

## **Explanatory Memorandum to the Fruit Juices and Fruit Nectars (Wales) Regulations 2013**

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Member's Declaration**

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Fruit Juices and Fruit Nectars (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

**Mark Drakeford, AM**

Minister for Health and Social Services, one of the Welsh Ministers

25 October 2013

## **The Fruit Juices and Fruit Nectars (Wales) Regulations 2013**

### **1. Description**

The proposed Regulations revoke existing Fruit Juices and Fruit Nectars Regulations and replace them with a single Statutory Instrument. The Regulations also implement Council Directive 2012/12/EU into UK law.

### **2. Matter of Special Interest to the Constitutional and Legislative Affairs Committee**

None.

### **3. Legislative Background**

The powers enabling this instrument to be made are as follows:

- (a) Paragraph 1A of Schedule 2 to the European Communities Act 1972 (“the 1972 Act”), so far as relating to regulation and Schedule 1.
- (b) Section 4(1), (2), (3), (4) and (8) and section 10 of the Healthy Eating in Schools (Wales) Measure 2009 so far as relating to—
  - (i) regulation 21, to the extent it relates to paragraph 2 of Schedule 15, and
  - (ii) paragraph 2 of Schedule 15.
- (c) Sections 6(4), 16(1)(a) and (e), 17(1), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990 (“the 1990 Act”), so far as relating to the other provisions of these Regulations.

Functions under the 1972 Act and the 1990 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the Food Standards Act 1999, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006

There are no issues of regularity or propriety for the Welsh Government arising from the making of the 2013 Regulations.

### **4. Purpose and Intended Effect of the Legislation**

EU rules on fruit juice are important to ensure that consumers make informed choices based on effective labelling. The rules help protect the consumer by ensuring any products described as a “fruit juice” will meet minimum legal compositional and labelling requirements. Council Directive 2001/112/EC relating to fruit juices and similar products lays down rules governing the composition and labelling of these products and has been implemented into English law by the Fruit Juices and Fruit Nectars (Wales) Regulations 2003. The Regulations lay down product definitions and reserved names by which juices can be called. Conditions for juice manufacture are also controlled by

laying down permitted raw materials and treatments and limiting the amount of ingredients and additives. One of the most significant changes brought by the 2001 Directive was the distinction between fruit juice and fruit juice from concentrate. Fruit juice can be made in two distinct ways. Firstly, it can be obtained directly from the pressing of the fruit, also commonly known as 'not from concentrate' (NFC) or sometimes by the trade as direct fruit juice. The Directive allows only this type of juice to use the reserved description "X juice" (where X represents a type of fruit). To minimise costs, juice may also be extracted and concentrated in the country of origin and then transported to processors in various countries, where it is reconstituted by the addition of the same amount of water as originally removed. This second type of juice is described as 'from concentrate' and the reserved description "X juice from concentrate" needs to be used. The distinction between the two types was a contentious issue and incurred significant costs on UK industry in re-labelling in 2003. However in subsequent years the European Commission, industry and all Member States were keen to see the Directive updated to take account of technical progress since its adoption in 2001 and to also bring it in line, where possible, with existing international standards for fruit juices, particularly the revised Codex Standard for fruit juices and nectars adopted in 2005.

A first series of amendments were adopted in 2009 by Commission Directive 2009/106/EC. These were implemented by the Fruit Juices and Fruit Nectars (Wales) (Amendment) Regulations 2011. This introduced new minimum Brix levels for fruit juices from concentrate largely in line with Codex. Brix levels are used in the food industry for measuring the approximate amounts of sugar in fruit juice. At that time the European Commission would have liked to further align the Directive with the Codex Standard but these additional amendments could only be made through the Ordinary Legislative Procedure, formerly co-decision. Agreement between the Council and European Parliament on a 2nd more detailed set of amendments was reached at the end of 2011. This IA is primarily concerned with the impacts of implementation of this 2nd set of revisions.

The revisions agreed include permitting aromas, which can be lost during processing, to be optionally added back as necessary, and preventing the addition of mandarin juice to orange juice without indicating this on the labelling. It also removes sugar from the list of authorised ingredients that can be added to fruit juice, includes tomatoes in the list of fruits that can be used for fruit juice production and permits freezing as an authorised way of storing fruit.

## **5. Consultation**

A 6-week consultation from 25th July to 5th September 2013 was conducted seeking the views of stakeholders on the new SI and the costs and benefits estimated in the Consultation Stage IA. There were no responses to the consultation in Wales. A total of 4 responses were received to the consultation in England, two from local authority trading standards bodies and one representing the fruit juice industry British soft drinks association (BSDA) and the other the retailers British Retail Consortium (BRC). All four respondents offered general support to the introduction of the new Regulations. Some

reservations were expressed from BSDA as regards the magnitude of some of the estimates for savings included in the IA, and as a result some downward revisions were made to those estimates. BRC questioned the move from criminal to civil sanctions as they felt the current enforcement system worked well

## **6. Regulatory Impact Assessment.**

### **Costs and Benefits of the Options**

This section sets out the familiarisation costs, reformulation and/or one-off labelling costs and benefits, and any recurring costs and benefits.

Industry views were gathered and represented through the BSDA which represents the vast majority of the fruit juice manufacturers in the UK. They have indicated that the revised Directive will not impact greatly on the sector. Overall, relatively small impacts should be associated with the proposed changes and that this new legislation would generally be cost neutral. The costs that do arise will principally be one off costs associated with meeting any re-labelling requirements and initial familiarisation with the new legislation.

### **Costs**

#### **New measures in 2012/12/EU**

#### **Familiarisation costs**

##### *Industry*

Fruit juice and soft drinks manufacturers that produce fruit juice will need to read and become familiar with the requirements of the new Regulations. We estimate that it will take one production manager approximately 2 hours to read and become familiar with revised Regulations including Schedules. The average hourly rate is up rated by 30% to take account of overheads in line with standard cost model methodology, resulting in a median hourly wage rate of £26.

There were no fruit juice manufacturers although 15 soft drinks manufacturers located in Wales in 2012. If we make the assumption that these numbers would be representative for the life span of the policy, this means a total one-off familiarisation cost to industry of £783 ( $15 \times 2 \times 26.1$ ), at an equivalent annual cost of £91

##### *Public sector*

##### *One-Off Familiarisation Costs*

Local authorities will also need to become familiar with the updated Regulations. It is estimated that it would take one Trading Standards officer (TSO), 2 hours to read and become familiar with the Regulations and disseminate them to key staff. The median hourly wage rate for a TSO is £21.01, which yields a total one-off cost to the public sector of £924 (22\*2\*21.01) (there are 22 LAs in Wales), at an equivalent annual cost of £107.

