

FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. TITLE OF THE PROPOSAL

The Fruit Juices and Fruit Nectars (Scotland) Regulations 2013

2. PURPOSE AND INTENDED EFFECTS

(i) Objectives

The aim is to implement the rules contained in Directive 2012/12/EU into national law to ensure a level playing field for industry throughout Europe. We also aim to simplify the regulatory landscape for businesses by consolidating the existing fruit juice regulations.

Implementation of these measures will provide a level playing field for Scottish businesses allowing them to compete with the rest of Europe on an equal footing. The new rules are broadly beneficial to industry as they provide more flexibility and improved legal clarity, are better aligned with other international rules on fruit juice such as Codex and take account of technical progress. The rules are required to be in place by 28 October 2013 but industry have a further 18 months transition period until 28 April 2015 before they need to fully comply with the new rules to enable the exhaustion of existing stocks. This additional period should offset some of the costs and allow some of the relabelling to be built in as part of a product's refresh cycle.

(ii) Background

EU rules on fruit juice provide a level playing field for UK manufacturers both within the UK and across the EU. 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 Scottish law by the Fruit Juices and Fruit Nectars (Scotland) 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 base 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 cost the UK industry several million pounds in relabelling 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 Codex¹ 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 (Scotland) Amendment Regulations 2011. This introduced new minimum Brix levels for fruit juices from concentrate largely in line with Codex. Brix values provide a measure of quality by setting minimum soluble solids (sugar content) for fruit juices. 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 second more detailed set of amendments was reached at the end of 2011. This Business and Regulatory Impact Assessment (BRIA) is primarily concerned with the impacts of implementation of this second set of revisions.

The Directive represents a good deal for the UK fruit juice industry. Implementation of the changes is therefore desirable for UK industry. It includes a number of UK priorities, crucially 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 storage method.

The successful retention of some aspects of the current Directive has also been important. Particularly the continued distinction between “fruit juice” and “fruit juice from concentrate”, terms with which the consumer is now familiar and prevention of moves to allow the addition of mandarin juice to orange juice without indicating this on the label. Overall the Directive can be seen to be a positive change which will ultimately help improve UK trade in these products and provides consumers with improved labelling and choice.

The British Soft Drinks Association (BSDA) who represent the bulk of UK manufacturers has welcomed the changes and said that the “new rules will provide consumers with a broader range of clearly labelled, high quality and authentic products to meet changing tastes”². Crucially it provides improved legal clarity surrounding the restoration of aromas to juices which is now optional rather than mandatory, an issue which had been of particular concern to the industry because of the lack of availability of many aromas.

The most substantial changes brought in by Council Directive 2012/12/EU are listed below:

Processing methods

- Move from mandatory to optional restoration of aromas to fruit juice and fruit juice from concentrate in line with Codex.
- Permit a new category of juice called water extracted fruit juice (juice produced by the diffusion of water with pulpy whole fruit or dehydrated whole fruit) in line with Codex.
- Permit the freezing of fruit as an approved method of preservation and clarification.

Sugar Prohibition

- Prohibition of sugar addition to fruit juices.

¹ Codex is an FAO/WHO which develops harmonised international food standards, guidelines and codes of practice to protect the health of the consumers and ensure fair trade practices in the food trade. It promotes coordination of all food standards work undertaken by international governmental and non-governmental organizations.

² BSDA Press Release 14 December “Soft drinks industry welcomes European Parliament vote on Fruit Juice Directive” (BSDA website www.britishsoftdrinks.com)

- Prevention of ‘no added sugar’ claims on fruit juices.
- Optional use of clarifying text to educate consumers for a time limited period that in the future fruit juice will no longer contain added sugar.
- Prevention of the use “no added sugar claims” on nectars containing added sweeteners.
- Lowering of Brix values for blackcurrant, guava, mango and passion fruit to those laid down in Codex.

Labelling

- Requirement for the product name to reflect the fruits represented in the ingredients list.
- Inclusion of tomatoes in the list of fruits used in fruit juice production.
- To amend the definition of fruit juice to clarify that the use of fruit purees is acceptable in juice production and can be regarded as “juices” for the purposes of the directive.

