with neighbours, indeed all land users. It is likely to be useful to clear any bee activity with your neighbour first and if not cleared, it is probably best to keep your bees elsewhere.

Sensible location of hives, filled with nice bees, in reasonable numbers, is vital. The test I apply is this. Assuming I was the neighbour and I was wandering permanently around my garden in a swimsuit, would I be happy to have bees next door? Probably a higher standard than the law requires! Just as the beekeeper

must be reasonable to his neighbour, so must the neighbour, and activities such as the poisoning of bees and setting alight of hives should, as a final resort, be referred to the relevant authorities.

#### **4. Environmental Protection Act 1990.**

The section enables a person complaining of a statutory nuisance by a neighbour (this can include a beekeeper) to apply to a local authority for an abatement order. A statutory nuisance includes “any insect emanating from premises and being prejudicial to health and a nuisance”. Once served, the neighbour (or a beekeeper) can only have an abatement order removed or modified on an application to the magistrate’s court and on such terms as the court agrees.

#### **Comment**

The issue of an abatement notice is a potential disaster for the beekeeper, especially if the local authority has acted too hastily and without proper consideration of the facts. Invariably, the beekeeper will have to make, at his expense, an application to the Court for a discharge of the abatement notice or at least secure an acceptable arrangement under which he can continue to keep bees. Moral: Always do your best to keep your neighbours sweet with honey and hopefully it will stop trouble later.

#### **5. Data Protection Act 1998.**

The Act restricts members’ clubs and associations and any association to which a person belongs, from disclosing information held about the member to any third party unless the member has first given a “Data Protection Act” consent. Whilst this restriction may not inhibit the day to day workings of some clubs and associations, in the case of a beekeeping association the restriction can cause difficulties. Because of the nature of beekeeping and diseases and other problems which may affect bees, there will be many occasions when it is vital that members’ details can be released to the relevant authorities and to other members. It is for this reason that many Associations are now seeking or have already obtained “suitable” consents from members. A suitably-worded consent will also enable members’ details to be included in an associations’ year book and similar publications

#### **6. Insurances.**

You will primarily be concerned with:

[A] Public Liability Insurance, [B] Product Liability Insurance, [C] Contents Insurance and [D] Foulbrood and Notifiable Pests Insurance.

As regards Public Liability and Product Liability insurances if the Association to which you belong is affiliated to BBKA you should be able to take advantage of these insurances maintained by it. If your association is not affiliated to BBKA it has probably arranged these insurances elsewhere (but it is important to check). Contents insurance for hives (and the like) is normally obtainable through members’ personal contents insurance or through BBKA (see above). Foulbrood and Notifiable Pest Insurances are obtainable through Bee Diseases Insurance Limited.

## **7. Poisoning.**

There is no specific legislation requiring farmers to notify beekeepers in advance of any intended use of poisonous sprays and other substances so it is essential that beekeepers liaise with farmers in the localities where bees are kept. It must be remembered that bees are likely to be affected if they venture through areas where spraying is taking place or has taken place, even though not foraging within them. No farmer wants to kill bees and it is well to remind farmers regularly of the bees presence in the vicinity of their operations. And the beekeeper must do all he or she can to fit in with the farmer's and contractors' timings and commercial requirements. If spray damage is suspected, beekeepers should take a sample of at least 200 dead bees and send it to the National Bee Unit for diagnosis as to the source of the problem.

### **Can you sue the wrongdoer?**

This question came up in the case of *Tatton and others v A D Walter Ltd*. In this case, bees worked a crop of oil seed rape which was affected by seed weevils, so the farmer applied a pesticide. Although the farmer did not know the particular beekeeper's bees were working the crop, the court took the view that it could be expected that bees would work crops such as oil seed rape and because the farmer had not complied with the guidelines for spraying he was liable for the loss of the bees.

## **8. Honey from Hive to Honeypot.**

Honey offered for human consumption must comply with the law but the degree of compliance varies according to the extent of the beekeeper's operations, whether the honey is for private or public consumption and the market, if any, in which the beekeeper will engage.

### **Honey safety and hygiene.**

The relevant legislation is far reaching, including not only the safe hygienic production of food itself but also has implications for the medications and treatments that are applied to bees, the pesticides that can be used, and directly or indirectly, every other factor that could affect the safety of the food that we produce. At law most beekeepers will be treated as involved in the Food Business [meaning any undertaking whether for profit or not, whether public or private, carrying out any activities related to any stage of production, processing or distribution of food] and will be a Food Business Operator [meaning the natural or legal person responsible for ensuring that the requirements of food law are met within the food business under their control. Selling honey will make you a Food Business Operator.