**Table 1:** Familiarisation costs for trading standards officers in Wales.

|       | Number of Local Authorities | Median average hourly wage (uprated by 30%) | Total Familiarisation Cost | Equivalent Annual Cost |
|-------|-----------------------------|---|----------------------------|------------------------|
| Wales | 22                          | £21.01                                      | £924                       | £107                   |

### *Other Costs*

The most significant changes are highlighted below along with a narrative assessment of the impacts of their costs and benefits. Where economic information is available for the changes, monetised costs and benefits have been included. These will be taken into account along with the overall costs and benefits outlined under the familiarisation costs and overall benefits of the Regulations.

## **1) Processes**

### **Revision 1.1 (a): Move from mandatory to optional restoration of aromas in line with Codex.**

#### *Background*

The current EU Directive requires mandatory restoration of aromas to all fruit juices and nectars. Restoration is necessary in fruit juice production because volatile flavouring components are lost during processing. In many cases these are collected during the production process and then added back to the juice to restore it to as far as possible its original state. However, it is recognised that there are technical difficulties in fully restoring all aromas to certain juices. For juices such as pineapple the aromas are of too poor quality to add back and would affect product quality. Grape juice from concentrate, which is widely used in fruit juice blends and juice drinks has no recovered aroma available. For many of the tropical juices such as mango, guava, passion fruit, papaya etc the aromas are not recovered or not available in sufficient quantities and fruits such as peach, pomegranate and cranberry also have little or no available aromas.

The reality of fruit juice processing was therefore to a certain extent at odds with the legal requirements of the Directive and the UK's desire to see a change to "optional" restoration was one of our main drivers. The move to optional restoration of aromas is also of significant trade benefit to the UK in helping resolve trade issues relating to UK orange and apple juices. For reasons of competitive product pricing and consumer

demand, some UK manufacturers did not add back certain high value aromas (orange and apple) for economy and value priced ranges resulting in some German testing laboratories considering the UK to be in breach of the Directive. The UK market is unique in Europe in this aspect, and value or economy products are a significant proportion of the market, representing approx 30% - 40% of the market. The Directive requires juices to be representative of an average juice but a lack of a definition for an average juice and the absence of accepted levels of aromas make the mandatory restoration provisions in the directive difficult to adhere to. The move from mandatory to optional restoration therefore brings clarity to the issue. Aroma restoration will still take place but it will allow industry to restore appropriately based on consumer preferences and the pricing and marketing strategy appropriate to the product in the market place.

## **Costs of the measure**

### *Industry*

Increased flexibility will remove the costs attributable to currently mandatory restoration of aromas. This measure will save costs rather than incur any new cost burden.

### *Consumers*

It might be argued that such a relaxation in the rules could lead to a dilution in the quality but realistically this is not likely to be the case as manufacturers will want to sell quality juices that meet consumers differing tastes. There is also the possibility that some consumers may be indifferent to the inclusion of high value aromas or aromas at all and prefer products where some aromas are not restored. The addition of aromas will vary according to pricing and marketing strategies but all juices will still need to meet the minimum composition and labelling standards required by the Directive. Optional restoration allows for further product diversification and ensures that fruit juices remain affordable. Competitive pricing and diversification is essential to UK industry and are likely to be beneficial for the consumer. Fruit juice also counts as one of the five a day and enabling low income consumers continued access to a budget and economy-range juice is important.

## **Benefits of the measure**

### *Industry*

Manufacturers of value and economy range products who compete on small margins may choose not to restore all aromas, particularly those high end top notes. Industry has estimated that adding the additional top notes to fully restore aromas costs them around an extra 0.5p- 2p per litre. Industry has also informed us that the additional cost of restoring all the aromas is more likely to be at the lower end (0.5p/l) than the higher of the range (2p/l). Aroma costs are dependent on the nature of the aroma required for a

product but also on the availability, seasonality and crop yields. Using figures taken from the 2012 AIJN report and based on the assumption that all value/economy juices are ambient and private label from-concentrate juice, we can estimate a volume of 346 million litres or 30% market share by volume for economy juices. This could equate to cost savings for UK industry of between £1.73 million (at 0.5p per litre) and £6.92 (at 2p per litre) million per year if they chose not to fully restore all 346 million litres of value/economy juices. This assumes all juices in the category currently restore to comply with the current Regulations.

It is unlikely that all of the ambient private (mostly value/economy) range will continue restore aroma. For the purpose of this IA we assume around 80% of ambient and private label from concentrate juice will opt not to restore aromas. Consequently, the estimated cost savings are projected to be £1.38 million per annum and around 0.4% of the total value of the ambient and private label from concentrate juice sector. The BSDA response to the consultation suggested that our estimated benefits of not restoring aromas were not practically realisable as industry will maintain the status quo and carry on with current practices. However, we know that prior to discussions on revising the Directive industry did not always fully restore aromas to many value end orange and apple juices. Following concerns by Germany, UK industry reverted to fully restoring aromas to avoid any issues of compliance. One of the main reasons the UK sought amendment to the directive was to provide for optional restoration of aromas on the grounds that many aromas were unavailable but also to provide legal clarity around UK industry practices for those value end where all aromas are not restored. We believe that it is therefore valid to assume that most of those products at the value end of the market that earn profits from very small margins may revert to not restoring aromas and save costs. We have revised our estimates to reflect the lower end estimate of a potential 0.5p per litre saving previously given to us by industry. We do not accept that industry will not change some of their practices now that they have the legal freedom to do so.

There are a number of non-monetised benefits associated with this regulation:

- allows industry to respond to consumer demand for choice and to drive competition in the market;
- solves the problem of requiring manufacturers to introduce poor quality aromas;
- will resolve the difficulty of non-availability of tropical aromas and allows them to be added back as is practical and appropriate to the product. Juices which cannot be restored will now be compliant;
- will alleviate the trade difficulties recently encountered (particularly with Germany) because of questions around aromas compliance issues;
- allow more choice - aromas are used to differentiate between products and give products an identity which consumers then choose depending on their taste and price profiles;
- will protect economy range juices where for reasons of competitive pricing and consumer demand, high value aromas are costly to add back. Economy ranges

represent an important part of the UK market but are generally unique to the UK market place.

Overall, this change will benefit the industry through increased flexibility in how juices are manufactured with regards to aroma and flavour restoration. This change makes it easier for manufacturers to offer a broader range of products at a wider price range. Additionally, the legal clarity associated with optional restoration is crucial but difficult to attribute benefits (the avoided costs of trade disputes), but if a case was taken by another Member State (MS), the costs involved could be significant.

