

Explanatory Memorandum to the Fruit Juice and Fruit Nectars (Wales) (Amendment) Regulations 2011

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the **Fruit Juice and Fruit Nectars (Wales) (Amendment) Regulations 2011**. I am satisfied that the benefits outweigh any costs.

Gwenda Thomas AM

Deputy Minister for Social Services

8 March 2011

Explanatory Memorandum to the Fruit Juice and Fruit Nectars (Wales) (Amendment) Regulations 2011

1. Description

1. This Statutory Instrument implements, in Wales, Commission Directive 2009/106/EC relating to fruit juices and certain similar products intended for human consumption.

2. Matters of Special Interest to the Constitutional Affairs Committee

None

3. Legislative Background

The Welsh Ministers have power to make these Regulations under Sections 16(1) (a) and (e), 17(1), and 48(1) of the Food Safety Act 1990

This instrument is subject to the negative procedure.

4. Purpose and Intended Effect of the Legislation

The amending Regulations introduce changes to the existing rules on fruit juices which arise as a result of an amendment to Council Directive 2001/112/EC on Fruit Juices and Fruit Nectars. These changes were proposed and agreed by Member States in order to further align EU rules with the Codex Standard on Fruit Juices. This will help ensure a level playing field in international trade of this commodity and assures consumers additional protection in terms of fruit juice quality.

Commission Directive 2009/106/EC make two amendments to Council Directive 2001/112/EC. It makes a small linguistic change in relation to mixed juice products containing fruit juice and fruit juices from concentrate and to nectars obtained wholly or partly from one or more concentrated products, in order to alleviate translational difficulties across Member States of the EU. It also introduces a table laying down the minimum Brix levels for fruit juices from concentrate which will help ensure better consistency in product quality by applying the same minimum levels to the same products across the EU. (Brix levels provide a measure of quality by setting minimum soluble solids, i.e. sugar content, for fruit juices).

5. Consultation

The Food Standards Agency in Wales held a shortened public consultation from 22 December 2010 to 2 February 2011. No stakeholders in Wales responded to the consultation and there were no changes required to the SI as drafted.

6. Regulatory Impact Assessment

Options

- Option 1- Do nothing. Failure to update the Fruit Juices and Fruit Nectars (Wales) Regulations 2003 SI No. 3041 (W.286) to keep them in line with Council Directive 2001/112/EC as amended by Council Directive 2009/106/EC may lead to infraction procedures. This would also leave UK industry at a competitive disadvantage against other Member States as its current code of practice would have no legal basis.
- Option 2 - Introduce amending regulations. This is the chosen option. This will allow for consistency in labelling across the EU for mixed juices and juices made from concentrate. The introduction of minimum Brix levels will ensure that all manufacturers will have to comply with the levels previously governed by voluntary codes of practice.

While we note that these Regulations apply to Wales only, separate but parallel regulations will be implemented in England, Scotland and Northern Ireland; as such the impact on the UK as a whole has been assessed.

The markets affected by the amended regulations

Fruit juice manufacturing

According to the Inter-Departmental Business Register (IDBR) from the ONS there are 40 fruit and vegetable juice manufacturers in the UK; 35 of these are located in England and 5 in Wales. Based on the number of employees¹ 30 are defined as micro businesses, 5 as small and 5 as medium. There are also 235 soft drinks manufacturers in the UK, some of which may also produce fruit juices as part of their range.

The market for fruit juices is quite concentrated. Own label brands account for approximately 60% of sales, with a further 32% accruing to just 6 brands².

Retail value of all fruit juice sales was approximately £1.8bn in 2009, down by 4.5% on 2008 figures. In volume terms, consumption of fruit juice peaked in 2007, before year-on-year fall of 3.4% and 3.1% respectively in 2008 and

¹ Standard definitions of business size based on number of employees are as follows: Micro - less than 10; Small – less than 50; Medium – less than 250; Large – 250 or more.

² Mintel, *Fruit Juices and Fruit Juice Drinks*, November 2008.

2009³. The sector breakdown between chilled and ambient juices⁴, based on litres consumed, is given in the table below.

| Types of Juice | Percentage share |
|--------------------------------|------------------|
| Ambient juice | 45 |
| Chilled 'Not From Concentrate' | 25 |
| Chilled 'From concentrate' | 21 |
| Smoothies | 5 |
| Freshly squeezed | 4 |

Source: 2010 UK Soft Drinks Report, BSDA.

Given that the amended regulations affect mixed juices, blended from fruit juice and juice from concentrate, and juices from concentrate, approximately 66% - the ambient juice and chilled 'from concentrate' sectors - of the fruit juices market will be affected by this legislation.