### **Registration of premises**

The basic rule is that all beekeepers are food business operators and that, unless exempt, they are required to register the premises where they operate their business. A beekeeper who is a primary producer (producing or processing small quantities of their own honey and disposing to ultimate consumers whether or not through a retail outlet does NOT have to register. The uncertainty is that "small quantities" is not defined. It is difficult to believe that a beekeeper with, say, 1-3 hives has to register. If in doubt, check with local Environmental Health at your local council office. Ultimately, the position would need to be determined by the courts. Failure to comply may result in criminal sanctions. Please also note that if a beekeeper or an association processes another's honey, or honey is sold NOT to the ultimate consumer, the beekeeper's or association's premises must be registered.

### Hazard Analysis and Critical Control Concept (HACP).

HACP requires some beekeepers to consider –

- what could happen to make the food, i.e. honey, unsafe,
- where or how it could happen,
- decide on controls that will prevent it happening, and affect them, and
- monitor their effectiveness.

Although HACP will not apply to small-time beekeepers (it would apply for example to a Honey Co-operative), nevertheless all beekeepers are advised to follow the concept because it may provide a defence in the case of later problems.

### Food Safety Act 1990 Section 32

Authorised inspectors can inspect the beekeeper's premises even though not registered, and have wide powers including requiring improvements, prosecution and closure of the premises.

### Lot Numbers and Record Keeping

Until offered for sale there is no legal need for lot numbering or other recording. However, beekeepers, in anticipation of any later problems, should, if only informally, identify incoming crop.

### Storing and handling of equipment.

Honeycomb, for example, is a food container. It follows that all possible steps must be taken to ensure that frames and other equipment remain clean and do not become contaminated.

### Equipment, Packaging and Cleaning.

The very highest standards must be observed and applied. Only use items which are suitable for food use.

### Food Room.

Most of us extract in the family kitchen (I did until a year back when I created specialised extraction jarring and storage areas, much to my wife, Elizabeth's delight!) If you are a candidate for "How Clean is your House" you should be alright.

## Selling Honey.

Small scale beekeepers who wish to sell their honey have to comply with the Honey Labelling Regulations 2003.

The regulations specify that:-

- ***the water content of the honey must be less than 20%.*** If it is higher it is liable to ferment. If you extract only honey from comb that has been capped there should be no problem.
- ***the percentages of invert sugars and sucrose must be consistent with that expected from the floral source.*** No problem here if you use your own honey.
- ***The honey shall not have been heated in such a way as to significantly destroy enzymes and drive off the volatile aromatic compounds which give each type of honey its unique quality.*** If honey is warmed for extraction and bottling it is advisable to keep the temperature below 35 degrees C and to cool quickly when the job is done. For pasteurisation a temperature of 63 degrees C is needed for 30 minutes followed by rapid cooling. The composition of honey is best preserved by storing at low temperatures.
- ***The honey should be free from mould, insects, insect debris, brood and any other organic or inorganic substance foreign to the composition of honey.*** Take care to minimise the introduction of foreign materials from the field into the extraction room. The extraction room and all equipment should be washed thoroughly before extraction. The honey must be filtered to remove these foreign materials. The recommended mesh size is 0.2mm which will ensure that some pollen remains.
- ***Containers should be made of materials which under normal and foreseeable conditions of use do not transfer their constituents to the honey in quantities which could endanger human health or bring about a deterioration in its aroma, taste, texture or colour.*** Equipment made of food-grade stainless steel, food-grade plastic and glass meet these criteria.

## **LABELLING.**

The label should indicate:

1. The description of the product.
2. the name and address of the producer.
3. the country of origin.
4. a "best before" date.
5. a lot mark.
6. the weight.

1. **Description of Product:** this must be one of the following reserved descriptions: honey/comb honey/chunk honey/baker's honey intended for cooking only/the word "honey" with any other true description e.g. Honeydew Honey, Pressed Honey, Blossom Honey/the word honey with a regional, topographical or territorial reference. If there is any reference to a particular plant or blossom (this includes both pictures and words) the honey must have come wholly or mainly from that blossom or plant – i.e. the honey must be characterised by that blossom or plant. If reference is made to a geographical origin the honey must come wholly from that place (but see Warning, below).
2. **Name and address of Producer:** Sufficient information is needed in order to trace the producer.
3. **Country of Origin:** Honey must be labelled with the country in which the honey was harvested. Not necessarily a member state of the EU. In our case it could be "Product of the UK" or "Product from England" but must not be part of the address.
4. **Best Before Date:** Honey lasts for years but an appropriate durability or "best before" date must be given. Two years is reasonable. If this specifies day:month:year, a lot number is not required.
5. **Lot Number:** A lot means a batch of sales units of food produced, manufactured or packaged