### *Consumers*

The main benefits for consumers relate to improved choice. It is also assumed that any benefits accrued to businesses are passed on to consumers. Permitting the optional restoration of aromas means a more diverse range of products will be available as aromas help to differentiate products. Fruit aromas can be collected and refined in order to produce different aroma profiles so that brands can be marketed with different taste and aroma profiles. If legislation seeks to set inflexible aroma requirements then products could become uniform and reduce choice on the market place. In a competitive market, changes to ongoing business costs – such as a reduction in the costs of adding aromas – are passed on to consumers. Therefore the £1.38m savings to industry identified above may in fact be passed through to consumers in the form of lower prices.

Consumers will also benefit from the retention and viability of value or economy products which are a significant proportion of the UK market at approx 30% - 40%.

Consumers remain protected as juices still meet minimum standards.

#### **1.1 (b) Permitting a new juice category - “water extracted fruit juice”.**

A new reserved description has been added to allow juice products obtained through a water extraction process of a dried fruit to be able to be legally marketed as a juice. The current Directive contained no provision for a juice obtained by the process of water extraction of a dried fruit. This caused problems for juices sold in the UK as “prune juice” since under the terms of the Directive the reserved description “x juice” relies on the use of fruit that is “fresh, or preserved by chilling” for the juicing process. Fruit preserved by dehydration is not covered, probably due to the fact that prune juice is a relatively new product that was not produced in the EU when the Directive was being negotiated. However products must use the agreed reserved description “water extracted X juice” rather than just X juice. Water extracted juices are not a particularly large market in the UK and the Prune Juice market is estimated around 2.8million litres according to the BSDA in their response to the consultation.

### **Costs of the measure**



### *Industry*

There will be some relabelling associated with this inclusion as the name used will need to reflect the new reserved description “water extracted X juice” rather than simply a preferred “X juice”.

The average relabelling cost for 1 SKU is approximately £1,800. Information supplied by industry indicates that there will be very few individual product lines affected, approximately 2-3 branded products (Sunraisya, Sunsweet) and 2-3 own brand (Asda, Tesco, etc) so the scale for change is small, however for those lines that are affected the redesign and labelling changes will be small. For example we expect that approximate relabelling costs may be in the region of: 6 SKU x £1800 = £10,800.

We do not have data that is specific to Wales, but we can calculate an indicative estimate by using the proportion of soft drinks producers in Wales (7%, see paragraph 28). 7% of the total cost of £10,800 is £756 (EAC of £88).

### *Consumers*

There will be negligible costs to consumers and the costs are unlikely to be passed on by manufacturers (as they are transitional rather than ongoing costs).

## **Benefits of the measure**

### *Industry*

At present, selling a product labelled as prune juice is technically illegal as these products are not authorised to be called juices. Providing for their inclusion will ensure a level playing field for these juices and allow industry to market them as juices a term which consumers probably already associate with these products. Prune juice is also associated with certain health benefits and becoming increasingly popular. Permitting its description as a juice may help increase its market and assist with future product diversification for other water extracted dried fruit. Alignment with Codex should also help industry avoid trade disputes or import difficulties in the naming of such products.

### *Consumers*

Consumers will benefit from improved clarity around the naming of prune juice products and how they are obtained. Initially there may be a small amount of confusion around whether the product has changed given the name change from ‘Prune juice’ to ‘water extracted Prune juice’, however, this can be managed by education and some products already contain an explanation of how the prune juice is obtained so the change of product name may not be a significant factor. Given the more secure legal footing for industry the emergence of new types of water extracted juices may give consumers more choice.

### **1.1 (c) To permit the freezing of fruit as an approved method of preservation.**

This amendment will allow the use of frozen fruit in fruit juice production. This is helpful to industry and recognises the technological need to allow the freezing of some fruits for practical reasons, particularly where processing facilities don't exist near the fruit farms in some developing countries. It will also help with juice availability of certain seasonal fruits and avoid a deterioration of fruit quality which might prevent its use in juice production. Overall however it is not expected that this will result in significant changes to current practices as most large scale juice production is well established and processing factories are located close to where the fruit is picked.

#### **Costs of the measure**

##### *Industry*

There is no cost to the industry associated with this measure as this simply gives industry the freedom to freeze certain types of fruit if necessary before processing which is currently not permitted.

##### *Consumers*

There will be no cost implications for consumers as this is about introducing more flexibility in the manufacturing and processing of raw materials.

#### **Benefits of the measure**

##### *Industry*

It has not been possible to monetise the benefits in relation to the freezing of fruits but it is likely to be very small as this measure is just providing flexibility for industry particularly for fruits processed in small volumes or where there are seasonality issues. Fruit processors may need to adapt some of their equipment which is currently geared for chilling to freezing. Overall it is expected that the majority of juice processing will remain unchanged with processing occurring very quickly after harvesting and freezing will be used only where needed.

However, there are some (non-monetised) benefits. It will allow industry to use frozen fruit in times of shortage and hence smooth the price of fruit juice made from soft fruits throughout the year. At the height of harvest, fruit that can't be processed can be frozen to be processed at the end of the season when the processing factory can catch up. This is particularly important for soft fruits such as raspberries and strawberries.

It will also assist in the processing of new and upcoming exotic fruits going for juice production such as noni fruit where the processing facilities don't exist in the country where the fruit is grown. Freezing of such fruit allows the fruit to be preserved and then

transported to processing factories for juicing. This also means that there will be benefits for the UK producers where these fruits are sourced from the UK.

### *Consumers*

This will allow consumers to enjoy a wider range of products throughout the year and allow juices from more novel fruits to be produced more easily.

### **1.2. (a)- (d) Prohibition of sugar addition to fruit juices, prevention of ‘no added sugar’ claims and voluntary labelling initiative.**

- (a) Sugar will no longer be permitted to be added to fruit juice
- (b) ‘No added sugar’ claims will no longer be valid for use on fruit juices
- (c) Optional use of clarifying text to educate consumers for a time limited period that in future fruit juice will no longer contain added sugar

This proposal is in line with UK policy on reducing fat, sugar and salt intakes. However, it is not generally common practice for UK industry to add sugar to fruit juice and indications from the industry are that only a few grapefruit products might be affected. At present sugar is permitted to be added to juices and nectars but for juice its addition needs to be highlighted both in the product name and by indication of the amount added. Thus to a certain extent there is already a disincentive for industry to add sugar to juices. The prohibition of sugar addition to juices however has a consequence for industry in that they will no longer be able to make “no added sugar” claims on any juices. This is because it would contravene food labelling rules by suggesting that the juice possesses special characteristics (i.e. no added sugar) when in fact no juices will contain added sugars. Industry has expressed a concern that consumers may be confused by the changes and wonder about the sudden disappearance of these claims overnight. As a result the directive provides for manufacturers to factually alert consumers by including a specific statement regarding the change to the sugar provisions to the effect that “From 28 April 2015 no fruit juices contain added sugars”. Its use is entirely voluntary but if used it must appear in the same field of vision as the name of the product and can only be used until 28 October 2016. It is also possible that some retailers may look to educate consumers that in future fruit juice will no longer contain added sugar. However, it is unlikely that this is something that manufacturers will do as it incurs a cost.