Canned fruit manufacturing

Current estimates suggest that there are approximately 10 manufacturers of canned fruit in the UK⁵. These Regulations will also apply to canned fruit preserved in fruit juice. Retailer own brands account for approximately 67% of the canned fruit market, with brand leader Del Monte accounting for approximately 13%; however other brands such as Princes and SPC Nature's Finest have seen the biggest growth recently⁶.

Costs and Benefits of the options

Option 1 forgoes the benefit of having clear legislation consistent with other Member States, and the benefits of introducing Brix levels; namely ensuring product quality, supporting competitive international trade in fruit juice, detecting adulteration and testing of juices.

³ The 2010 UK Soft Drinks Report, BSDA: <http://www.britishsoftdrinks.com/PDF/2010%20soft%20drinks%20report.pdf>

⁴ Ambient juice does not need to be refrigerated before opening but can be stored at room temperature. Ambient juice tends to be from concentrate.

⁵ Based on market analysis we have identified the key manufacturers in canned/packaged fruit as: Del Monte, Princes, SPC Nature's Finest, John West and own-label manufacturers. This has been rounded up to 10. As we have no further information, and in order to be cautious, we assume that these are all in England.

⁶ Mintel, (2007), Frozen and Canned Fruit and Vegetables UK

Option 2 will result in benefits to both industry and consumers. To our knowledge, introducing Brix levels for fruit juice from concentrate juices will have negligible impact, as packers and suppliers of such juices already comply with minimum Brix levels through voluntary codes of practice. However, we are aware that canned fruit packers who pack fruit in a juice medium will be affected and may face some additional costs.

Option 2 is the preferred option, as this ensures industry and consumers benefit from legislated minimum standards at little cost to the fruit juice industry. An 18-month timescale since adoption of the Directive has allowed producers to prepare for label changes in the relatively small amount of products affected and to work towards exhausting current label stocks.

Option 1

Costs

There would be no change to the regulatory environment for UK industry and therefore there are no immediate costs. However, the absence of consistency of product descriptors and quality standards across fruit juice may cause lost business for England based fruit juice and canned fruit juice manufacturers beyond 2011.

Benefits

There is no change to the regulatory environment, and therefore no incremental benefits.

Option 2

Costs

Industry

Familiarisation Costs

Fruit juice and canned fruit manufacturers will need to read and become familiar with the new Regulations. However, as industry has been aware of the proposed changes for over 2 years and is already working to the Brix level through their own code of practice, it is likely that relatively little time will be required for this.

We estimated that it will take one manager approximately 15 minutes to read and become familiar with the Regulations. The average hourly pay rate for *production managers* is £19.38⁷. This is up-rated by 30% to account for

⁷ http://www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occ4.pdf

overheads, in line with standard cost model methodology⁸ to a wage rate of £25.19⁹. For a reading time of 15 minutes this represents an average cost per business of £6.30.

For the 40 fruit and vegetable juice producers in the UK this represents a total familiarisation cost of approximately £251, £32 of which will be incurred by manufacturers in Wales.

One-off costs associated with the linguistic change

Re-labelling

The linguistic change will require minor re-labelling for mixtures of juices containing both fruit juice and fruit juice from concentrate; however these products account for only a very small proportion of the UK market. Information from the industry trade association representing the large fruit juice manufacturers, the British Soft Drinks Association (BSDA), indicates that there are very few stock keeping units (SKUs) which will require to be changed. BSDA has indicated that only one of their member manufacturers will be affected by the linguistic change resulting in four of their products requiring relabel changes. We assume this manufacturer is England-based. All of BSDA's other member companies (21 in total), manufacturing fruit juices, have indicated no changes will be needed.

Based on the results of recently-commissioned Defra research¹⁰, we estimate that re-labelling costs of £1800 per SKU¹¹. For the four products known to be affected this represents a re-labelling cost of approximately £7200 in the UK. Additionally, this commissioned work also highlights lead-in times. The longer the implementation time allowed for a given mandated label change, the higher the probability of its alignment with business-as-usual (for instance, marketing driven) label changes, and, therefore, the greater the consequential cost saving to the manufacturer. **Therefore, we suggest that actual re-labelling costs would be below £7200**, but do not attempt to quantify the saving which would accrue to any lead-in time for the amended regulations.

One-off costs associated with the setting of minimum Brix levels for juices from concentrate

⁸ <http://www.berr.gov.uk/files/file44503.pdf>

⁹ Costs are estimated by multiplying wage rates uplifted by 30% to account for overheads in line with SCM methodology. This means that wage rates reported in the text are rounded to 2 decimal places and when grossed may result in rounding errors.

¹⁰ *Developing a framework for assessing the costs of labelling changes on the UK* (Campden BRI, forthcoming for Defra). The key finding from Campden BRI's research is that the costs of labelling changes vary according to a number of parameters, and these were found to be: product shelf life, complexity of label change, firm size and printing technique employed (which, in turn, is influenced by the type of packaging used). Campden BRI suggests that the average cost of implementing a minor labelling change, such as minor a linguistic change, is £1800.