under similar conditions. It enables problems to be traced. The lot number is preceded by the letter **L** to distinguish it from other indicators. The number may be a short code comprising letters and/or numbers identifying the appropriate batch. It is prudent to have small lot sizes. The beekeeper is required to keep a record of each batch with its provenance and destination and retain this for the shelf life plus 6 months.

For certain sales, Lot numbers are not needed.

6. **The Weight:** Under previous regulations, certain honeys could only be packed in stipulated weights. These restrictions have now been removed. Imperial units can be added after the metric ones but must not be in larger type and there must be no print between them. The abbreviation for gram is g and for kilogram is kg. An s must not be added. There must be one type space between the numerical value and the unit or its abbreviation.

Printing of labels:

Printing must be clearly legible and permanent. Labels should be fixed to the side of the container. The lettering must be 3mm high for weights between 50g and 200g; 4mm for weights between 200g and 1 kg and 6mm high for greater weights. Only the weight declarations have to be a certain height. The criterion for the size of all the other statutory information is that it must be easy to understand, clearly legible, indelible, not interrupted by other written or pictorial matter and in a conspicuous place such as to be clearly visible.

The information given on the label must be true in every respect and in no way misleading.

Warning: Please note Food Information Regulations 2014. As from 13<sup>th</sup> December 2014, where a fondant contains more than one ingredient the list of ingredients must be stated. However, in the case of single ingredient foods where the name of the food is identical to the ingredient name (i.e.honey) this requirement does not apply. Please further note that as from 13<sup>th</sup> December 2018 the remaining labelling regime under the Food Labelling Regulations 1996 will be replaced by new regulations. Please bear this in mind when re-ordering/making your honey labels.

Other regulations and codes of practice apply to food and it is impractical to set them out in this note. For further information, contact local authority Environment Department.

Note: Andy Pedley, an Environmental Health Officer and beekeeper in 2009 wrote a series of articles in Bee Craft setting out the relevant legislation and proper procedures relating to honey processing. All beekeepers should obtain and keep copies of the articles for ready reference.

**9. Bee Diseases and Pest Control (England) Order 2006** made pursuant to the provisions of the Bees Act 1980 (now amended by Bee Diseases and Pests Control (England) (Amendment) Order 2010.

Clause 2 - Definition extends to American foul brood and European foul brood (each a notifiable disease) and small hive beetle and any species of the trophilaelaps mite (each a notifiable pest).

Clause 3 - An owner or person in charge of a hive who knows or suspects that any bees are infected with a notifiable disease or notifiable pest and other person who has or discovers a bee pest that may be injurious to bees must inform the Secretary of State.

Clause 3 - After notification has been given as above a Standstill is imposed on bees, equipment, vehicles and the like.

Clause 6 - enables service of notices to prevent various removals including bees and hives.

Clause 7 – in case of foul brood, requires destruction or treatment of bees, hives, equipment to the extent directed.

Clause 8 – in case of a pest, authorities have similar powers as regards destruction or treatment.

Briefly, the purpose of the Order in relation to these brood and pest problems is to enable the “authorities” to act and intervene. All the beekeeper needs to know is that if one of these problems arises, he or she should (indeed must) contact the local bee inspector at once and take matters from there.

WARNING. On 11 September 2014 the Italian National Reference Centre for beekeeping confirmed first detection of the presence of small hive beetle in Italy. See BBKA web-site for further developments.

The purpose of these notes is to give an overview of legal aspects of various situations which may confront the beekeeper. When we came to Stewkley in 1971 I unwittingly brought AFB with one of my hives – the local bee inspector stepped in and the problem was soon cleared. Hopefully, you will not be troubled but if you are, then perhaps these notes may offer some direction. However, you must not rely on these notes but instead take legal advice and rely on that advice alone, please.

Andrew Beer  
September 2014

A plea:

If you have any “bee” problem you would like to discuss with me please pick up the phone and dial 01525 240235 or turn on the computer and e-mail me on [ae@thebeers.org](mailto:ae@thebeers.org)

The more you tell me, the better these notes will be. Is there a “legal area” you think should also be covered in this paper? Just tell me!

Thanks in advance,  
Andrew Beer