UK industry has been supportive of prohibiting adding sugar to juice but would have preferred to be able to continue to make use of “no added sugar” claim on the label. However it accepts this is not possible within the context of food labelling rules but there may be some costs associated with this measure.

### **Costs of the measure**

## *Industry*

### **1.2 (a) Prohibiting the addition of sugar to fruit juice**

There will be one off reformulation or relabelling costs for fruit juice manufacturers who currently add sugar to fruit juices, as the addition of sugar to fruit juice will now be prohibited. From current knowledge of the sector and using information provided by the BSDA in relation to their members we understand there are around 30 grapefruit products and 3 may currently use sugar. These 3 will need to be reformulated or relabelled. To be on the safe side and to account for non trade association affiliated industry we estimate that up to a maximum of 10 stock keeping units (SKU) may be affected by this change. Average relabelling costs have been calculated as part of the Defra- commissioned study into assessing the costs of labelling changes on the UK. The results from this work indicate that the average cost for re-labelling per SKU is approximately £1800. The approximate relabelling costs for 10 SKUs would therefore be  $10 \times £1800 = £18,000$ . The actual cost may in fact be less than £18,000 as some manufacturers might choose to reformulate rather than re-label. We assume that they would only do this if the net cost of reformulation is less than that of re-labelling. Therefore, £18,000 can be seen as an upper bound on the possible cost.

We do not have data that is specific to Wales, but we can calculate an indicative estimate by using the proportion of soft drinks producers in Wales (7% of the total cost of £18k is £1,200 (EAC of £146).

### **1.2(b) Removing the need to use a ‘no added sugar’ claim for fruit juices**

The use of “no added sugar” claims on fruit juices is generally not a widespread practice but some main stream not from concentrate manufacturers do currently use them, particularly on juices marketed towards children. We are aware of one major manufacturer, who would be affected by the requirement to re label as a result of removing the no added sugar claim. Information from industry suggests that one-off costs associated with the removal of ‘no added sugar’ claim will be around £850,000. Industry will have until 28 April 2015 to fully comply with the rules. The industry had information on the impending implementation of the new regulation and the impending 18 months implementation period since the regulation was adopted in April 2012. The industry will need to comply with the new rules from 28 October 2013 and will have until 28 April 2015 to exhaust stocks manufactured and labelled before 28 October 2013.

We do not have data that is specific to Wales, but we can calculate an indicative estimate by using the proportion of soft drinks producers in Wales 7% of the total cost of £850k is £59.5k (EAC of £6,912).

### **1.2(c) Voluntary clarifying statement on added sugar in juices**

The voluntary statement will alleviate some of the concerns expressed by industry relating to possible consumer confusion at the sudden loss of no added sugar descriptors and that as a result they may choose no added sugar fruit juice drinks as an alternative, a completely different category of drink which is outside the scope of the regulations. The voluntary statement will allow manufacturers to choose whether they feel they need to explain to consumers about new requirements. It is difficult to anticipate uptake but it seems more likely that because the required labelling changes for adding the clarifying statement will be voluntarily allowed for a limited time period. Industry (manufacturers and retailers) may feel it is not worth taking up. However they may choose to use it as part of any new marketing or educational campaigns they embark on.

#### *Consumers*

There is no perceived cost to the consumer as the labelling changes are likely to be absorbed by the manufacturer. Consumers will be able to have confidence that sugar is not added to any fruit juice and the only sugar present should be that naturally present in the fruit.

#### **Benefits of the measures**

There may be non-monetised benefits for industry and consumers.

#### *Industry*

The industry will benefit from a level playing field across the EU whereby no fruit juices will be able to contain added sugar. As most juices in the UK do not contain added sugar, this will have minimal affect on industry. Industry may choose to portray the changes as a positive message in their marketing of juices to consumers. The main benefits relate to the optional use of a voluntary clarifying statement regarding the lack of added sugar in juices and it is up to industry to decide whether they wish to take advantage of this.

#### *Consumers*

Only a small number of products currently use no-added sugar claims on juices so there will be minimal affects. The demise of “no added sugar” claims on juices may help alleviate any possible consumer confusion about the presence of added sugars in juice and will marginally reduce the sugar intake of consumers who would have consumed fruit juice with added sugar. However, it could also confuse consumers looking for such claims and drive them to buying fruit juice drinks which will still be using these claims. Any benefit will depend on whether industry chooses to use the statement on those

small numbers of products currently using the claim. Consumers can be assured though that no fruit juices contain added sugar.

### **1.3 (d) Prevention of “no added sugar” claims on nectars containing added sweeteners**

Although the addition of sugar (and honey) to fruit juice is now prohibited, sugar, honey and sweeteners are still permitted to be added to fruit nectars. The new rules, however, additionally prevent the use of “no added sugar” claims on nectars containing sweeteners. This goes against the UKs interpretation on the use of “no added sugar” claims in products containing added sweeteners. While agreement was accepted to make a special case for nectars, a statement at Council was secured which provided assurance that this was an isolated decision pertaining to fruit nectars which should not set a precedent or prejudice any future discussions on the use of “no added sugar” claims in other products containing added sweeteners.

#### **Costs of the measure**

##### *Industry*

The nectar category in the UK is quoted as 189 million litres according the recent BSDA 2012 Soft Drinks Report<sup>2</sup>. However we understand that this is more likely to represent the fruit juice drink sector in the UK and not the traditional Nectar definition in the directive. Nectars are composed of a minimum juice content mixed with water and/or sugars honey or sweeteners and are traditionally not very common in the UK. Similar types of products in the UK market would be sold as ‘fruit juice drinks’ and are composed of varying proportions of fruit juice , water and other ingredients such as additives taking them outside the scope of the fruit juice directive. As nectars meeting the directive definition are not commonly produced in the UK this change is more likely to affect mainstream Europe, where nectars are much more common.

##### *Consumers*

There will be minimal effect of the measure on consumers as the UK nectar market is small.

#### **Benefits of the measure**

##### *Industry*

Since products sold as nectars are traditionally not a significant part of the UK market, there is likely to be negligible impact.

##### *Consumers*

There will be virtually no benefits of the measure to the consumers as the UK nectar market is small. Consumers may notice a change in any imported products labelled as nectar where those with added sweeteners will not be allowed to use the term 'no added sugar'.