¹¹ Stock Keeping Unit.

Fruit Juice Manufacturers

These Regulations are likely to affect only a small number of fruit juice products as major fruit juice manufacturers and packers in the UK already adhere to an industry code of practice which recommends minimum Brix levels for fruit juice from concentrate. The values set out in the proposed amending Regulations are identical to those in the COP and industry stakeholders have indicated that there is unlikely to be a reformulation or re-labelling cost associated with this part of the Regulations.

Canned Fruit Manufacturers

Canned fruit may be packed in several types of liquid mediums such as syrup, water or fruit juice. The new Brix requirements would mean that packers would need to ensure that those fruits packed in fruit juice would meet the minimum Brix levels. We are aware that for certain canned fruits packed in juice made from concentrate a Brix level that is lower than that laid down in the industry's current the new regulations is sometimes used. This is particularly an issue for apple and grape juices where the less strong flavour of such juices is used is required so as not to impinge on the flavour of the fruit.

Businesses whose products do not meet the minimum Brix levels set out in the Regulations will either have to reformulate in order to meet the new minimum Brix levels, or re-label their products using different descriptors.

Reformulation

The cost of reformulation varies widely on a product-by-product basis. Reformulation of fruit juice in order to meet minimum Brix levels is likely to impose a one-off cost to manufacturers associated with changes in production processes. There may also be an increase in on-going costs if a higher volume of concentrate is required for each unit of output produced. However, based upon industry stakeholder feedback received during initial discussions of the proposed amendments, we suggest that both one-off and increased recurring reformulation costs would be negligible in this case.

Re-labelling

It is estimated that approximately 80 canned fruit products¹² could be affected by these Regulations. Assuming average re-labelling costs, for a minor label change, of £1800 per SKU, if all canned fruit manufacturers were to re-label the affected products they would incur a re-labelling cost of £144,000. Given both the importance of lead-in times highlighted above, and the significant

¹² Based on products available from the three leading supermarkets according to mysupermarket.com on 02/07/10. Included are all canned fruit, fruit pots and fruit jars which contain fruit in fruit juice – excluding pineapple in its own juice and grapefruit in its own juice.

lead-in time that the industry has had in this case - industry has been aware of these Regulations since August 2009, and so may have taken the proposed changes into account when planning routine label changes – we suggest that actual re-labelling costs would be below £144,000 across the UK (There are no affected businesses in Wales).

The decision to re-label or reformulate canned fruit SKUs, in response to the Regulations, would vary on a product by product basis across manufacturers. We currently have no information on the number of products that would be re-labelled in response to the Regulations being imposed. **Therefore we assume that the true cost associated with the setting of minimum Brix levels for juices from concentrate for canned fruit manufacturers would be between zero (if all SKUs were reformulated in response) and £144,000 (if all SKUs re-labelled in response, and no alignment of mandated label changes with business-as-usual label changes).**

Local Authorities

Familiarisation Costs

Local authorities will also need to become familiar with the new Regulations. It is estimated that it would take one Trading Standards officer and one public analyst 1/2 hour to read and become familiar with the Regulations and disseminate them to key staff.

The average hourly pay rate for *inspectors of factories utilities and trading standards* is £15.58 and for public analysts is £19.38 per hour. This is up-rated by 30% to account for overheads, in accordance with the standard cost model. For a reading time of 30 minutes each this represents a cost per local authority of £23.11.

To estimate the total costs this is multiplied out by the number of local authorities in the UK, as per the table below. The estimated familiarisation cost to local authorities amounts to approximately £10,840, £508 of which will be incurred by Welsh local authorities.

| | <i>England</i> | <i>Scotland</i> | <i>Wales</i> | <i>N. Ireland</i> | <i>UK</i> |
|----------------------|----------------|-----------------|--------------|-------------------|------------------|
| Number of L.As | 389 | 32 | 22 | 26 | 469 |
| Familiarisation Cost | £ 8,991 | £ 740 | £ 508 | £ 601 | £ 10,840 |

Note: Totals may not sum due to rounding

Costs are estimated by multiplying wage rates uplifted by 30% to account for overheads in line with SCM methodology.

This means that wage rates reported in the text are rounded to 2 d.p and when grossed may result in rounding error.

Summary of one off costs incurred

Familiarisation costs

Industry

| | |
|---------------|------|
| Wales | £32 |
| Across the UK | £314 |

Local authorities

| | |
|---------------|---------|
| Wales | £508 |
| Across the UK | £10,840 |

Costs associated with the linguistic change

| | |
|------------|--------|
| Relabeling | £7,200 |
|------------|--------|

Costs associated with the setting of minimum Brix levels

| | |
|---------------|-------------|
| Reformulation | £negligible |
|---------------|-------------|

Relabeling

| | |
|------------|----------|
| In England | £144,000 |
|------------|----------|

Enforcement Costs

The Regulations will be enforced by Trading Standards officers in local authorities. Brix levels will require testing in order to demonstrate compliance. The test required uses standard techniques measuring soluble solids by refractometer already in everyday use by Public Analysts and so we anticipate that these Regulations will result in no additional enforcement costs.