(iii) Rationale for Government Intervention

Government intervention is necessary in order to transpose Council Directive 2012/12/EU into national law which needs to be done by way of updating the existing Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 (as amended). Failure to transpose the Directive may result in the European Commission taking infraction proceedings against the UK, a course of action which could be costly and which we would want to avoid. The minimum infraction fine that can be imposed on the UK is 9.6 million Euros.

Implementation of the Directive will ensure consumers are protected by guaranteeing a minimum fruit juice quality. It is proposed that existing rules on fruit juice should be consolidated into a new single Scottish Statutory Instrument (SSI) which will make it easier for industry and enforcement authorities by having all the fruit juice rules together in one set of Regulations.

This will allow Scottish industry to compete on an equal basis with the rest of Europe in line with the Scottish Government’s productivity and participation targets and work towards realisation of Scotland’s full economic potential.

3. CONSULTATION

(i) Within Government

The Food Standards Agency, which has responsibility for this work in Scotland, has informed Scottish Government officials from the Food and Drink Industry Division of the Rural Affairs and Environment Directorate and officials from the Health and Wellbeing Directorate of the consultation. During the development of the proposals these officials were kept informed by means of EU Council Working Group reports and interested party letters.

(ii) Public Consultation

Stakeholders have been updated on the further development of Directive 2012/12/EU by means of six interested party letters (between June 2009 and March 2012). A full 12 week public consultation was carried out in Scotland from 14 June to 6 September 2013 to seek views on the impact of the proposed legislation. No substantive responses were received regarding the draft Scottish Statutory Instrument.

(iii) Business

During the consultation period, eleven Scottish businesses thought likely to be affected were

approached directly to assess the possible impact of the requirements of the draft SSI on their business. Of those contacted, only three responded: AG Barr, C J Lang & Son Ltd and Catering Services (Supplies) Ltd. No adverse financial implications were identified.

4. OPTIONS

Option 1 – Do nothing. Failure to update the Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 to align them with Council Directive 2012/12/EU would constitute a failure to comply with EU obligations. It may lead to infraction proceedings being brought about by the European Commission and a financial penalty. This would also leave Scottish industry at a competitive disadvantage against other Member States and industry would not benefit from the favourable changes which have been welcomed by fruit juice manufacturers.

Option 2 – Introduce the changes required by Council Directive 2012/12/EU and consolidate all existing Fruit Juice Regulations into a single new Scotland Fruit Juice SSI. This provides consistency for Scottish industry across the EU and ensures consumers are guaranteed a minimum quality product. Consolidation will ensure the rules on fruit juice are brought together in one place making it easier for manufacturers and enforcement officials who need to refer to the legislation. The majority of changes are favourable to the UK particularly the move from compulsory to optional restoration of aromas to juice. This move is also in line with the international Codex fruit juice standard which opts for optional restoration of aromas.

The new measures are broadly welcomed by UK industry and implementation in a timely manner is highly desirable in order to benefit from the improved measures in the new Directive. Industry have until April 2015 to fully comply with the rules and it is envisaged that much of the relabelling costs incurred should partly be offset by this additional 18 month transition period to allow the exhaustion of stocks.

(i) Sectors and Groups affected

While these proposed Regulations apply to Scotland only, equivalent regulations will be introduced in England, Wales and Northern Ireland; as such the impact on the UK as a whole has been assessed.

Consumers - will be affected by the labelling changes, given that sugar will no longer be permitted to be added to fruit juices and the use of the 'no added sugar' claim will no longer feature on fruit juice packaging. Use of an optional informative statement about the lack of added sugar will also be allowed for a specific time period. Consumer confidence should increase after this change as it will be understood that fruit juice manufactured in the EU will not contain added sugar. The consolidated Regulations will ensure that consumers can have confidence in the quality of products on sale.

Changes to the rules on aroma restoration should increase product diversification and ensure continued availability of competitively priced products. Naming of mixed juices now needs to better reflect the proportions of the different juices added. Consumer confidence should increase as many of the changes introduce clarity and should help consumers in their purchasing decisions.

Local Authority Environmental Health Departments - enforcement of the rules on fruit juices is the responsibility of Local Authority Environmental Health Departments.

Businesses manufacturing, processing and retailing fruit juices - will be the main groups affected, principally in terms of the changes to composition and labelling requirements and familiarisation with the new Regulations.