### **1.2(e) Reversion to the Codex Brix values for blackcurrant, guava, mango and passion fruit juices from concentrate.**

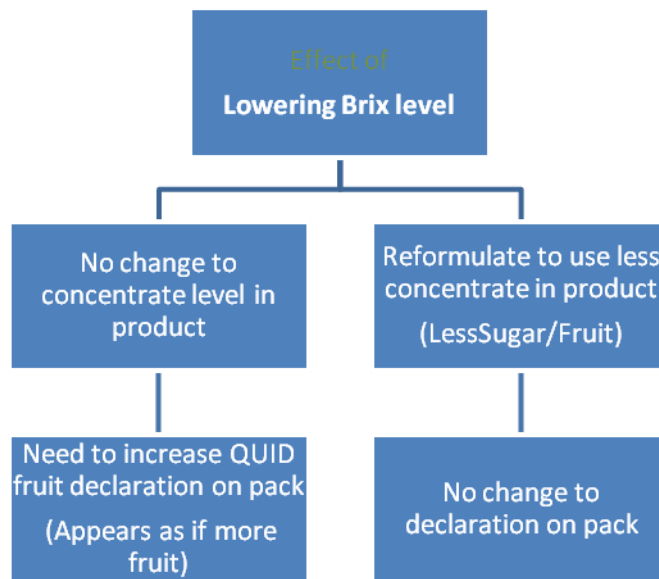
The most recent amendment to the Fruit Juice Directive in 2009 introduced minimum Brix levels for a range of fruit juices from concentrate. For four of the fruits, blackcurrant, guava, mango and passion fruit, the minimum Brix levels set by the EU were higher than those in the Codex standard as the figures reflected European industry practices. Setting higher Brix levels was in response to European manufacturers working to higher levels which are representative of EU manufacturing practices. This was a protective measure for EU suppliers to keep out lower Brix juices (and lower quality) but the European Parliament was particularly concerned by these differences and felt there were possible trade advantages for non-EU products working to the lower minimum Brix levels in the Codex standard. As a result, the Directive has been amended so that the Brix levels for blackcurrant, guava, mango and passion fruit are aligned with the Codex Standard.

Industry may choose to reformulate slightly. Working with the lower Brix level will allow them to add slightly less fruit concentrate but still meet the existing nutritional and Quantitative Ingredient Declaration (QUID) declarations on pack. Alternatively, they can adjust their labels to increase the QUID percentage of fruit as they will base their calculations on the lower minimum Brix. Figure 2 summarises the options available to the manufacturers in order to comply with the new regulations.

Initial responses from industry suggested that reformulation was more likely be their route of choice as this avoids any label amendment and the industry could take the opportunity for a small cost saving. However it is difficult to say for sure which route will be chosen and will depend on decisions within individual companies. Following consultation, industry suggested an equal split between reformulation and relabeling. As we only have information on estimates for relabeling costs for the purposes of this IA we have assumed that industry will relabel. This is conservative, in that if the industry finds it cheaper to reformulate than they will do so.

**Brix levels equate to the soluble solids level (sugar) which directly relate to the Fruit QUID declaration on pack & also Nutritional Information.**

Figure 2. Options for the manufacturers to comply with lower Brix



### Costs of the measure

#### *Industry*

It is difficult to say for certain whether industry will reformulate or relabel as this is a commercial decision which is likely to be dependent of a number of factors. If industry choose to relabel they will need to change their labels to increase the Quantitative Ingredient Declaration (QUID) percentage of fruit if they base their calculation on the new lower minimum. This will incur labelling costs but as these fruits do not constitute a significant amount of the market, or are used in combination with other fruits, in practice only a small amount of products would need to be changed. The European Association and UK trade Associations currently work to the higher Brix levels for these fruits but have plans to review their code of practice in the light of the changes to European and domestic regulations. With industry having until 28 April 2015 to fully comply with the rules and the small number of affected parties, the likely costs are deemed to be very small. As part of the consultation process industry were asked to provide an estimate of the number of products affected and any costs associated with a re-labelling route. In their response the BSDA indicated that responses from their members suggested that there is likely to be a fairly equal split between relabelling and reformulation. They pointed out that both of these routes involve some cost, although with reformulation some savings are made in the quantity of juice used but the reformulation requires a costly approval process initially (see para 93). As new products are developed the Codex Brix values will be used from the outset. The label change would typically only affect the ingredient list but would be dependent on the fruits used



in the product. It is estimated that this could affect around 30SKUs in the whole market and assuming all the manufacturers choose to re-label rather than reformulate the total cost to the industry would be £54, 000.

### *Consumers*

There will be no additional costs to consumers and they should not be noticeably affected by this measure. Although industry may slightly reduce the fruit ingredient, it is unlikely that consumers will notice any taste or quality differences. Alternatively, industry may choose not to change their product formulation and this will result in a higher fruit QUID declaration.

### **Benefits of the measure**

#### *Industry*

Industry would have preferred to keep the minima for the four fruits at existing levels as this represents their current practices. However, the changes mean that by working to a lower minimum Brix level for these fruits industry could reformulate products slightly and reduce the amount of concentrate ingredient to enable the juice level to tie in with the existing level they declare on pack. A reduction on the amount of fruit ingredient may mean industry could enjoy some small costs savings for those fruits. However, this is likely to be fairly small and might be offset by initial approval costs relating to nutrition declarations. Overall we do not have sufficient information to monetise the overall savings of reformulation, but have instead assumed all industry will re-label.

## **1.3 Labelling**

### **1.3 (a) Requirement for the product name to reflect the fruits represented in the ingredients list.**

The new rules tighten existing requirements regarding the naming of mixed juices. The product name must now correspond with their order in the ingredients list. So if a product is composed of grape (90%), apple (7%) and mango (3%) then the product name must be Grape, Apple and Mango Juice rather than any other combination. The previous requirement was rather more loosely worded and required supplementation of the product name with the juices used.

### **Costs of the measure**

#### *Industry*

This requirement is likely to affect mainstream Europe more than the UK. In the UK it has been mostly industry practice to apply this labelling principle so it should not cause significant change to the industry. There may be some smaller niche products which may need to amend their labels. Alternative naming options such as indicating the number of fruits or using terms such as mixed fruit juice or several fruit juice still remain.

### *Consumers*

There will be no costs of the measure on consumers.

### **Benefits of the measure**

#### *Industry*

Industry will benefit from a level playing field and universal application of the naming of these mixed juices across Europe and in the UK. Any products currently trying to gain a marketing advantage by highlighting small amounts of desirable, exotic or high value fruit first in the name will no longer be able to do this.

#### *Consumers*

Informed choices benefit- Consumers will benefit from clearer labelling information to help them make more informed choices. They will be able to identify more clearly from the product name the nature of the product and the most dominant juice (in volume terms). Consumer's will benefit as products composing of high value fruits or used in small amounts cannot be highlighted at the expense of the lower value of those juices making up the greatest proportion of the products in order to make the product more appealing to purchase. However possible consumer confusion is an issue as some juices used in small amounts have very strong flavours likely to impart the characterising flavour to the product. If this juice is listed later in the product name consumers may not realise the true flavour.