Benefits

Consumer

The inclusion in law of defined Brix levels will ensure consistency in product quality by providing a clearly-defined, pan-European minimum quality standards for UK manufacturers to adhere to. The proposal will assist with detecting adulteration and testing of juices, as minimum Brix figures are now

laid down in law, with consequent benefits for the consumer. The figures for the Brix levels in the present proposal are in line with European trade practices and there should be minimal costs to the consumer in terms of consistency and quality of product. Consumers can now be assured that the reconstitution of concentrated fruit juice with water to make fruit juice from concentrate will be carried out to meet minimum Brix levels when previously no such values were laid down in law.

Industry

The proposal to include Brix values will provide regulatory certainty for manufacturers. There are currently no specified Brix levels set in UK law, and it is therefore important to allow free trade and ensure UK manufacturers are not disadvantaged in the international trade of affected fruit juices and canned fruit products. Brix levels are also laid down in a Codex Standard covering fruit juices meaning that in the absence of European or UK rules industry could be forced to accept these levels. The Regulations, in certain instances, set levels which are slightly different to the Codex Standard in order to take account of European fruit processing practices. This provides a more secure basis for UK manufacturers in any trade disputes.

Local authorities

Local authorities now have a further analytical bench mark to judge the authenticity and quality of a juice by ensuring a juice from concentrate meets a legal minimum Brix level.

Risks and assumptions

Risks

There is a strong risk of infraction proceedings being taken out by the Commission. Failure to transpose this amending Commission Directive into national legislation could result in this course of action.

Administrative Burden Costs

Food Labelling is an administrative burden but any incremental changes to the administrative burden of this proposal should be minimal.

Wider Impacts

It is not foreseen that there are any wider impacts, other than those outlined in this Impact Assessment.

Consultation

An informal consultation was carried out in August 2007 when the Commission first indicated that it intended to move forward with revision of the fruit juice Directive. The responses received were used to develop the UK's negotiating position. Responses to that consultation indicated overwhelming support by industry and LACORs for the introduction of Brix values. The linguistic change was proposed later, in response to translation problems in other languages. Stakeholders have been regularly informed and updated on progress with the Commission's plans. Interested Party letters have also sought stakeholders' views on the issues as they arose, and there have also been stakeholder meetings to talk through the issues under consideration.

The Food Standards Agency in Wales held a shortened public consultation from 22 December 2010 to 2 February 2011. No stakeholders in Wales responded to the consultation

Enforcement

The Regulations will be enforced by Trading Standards officers in local authorities. Brix levels will require testing in order to demonstrate compliance. The test required uses standard techniques measuring soluble solids by refractometer already in everyday use by Public Analysts.

Simplification

There are no simplification measures as part of these proposals.

Implementation

The changes will be implemented by an amendment to the current Fruit Juices and Fruit Nectars (Wales) 2003 Regulations. It is proposed to bring the Regulations into force as soon as is practical to allow products meeting the new labelling requirements to co-exist with the current requirements during a transitional period. Review of the new requirements of the proposed Regulations is possible during the second phase of further amendments of fruit juices and nectars currently in the early stages of discussion at European level.

Summary and preferred option

Option 2 is considered to be the preferred option.

Option 2 provides consumers with improved measures for the minimum quality for juices.

Option 2 provides regulatory certainty for manufacturers and ensures the UK industry has a level playing field and can compete on the same legal basis with its EU counterparts. It also will help avoid trade disputes as levels are similar to that in the Codex standard. The costs of imposing option 2 are

minimal for all stakeholders. Those most affected, the fruit juice manufacturers and processors, are in favour of the proposed amending Regulations.

7. Competition Assessment

The proposed legislation applies to all relevant UK food and drink manufacturers equally, allowing them to trade across EU Member States, if appropriate. It should not limit the number or range of suppliers either directly or indirectly or reduce the ability of, or incentives to, suppliers to compete. Therefore, it is not expected to significantly impact on competition.

8. Post Implementation Review

The Commission published a new proposal on 22 September 2010 which will introduce further amendments to the Fruit Juice Directive in order to further align with Codex and make necessary technical adaptations. It is envisaged that negotiations will take place over the next year with a view to adoption of the proposal by the end of 2011. This will be required to be implemented into UK law within 18 months and will provide further opportunity for a review of the current amending Regulations and whether there are any issues arising from the introduction of this legislation or indeed whether they are still necessary.