According to the Inter-Departmental Business Register (IDBR) from the Office for National Statistics (ONS), there are 45 companies specifically focused on fruit and vegetable juice manufacturing in the UK, operating from 50 different sites. Of these sites, 45 are located in England and 5 in Scotland. Based on the number of employees, 40 of the companies can be defined as micro businesses, and 5 as small. There are also 230 soft drinks manufacturers in the UK, some of which (such as Coca Cola Enterprises and Britvic) also produce fruit juices as part of their range³.

Orange juice accounts for some 54% of the UK market and apple for 15%. Pineapple and grapefruit are the other two significant flavours at 5% and 2% respectively. Blended juices account for 14% and other flavours account for 10% of the market by volume. Fruit juice is also used in other products as an ingredient most notably fruit juice drinks and in canned fruit as a packing medium. Ingredient use would include confectionery and ice lollies and fruit juice containing food.

(ii) Benefits

Option 1

Do nothing. This retains the current legislative position as set out in the 2003 Regulations (as amended). Industry and enforcers would not be required to familiarise themselves with new Regulations.

Option 2

Move from mandatory to optional restoration of aromas

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 litre⁴. 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 report from the AIJN (the representative association of the fruit juice industry in the EU) and based on the assumption that all value/economy juices are ambient and private label⁵ 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 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.

³ Source: 'UK Business: Activity, Size and Location 2012' – Office for National Statistics – Tables B3.1 and B3.4

⁴ Informal communication with BSDA.

⁵ Private label refers to retailers own brands.

For the purpose of this BRIA we assume around 80% of producers of ambient and private label from concentrate juice will opt not to restore aromas. Consequently, the estimated cost savings are projected to be between £1.38 million and £5.54 million per annum. This is between 0.4% and 1.6% of the total value of the ambient and private label from concentrate juice sector.

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

- 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) to, 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. 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.

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%. If juice costs continue to rise and aroma restoration was still mandatory, industry indicate they may be forced to consider marketing strategies and value products may no longer be viable.

Consumers remain protected as juices still meet minimum standards.

Permitting a new juice category – ‘water extracted fruit juice’

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 is 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.

To permit the freezing of fruit as an approved method of preservation

Industry

There are likely to be some small savings overall as wastage is reduced. It has not been possible to monetise the cost of freezing fruits net of reduced wastage. 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 and freezing will be used only where needed.

This new measure will be beneficial to industry for a number of reasons. It will allow them 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 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. Consumers may also benefit from more stable prices because manufacturers' input costs are more predictable.

Prohibition of sugar addition to fruit juices, prevention of 'no added sugar' claims and voluntary labelling initiative

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.

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. 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.

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 UK’s 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.

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’.

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 Brix⁶ 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

⁶ Brix levels provide a measure of quality by setting minimum soluble solids levels (sugar content) for fruit juices. The Brix to acid ratio is an easy way to tell if the juice is sweet or acidic (sour); the higher the ratio the sweeter the juice.

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)⁷ 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 1 summarises the options available to the manufacturers in order to comply with the new regulations.

At the moment it would appear that reformulation is likely to be their route of choice as this avoids any label amendment and the industry is likely to take the opportunity for a small cost saving.

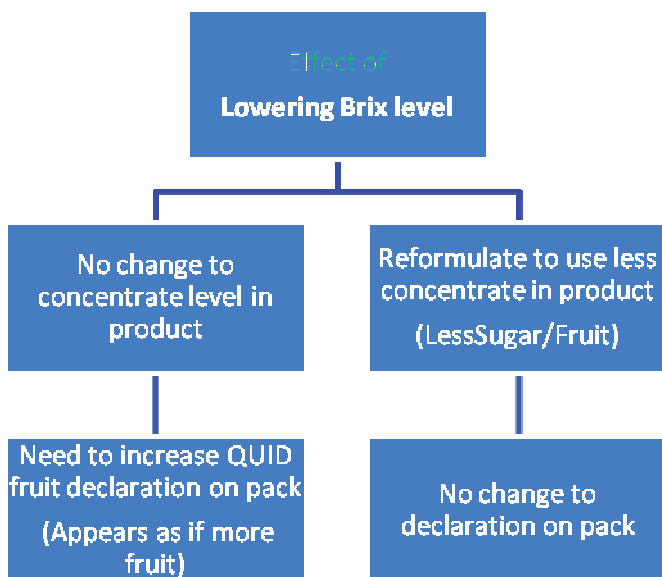


Figure 1: Options for manufacturers to comply with lower Brix

Industry

Industry would have preferred to keep the minima for the four fruits at existing levels as this represents their current Code of Practice. However, the changes mean that by working to a lower minimum Brix level for these fruits industry could reformulate products, slightly 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 costs savings for those fruits. However, this is likely to be small but we do not have sufficient information to monetise this. Some of the reduced costs may translate into marginally lower prices for consumers.