### **1.3 (b) Inclusion of tomatoes in the list of fruits used in fruit juice production**

Tomato has been added to the list of fruits covered by the directive meaning that tomato juices will be subject to the same specific rules as other fruit juices. This was requested by the industry and a measure they support.

### **Costs of the measure**

#### *Industry*

Tomato juice accounts for around 9.7 million litres of the UK juice market. The inclusion of tomato juice within the Directive will generally be cost neutral for juice suppliers as industry already adheres to an industry code of practice which is very similar to the requirements of the directive. Most tomato juice products are already labelled in accordance with the directive for consistency on the shelf with other juice products in any given branded range. Industry estimates that around 90% of products are already compliant. The remaining 10% may need to alter their labels or reformulate which accounts for around 3 products costing  $3 \times \text{£}1800 = \text{£}5,400$  (or  $\text{£}630$  EAC)

We do not have data that is specific to Wales, but we can calculate an indicative estimate by using the proportion of soft drinks producers in Wales. 7% of the total cost of £5.4k is £378 (EAC of £44).

Products labelled as containing tomato juice as an ingredient or packed using tomato juice may need to check that the juice complies and there may be a small number of products that will need to be reformulated or relabelled. This cost has not been taken into account but it is more likely to affect the EU suppliers of tomato based products.

*Consumers*

### **Benefits of the measure**

*Industry*

The rules provide manufacturers with a level playing field for tomato juice across the EU. However, in practical terms industry has already developed a Code of Practice for tomato juice which is broadly in line with the new rules. Practically the new rules should therefore not prove to be any more onerous including tomato juice as a fruit provides industry with a more secure legal footing for trading in this juice and ensures it is made to a standard minimum quality.

*Consumers*

Benefits for consumers focus mostly on securing the authenticity of tomato juice as it will now be covered by a legal minimum standard. This will assure consumers that they are getting a consistent product which meets minimum composition and labelling requirements.

There will be some small consumer benefits from consistency through the creation of a legal minimum standard. However in practice since, industry already adhere to a code of practice which is similar to the requirements of the Directive consumers are unlikely to notice any differences.

### **1.3 (c) To amend the definition of fruit juice to clarify that the use of fruit purees is acceptable in juice production.**

This is a small but significant change and clarifies that mixed juices prepared using fruits which are only available as purees can be called juices. Some fruits such as mango and banana exist only in puree form but are often used in blended juices. The distinction between some juices and purees is unclear in the existing directive and this change clarifies the situation providing certainty regarding their usage in juice production. For example, this will allow a product to be called “Orange and mango juice” rather than orange juice and mango puree.

### **Costs of the measure**

### *Industry*

There will be no significant costs to industry. Purees such as banana or mango are already used in the production of many fruit juice blends such as orange and mango, or tropical blends and the change will allow composite products of juice and puree to be described simply as a juice. Industry has welcomed this move which provides them with further clarity on the labelling of such juices. Smoothies have traditionally been considered to be outside the scope of the directive however the implications for smoothies comprising of only juices and purees is still being considered.

### *Consumers*

There will be no costs to consumers of this measure.

## **Benefits of the measure**

### *Industry*

This measure clears up any ambiguity for industry about whether juices containing fruit puree can be called a juice. The additional legal clarity will be helpful to industry who has previously questioned the naming of such products. This means that any products composed of both juice and puree can take advantage of this clarification and call mixed juice and puree products by the term juice. This will be a voluntary marketing decision for industry carried out in the course of any redesign or other labelling changes.

### *Consumers*

The benefits for consumers relate to improved label clarity. Using the 'juice' descriptor to describe a product consisting of juice and puree makes labelling simpler for the consumer. It is unlikely that consumers knowingly differentiate between fruits which are produced as a juice or puree and therefore unlikely they make any decisions based on the use of a puree as opposed to a juice such products. Purchasing decisions are more likely to be based on flavour and taste so we don't believe this change is likely to affect their purchasing decisions.

## **1.4 Other measures**

The new Directive introduces other small changes. However these primarily relate to improving clarity and reducing ambiguity and are likely to be cost neutral.

- Water used for restoration needs to meet Council Directive 98/83/EC the Drinking Water Directive
- Definition of flavours for purposes of fruit juice

- Addition of certain particular designations for fruit juices in certain countries

### **1.5 Enforcement regime – Use of Improvement Notices**

A move to a new more proportionate approach to enforcement is being proposed in line with other recently altered food legislation. This involves moving away from existing frontline criminal sanctions to the use of improvement notices. Escalation to a criminal offence would happen only if there is failure to comply with an improvement notice, with an offender being liable, on summary conviction, to a fine not exceeding level 5 on the standard scale of fines. Businesses will have the opportunity to appeal against an improvement notice to the Magistrates Court.

#### **Benefits**

##### *Industry*

A more proportionate enforcement procedure for businesses – There is a benefit to industry in terms of moving from the current criminal sanctions regime the use of improvement notices. It is anticipated that the gains will originate from reduced costs and the time saved to businesses in resolving the issues more quickly. This will materialise in the fact that it is envisaged that most cases will be resolved through compliance with the improvement notice and only those not complied with will need to be escalated to a Magistrates Court. However, this benefit is likely to be fairly minimal given the number of cases associated with fruit juice non-compliance is anticipated to be very small. This is currently a non-monetised benefit.

##### *Government*

Simpler enforcement procedures for enforcement officers– There is also a benefit to Government in terms of moving from the current frontline criminal sanctions regime to the new improvement notice regime. It is anticipated that the gains will originate from reduced court costs as the number of hearings will be reduced as issues will be resolved through issuing Improvement Notices, and the time saved to enforcement officers in resolving the issues more quickly instead of preparing for a court case. However, this benefit is likely to be fairly minimal given the number of cases associated with fruit juice non-compliance is anticipated to be small. This is currently a non-monetised benefit.

Information provided in the food standards enforcement actions report for 2011/12 shows that there were 66 food standards prosecutions in the UK; 48 of those in England and even fewer food labelling offences. For fruit juice specifically, the likelihood is that prosecutions are extremely low or possibly none at all. Nevertheless, we would expect the number of cases referred to criminal courts to be reduced.

### **1.6 Consolidation and Copy Out**

The changes in 2012/12/EU are being implemented through the creation of a new consolidated set of Regulations. The two existing Regulations will be revoked and combined with the new revisions to provide a complete set of rules making it easier for business working to one set of rules. Guidance will also be updated and improved. We have ensured that when implementing the amendments, copy out has been used as the norm. Existing rules have been reviewed and small amounts of gold plating and under implementation identified which will be removed.

## **Costs**

There will be no costs to industry, consumers or enforcement authorities of consolidating the regulations.

## **Benefits**

Consolidation of the regulations into a new single SI will see the number of regulations on fruit juice decrease to one. It will make it easier and more straightforward for industry and enforcement authorities to have all fruit juice rules together in one place. There may be some reduction in the time taken to access information from the regulations given that there will be no need to cross refer and all the rules will be in one place. We have not monetised this benefit because it is likely to be very small and affects only a relatively small number of companies. The use of copy out will ensure that the government is not going over and above the new Directive and therefore not adding any further burdens on business. Table 3 highlights where we have identified such occasions. These are few and their nature means it is not practical to monetise costs which are in any case likely to be very small. The new regulations will come into force on the 27 October 2013- the latest date for MSs to meet its EU obligations to implement the directive into national law. This is in line with the government policy of not implementing EU obligations early. We see these as non-monetised benefits but we expect that the savings overall to be small in size.

## **Overall Costs and Benefits**

The summary of Option 2 is presented in Table 2 below and is as follows:

- There is a one-off familiarisation cost for the industry which amounts to £783 (PV) and EAC £91.
- It is estimated that around 10 grapefruit juice manufacturers will face the relabelling costs of about £1,260 (PV) due to prohibition of added sugar to fruit juices in the new regulation (EAC £146).
- Manufacturers with product lines with misleading descriptor 'no added sugar' will have to relabel in order to remove the descriptor which will incur a lump-sum cost of about £59,500 (PV) to the industry (EAC £6,912).

- Manufacturers of water-extracted juices will also face a relabelling cost of about £756 in order to label their product as 'water-extracted juice' (EAC 88).
- Manufacturers of tomatoes will face a relabelling cost of about £378 (EAC £44) in order that their product is included in the list of fruits used in fruit juice production.
- The key monetised benefit will be to the manufacturers producing juice in the ambient private category. Using the assumption that 80% of the manufacturers will make a saving by not restoring aromas, the industry for this category may see benefits between £96,880 (PV) and £387,520 (PV), with a best (central) estimate of £242,200 (PV).

All other costs and benefits are non-monetised.

Table 2: Summary of all costs and benefits under option 2

|                                 | year 0         | 1              | 2              | 3              | 4              | 5              | 6              | 7              | 8              | 9              | Total            | EAC/p.a.       | PV               |
|---------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|------------------|----------------|------------------|
| <b>COSTS</b>                    |                |                |                |                |                |                |                |                |                |                |                  |                |                  |
| Industry familiarisation        | 783            | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 783              | 91             | 783              |
| Public familiarisation          | 1,064          | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 1,064            | 124            | 1,064            |
| Addition of sugar               | 1,260          | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 1,260            | 146            | 1,260            |
| Water extracted                 | 756            | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 756              | 88             | 756              |
| 'no added sugar'                | 59,500         | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 59,500           | 6,912          | 59,500           |
| BRIX                            | 3,780          | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 3,780            | 439            | 3,780            |
| tomato relabel                  | 378            | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 0              | 378              | 44             | 378              |
| <b>Total costs</b>              | <b>67,521</b>  | <b>0</b>       | <b>0</b>       | <b>0</b>       | <b>0</b>       | <b>0</b>       | <b>0</b>       | <b>0</b>       | <b>0</b>       | <b>0</b>       | <b>67,521</b>    | <b>7,844</b>   | <b>67,521</b>    |
| <b>BENEFITS</b>                 |                |                |                |                |                |                |                |                |                |                |                  |                |                  |
| Aromas (low estimate)           | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 968,800          | 96,880         | 833,913          |
| Aromas (central est)            | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 2,422,000        | 440,364        | 2,084,782        |
| Aromas (high estimate)          | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 3,875,200        | 704,582        | 3,335,651        |
| <b>Total benefits (central)</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>2,422,000</b> | <b>440,364</b> | <b>2,084,782</b> |
| <b>NET OUTCOME</b>              |                |                |                |                |                |                |                |                |                |                |                  |                |                  |
| Net benefit (low estimate)      | 29,359         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 96,880         | 901,279          | 89,036         | 766,392          |
| Net benefit (central estimate)  | 174,679        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 242,200        | 2,354,479        | 432,519        | 2,017,261        |
| Net benefit (high estimate)     | 319,999        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 387,520        | 3,807,679        | 696,738        | 3,268,130        |
| <b>Net Benefit (central)</b>    | <b>174,679</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>242,200</b> | <b>2,354,479</b> | <b>432,519</b> | <b>2,017,261</b> |

\*All costs are denoted in 2013 prices.

## Risks and Assumptions

### Risks:

Failure to transpose the directive into national law could result in infraction proceedings from the EU.

### Assumptions:

In carrying out this analysis following assumptions have been made

1. The fines that could result from infraction may be around 9.6 million Euros however, an objective analysis requires that we discount this figure and do not count it as a saving if the UK transposes this directive into national law.
2. The fruit juices industry is a mature industry and grows steadily and the number of existing manufacturers who need to be familiar with the new regulations is inflated from 45 to 75 to take into account the soft drinks manufacturers who also produce some fruit juice drinks as part of their product range. Any prospective entrants will not be particularly affected by new regulations.
3. Any reformulation costs are likely to be met from within the manufacturers' product development requirements over the three years between 28 April 2012 (the adoption of the directive) and 28 April 2015 (the deadline of 18 months to exhaust the older stock after the regulations have been introduced as national law on 28th October 2013).
4. Currently all the manufacturers restore aromas.
5. On implementation of the new regulations, 80% of the manufacturers who produce fruit juice in the category Ambient Private will choose not to restore aromas.
6. The inclusion of tomatoes in the list of fruits used in fruit juice production will require 3 products to be relabelled.

### **Administrative Burden Costs**

The administrative costs for the transition period due to familiarisation costs and one-off relabelling/reformulation costs to the industry together amount to £62,677(PV) and EAC £7,282. The transition costs may not be equally distributed between businesses as most of the firms already work to these regulations as an industry standard. There will also be ongoing non-monetised savings from removal of gold plating where it exists as well as consolidation of the fruit juice regulations. The small businesses will also have to face these transition costs as there can be no discrimination in the implementation of national law and if this law is not adopted the infraction process will hurt the entire industry small businesses and big businesses alike. The net administrative burden is likely to be small due to clearer and consolidated regulations which will bring into force the regulations which represent industry practices.