Requirement for the product name to reflect the fruits present 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

⁷ Quantitative ingredient declaration labelling shows the percentage of a particular ingredient in a food.

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.

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

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). Consumers will benefit as products composed of high value fruits 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.

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 is a measure they support.

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 industry already adhere to a code of practice which is similar to the requirements of the Directive so consumers are unlikely to notice any differences.

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".

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. Consumers are not entirely clear on the differences between juices and puree so any changes are unlikely to affect their purchasing decisions.

(iii) Costs

Option 1

Failure to transpose Directive 2012/12/EU may result in the European Commission taking infraction proceedings against the UK, a course of action which could be costly and which would best be avoided for reputational reasons. The minimum infraction fine that can be imposed on the UK is 9.6 million Euros.

There would be no familiarisation costs to either industry or enforcers.

Option 2

Familiarisation costs

Industry

Fruit juice manufacturers 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. As mentioned above, the total number of Scotland-based fruit juice manufacturers as of 2012 is 5. To account for the Soft Drinks manufacturers who may produce fruit juices as a part of their product range yet may not be covered by major juice manufacturers, we inflated the UK figure of 45 to 75 assuming there are 30 manufacturers in the Soft Drinks industry who will need to familiarise themselves with the new regulation.

Local Authorities

Local authorities will also need to become familiar with the updated Regulations. It is estimated that it would take one enforcement officer 2 hours to read and become familiar with the Regulations and disseminate them to key staff. The average hourly pay rate for an enforcement officer⁸ has been up-rated by 30% to account for overheads, in accordance with the standard cost

⁸ 2011 Annual survey of Hours and Earnings

model⁹, to £18.01. Thus the total familiarisation cost for the 32 local authorities in Scotland would be: $32 \times 2 \times 18.01 = £1152.64$

For the whole of the UK this would equate to $(433 + 32) \times 2 \times 18.01 = £16750$

Move from mandatory to optional restoration of aromas

Industry

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

Consumers

This will avoid further price increases to economy ranges as a result of having to add high value aromas. Some might argue 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.

Permitting a new juice category – 'water extracted fruit juice'

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 £1,800.¹⁰ 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: $6 \text{ SKU} \times £1800 = £10,800$.

Consumers

There will be negligible costs to consumers and the costs are unlikely to be passed on by manufacturers.

⁹ <http://www.berr.gov.uk/files/file44503.pdf> http://www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occ4.pdf

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 across 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 those required by this new legislation is £1800.

To permit the freezing of fruit as an approved method of preservation

Industry

There is no cost to the industry associated with this measure.

Consumers

There will be no cost implications for consumers.

Prohibition of sugar addition to fruit juices, prevention of 'no added sugar' claims and voluntary labelling initiative

Industry

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.¹¹ 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 x £1800 = £18,000

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 mainstream manufacturers of 'not from concentrate' juices 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 £850K¹². A limited number of producers may prefer not to reformulate their products and continue to add sugar to fruit juice. Such products would have to be marketed as a 'fruit juice drink' rather than fruit juice and would incur re-labelling costs. 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 use up stocks manufactured and labelled before 28 October 2013. We therefore believe that the estimated costs are maximum figures and the industry may not necessarily incur all these costs.

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

¹¹ *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 across 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 those required by this new legislation is £1800.

¹² Personal communication from BSDA

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.

Prevention of ‘no added sugar’ claims on nectars containing added sweeteners

Industry

The nectar category in the UK is quoted as 189 million litres according to the recent BSDA 2012 Soft Drinks Report¹³ but most products are not specifically labelled as nectar in the UK but as fruit juice drinks. Relabelling is therefore likely to be minimal and this change is more likely to affect mainstream Europe, where nectars are more commonly sold.

Consumers

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

Reversion to the Codex Brix values for blackcurrant, guava, mango and passion fruit juices from concentrate

Industry

Industry may 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 and therefore not quantified.

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. Industry may choose not to change their product formulation and this will result in a higher fruit QUID declaration.

Requirement for the product name to reflect the fruits present in the ingredients list

Industry

¹³ BSDA Press Release 14 December “Soft drinks industry welcomes European Parliament vote on Fruit Juice Directive” (BSDA website www.britishsoftdrinks.com)

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 this measure for consumers.

Inclusion of tomatoes in the list of fruits used in fruit juice production

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 x £1800 = £5,400 (or £630 EAC)

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

There will be no costs to consumers of this measure.

To amend the definition of fruit juice to clarify that the use of fruit purees is acceptable in juice production

Industry

There will be no significant costs to industry. Purees are already used in the production of many fruit juice blends such as orange and mango, or tropical blends and the change will allow the composite products to be described as a juice. Any changes to labels will be a voluntary decision for manufacturers and can be carried out in the course of redesigning packaging. There may be a knock on effect for some smoothie makers whose products comprise only of juice and puree as these products will now be caught by the new fruit juice regulations and will need to be described as a regulated product i.e. juice.

Consumers

There will be no costs to consumers of this measure.

(iv) 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

(v) Overall Costs and Benefits

The only real cost associated with Option 1 lies in the possible infraction fine of 9.6 million Euros on the UK Government.

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

- There is a one-off familiarisation cost for the industry which amounts to £3,809 (PV) and EAC £442.
- It is estimated that around 10 grapefruit juice manufacturers will face the relabelling costs of about £18,000 (PV) due to prohibition of added sugar to fruit juices in the new regulation (EAC £2,091).
- 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 £850,000 (PV) to the industry (EAC £98,749).
- Manufacturers of water-extracted juices will also face a relabelling cost of about £10,800 in order to label their product as 'water-extracted juice' (EAC £1,255).
- Manufacturers of tomato juice will face a relabelling cost of about £5,400 (EAC £630) 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 £11,913,038 (PV) and £47,652,153 (PV). In equivalent annual terms the benefits will be between £1,384,000 and £5,536,000.

All other costs and benefits are non-monetised.

Summary of total costs and benefits - option 2						
	Year 0	Year 1	...	Year 9	Total cost/benefit	EAC
COSTS						
Industry						
Familiarisation (transition)	£3,809	£0	...	£0	£3,809	£442
Cost of removing the description from the labels 'no added sugar'	£850,000	£0	...	£0	£850,000	£98,749
Cost of relabelling for the water extracted juices manufacturers	£10,800	£0	...	£0	£10,800	£1,255
Cost of relabelling Tomato Juice	£5,400	£0	...	£0	£5,400	£627
Cost of relabelling Grapefruit Juice	£18,000	£0	...	£0	£18,000	£2,091
Total Industry Costs	£888,009	£0	...	£0	£888,009	£103,165
Government						
Familiarisation (transition)	£16,750	£0	...	£0	£16,750	£1,946
Total Government Costs	£16,750	£0	...	£0	£16,750	£1,946
TOTAL COSTS	£904,759	£0	...	£0	£904,759	£105,111
BENEFITS						
Minimum savings	£1,384,000	£1,384,000	...	£1,384,000	£13,840,000	£1,384,000
TOTAL BENEFITS	£1,384,000	£1,384,000	...	£1,384,000	£13,840,000	£1,384,000
NET BENEFIT						
Total Net (Benefit)	£479,241	£1,384,000	...	£1,384,000	£12,935,241	£1,278,889
Total Net Business (Benefit)	£495,992	£1,384,000	...	£1,384,000	£12,951,992	£1,280,835

(vi) Summary of the preferred option

Option 2 is the preferred Option. 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 must be implemented by 28 October 2013. Government intervention is necessary to transpose this directive into national law by way of an SSI. 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 substantial 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 allow 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 Scottish manufacturers do not become disadvantaged.

5. SCOTTISH FIRMS IMPACT TEST

Eleven Scottish businesses of different sizes and from various geographical areas were approached directly during the public consultation period to seek their views the likely impact on their business of the changes proposed in the draft SSI. They were requested to consider all questions posed in the partial BRIA and assess the cost estimates.