### **Consultation**

A 6-week consultation from 25th July to 5th September 2013 was conducted seeking the views of stakeholders on the new SI and the costs and benefits estimated in the



Consultation Stage IA. There were no responses to the consultation in Wales. A total of 4 responses were received to the consultation in England, two from local authority trading standards bodies and one representing the fruit juice industry (BSDA) and the other the retailers (BRC). All four respondents offered general support to the introduction of the new Regulations. Some reservations were expressed from BSDA as regards the magnitude of some of the estimates for savings included in the IA, and as a result some downward revisions were made to those estimates. BRC questioned the move from criminal to civil sanctions as they felt the current enforcement system worked well

## Enforcement

The Regulations will be enforced by Trading Standards officers in a change to the existing enforcement regime is proposed with a move from the existing criminal sanctions to a more proportionate and targeted regime using improvement notices. Escalation to a criminal offence would happen only if there is failure to comply with an improvement notice, with an offender being liable, on summary conviction, to a fine not exceeding level 5 on the standard scale of fines. Businesses will have the opportunity to appeal against an improvement notice to the Magistrates Court

## Legal implementation and Copy-out:

Intervention is required to implement the amendments in Council Directive 2012/12/EU. The UK has 18 months to implement the requirements following its entry into force on 27 April 2012. In line with Government policy to implement EU obligations at the latest possible date the new rules will be brought in on the 18th November 2013 the latest possible date allowed by the directive.

The changes are being implemented through the creation of a new consolidated set of Fruit Juices and Fruit Nectars (Wales) 2013 Regulations with revocation of the two existing sets of regulations. The new Regulations will come into force on the 28 October 2013 which is the latest date by which Members States need to implement the directive into national law.

Regulations are being introduced separately in each of the constituent nations of the UK. We have ensured that when implementing the amendments in the revised directive, copy out has been used as the norm.

**Table 3: Comparison of existing national Regulation with EU Rules: Gold plating and under implementation**

| Where (2003 Regulations)    | Gold Plating / Under Implementation | Issue   | Solution                         |
|-----------------------------|-------------------------------------|---|----------------------------------|
| Regulation 3 Application of | Under implementation                | Text in Regulations 3 is less strict than the directive which applies it to a designated product' <i>intended for</i> | Text in italics deleted from new |

|   |                      |   |   |
|---|----------------------|---|---|
| <b>Designated product</b>   |                      | <i>human consumption and 'ready for delivery to the ultimate consumer or to a catering establishment'</i>   | Regulations   |
| <b>Regulation 4 Sale of food 'with a label' vs. used in trade</b>   | Under implementation | Regulation 4 relates to sale of food 'with a label' whereas Article 2(1) of Directive 2001/112/EC is more general and relates to the use of the product name 'in trade' to designate products.  | Amended to use directive wording "used in trade"  |
| <b>Regulation 4 Application to derivatives</b>  | Gold Plating         | Article 2(1) of Directive 2001/112/EC provides that the product names listed in Annex I shall only apply to the products referred to in Annex I and must be used in trade to designate them. Our Regulation 4 goes further and not only covers the 'reserved description' but also ' <i>any derivative thereof</i> ' and ' <i>any word or description substantially similar thereto</i> '.  | Remove reference to any derivative thereof and 'any word or description substantially similar thereto'  |
| <b>Regulation 4(b) relates to the use of a reserved description when being used as an ingredient</b>                | Duplication          | Ingredients provisions already covered by FIR   | Tentatively delete and include in guidance  |
| <b>Regulation 5(a) does not allow for use of the alternative names mentioned in Article 3.1(b) of the Directive</b> | Under implementation | Omitted because none of the names covered in Annex III relate to English terminology or apply to UK products, also now amended with further additions in new revision   | Include reference to alternative names mentioned in Article 3.1(b) and Annex III to allow their use   |
| <b>Regulation 5(c) relates to the addition of pulp and cells.</b>   | Gold plating         | Regulation 5(c) requires that any pulp and/or cells added to a fruit juice, a <u>concentrated fruit juice or a fruit juice from concentrate</u> must be indicated on label. Directive appears to only explicitly requires this in the case of fruit juice so application to the others would appear to be an over implementation. Believe it was the intention added pulp and cells should also be labelled when added and this is an oversight in directive. | Under consideration as to whether to retain existing text of Regulations. Industry tells us that if they add pulp and cells this will always be labelled. They are supplied separately from the juice by processors therefore to add them is an additional cost which they would want to make a |

|  |              |  | selling point of.  |
|--|--------------|--|--|
| <b>Regulation 6</b><br><b>Applies requirements of regulations 35, 36(1) and (5) and 38 of the FLR to the mandatory indications required by regulation 5 of the 2003 Regulations.</b> | Gold Plating | No justification for this and as the provisions in Regulation 6 of the 2003 Regulations will largely be covered by the provisions in Articles 12 and 13 of FIR.  | Delete   |
| <b>Schedule 5, note 1</b><br><b>No such provision in 2001/112/EC.</b>  | Gold Plating | This is additional explanatory text to assist readers that for a mixture of two fruits consisting of 50% of each fruit then you reduce the minimum juice requirements by 50% for each of the two fruits. | Remove and include in guidance notes. Industry has said it is helpful. |

### Summary of the preferred option

Option 2 is the preferred Option. We have until October 2013 to implement the new provisions in EU Council Directive 2012/12/EU amending Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption. Government intervention is necessary to transpose this directive into national law by way of an SI. Failure to implement the Directive would result in a failure to comply with our EU legal obligations and leave the UK open to infraction proceedings by the European Commission and a hefty fine. Option 2 provides consumers with improved measures to ensure the minimum quality for juices while allowing for diversification and new product development.

The changes to be introduced represent a positive step forward for the fruit juice industry with the overall benefits outweighing the relatively small costs associated. Any potential costs to manufacturers will be mitigated by a further 18 months transition period to all the exhaustion of existing stocks. This should allow industry sufficient time to alleviate the cost of label changes by aligning required label changes with voluntary, market-driven label changes. The UK fruit juice industry have indicated their support for the majority of changes and the BSDA have indicated that they believe there will be relatively small impacts from most changes and that the legislation is generally cost neutral.

The improved legal clarity in the preferred option will be very helpful to industry and help alleviate or avoid potential trade disputes, particularly in the area of restoring aromas to juices. Importantly the changes will help to maintain a level playing field within the global fruit juice industry by aligning with EU legislation and the international Codex standard on fruit juice and nectars so that manufacturers do not become disadvantaged.

## **Specific Impact Tests**

### **Statutory Equality Duties Impact Test**

#### **Race equality issues**

No impacts on specific ethnic groups have been identified from the policy options.

#### **Gender equality issues**

No gender specific issues related to the policy options have been identified.

#### **Disability equality issues**

No disability specific issues related to the policy options have been identified.

### **Competition Assessment Impact Test**

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.

### **Small Firms Impact Test**

It is acknowledged that the market for fruit juices includes small and micro businesses. However, as industry is in favour of these Regulations and has been informally consulted during the policy development stage, we do not envisage these Regulations imposing a significant or disproportionate burden on small businesses.

### **Sustainable Development Impact Test**

We do not envisage that either option outlined in this IA will have a significant impact on sustainable development. There are no significant environmental impacts or social benefits associated with this policy and we do not anticipate that our actions will have any impact on future generations.