<u>Questions asked in the consultation were:</u>	
<i>Move from mandatory to optional restoration of aromas</i>	<i>Is the estimated range of cost of restoring aromas per litre accurate? Is the assumption that 80% of ambient and private label from concentrate juice will re-introduce aromas reasonable?</i>
	<i>Are the figures quoted in the BRIA a true reflection of the likely costs? Are there other costs associated with this change that we have not captured? Are there other benefits associated with this change?</i>
<i>To permit the freezing of fruit as an approved method of preservation</i>	<i>We would be interested to be informed of any details of cost savings and how many products are likely to benefit from this option.</i>
<i>Reversion to the Codex Brix values for blackcurrant, guava, mango and passion fruit juices from concentrate</i>	<i>Could you provide an estimate of the number of products affected and any cost savings to industry if choosing to reformulate and use less fruit ingredient?</i>

<i>Option 2 – Familiarisation costs</i>	Stakeholders are invited to comment on whether the assumptions made in the BRIA when estimating costs for industry are reasonable?
	Stakeholders are invited to comment on whether the assumptions made in the BRIA when estimating costs for local authorities are reasonable?
<i>Move from mandatory to optional restoration of aromas</i>	Are there any costs associated with this change? How much does it cost to change a recipe? Is it one off cost?
	With the restoration of aromas no longer being mandatory would all the value range manufacturers choose not to restore and vice versa for the high-end range?
<i>Permitting a new juice category – ‘water extracted fruit juice’</i>	In the BRIA, have we fully accounted for the number of water extracted products affected?
<i>Prohibiting the addition of sugar to fruit juice</i>	Could industry please provide details on the number of grapefruit or other products which may be affected?
<i>Removing the need to use a ‘no added sugar’ claim for fruit juices</i>	We would be interested to know if the costs in the BRIA are a reasonable estimate of re-labelling.
	We would be interested to know how many products are likely to be re-labelled and over what time period.
	We would be interested to know how many products are likely to be reformulated and over what time period.
<i>Voluntary clarifying statement on added sugar in juices</i>	We would be interested to know if any companies are likely to take up the voluntary labelling option and how many products might include this additional statement and any associated costs?
<i>Reversion to the Codex Brix values for blackcurrant, guava, mango and passion fruit juices from concentrate</i>	Could industry provide an estimate of the number of products affected and any costs associated with a re-labelling route?

<i>Requirement for the product name to reflect the fruits present in the ingredients list</i>	<i>Could industry provide an estimate of how many products may need to be re-labelled or reformulated?</i>
<i>Inclusion of tomatoes in the list of fruits used in fruit juice production</i>	<i>Could industry provide an estimate of the number of products that might need to be re-labelled or reformulated?</i>

Realising the difficulties businesses have reported with understanding the complexities of the BRIA and the lack of available time to devote to this task, the questions were finally distilled to:

- Are you content with the proposed new domestic regulation as set out in Option 2 ?
- Are there any financial implications which have not been considered in the BRIA ?

Even with this reduction in questions, only three businesses were prepared to respond after being contacted twice. All reported to be content with the draft legislation and the estimated costs in the partial BRIA.

(i) Competition Assessment

The proposed legislation applies to all UK food juice manufacturers equally, allowing them to trade across EU Member States. 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. Thus the four OFT competition filter questions can all be answered negatively. Therefore, it is not expected to significantly impact on competition.

(ii) Test Run of Business Forms

There are no new forms associated with this piece of legislation.

6. LEGAL AID IMPACT TEST

Scottish Government Access to Justice has confirmed that there will not be an impact on the legal aid fund from these Regulations.

7. ENFORCEMENT, SANCTIONS AND MONITORING

The regulations will be enforced by local authority Environmental Health Departments throughout Scotland.

Sanctions for Non-Compliance

Regulation 17 of the Fruit Juices and Fruit Nectars (Scotland) Regulations 2013 lays down that the penalty on summary conviction for an offence under the Regulations is a fine not exceeding level 5 on the standard scale.

These proposals do not introduce any new sanctions for non-compliance with the Regulations.

Monitoring

The effectiveness and impact of the regulations will be monitored via feedback from stakeholders, including Enforcement Agencies, as part of the ongoing policy process. Agency mechanisms for monitoring and review include; open fora, stakeholder meetings, surveys and general enquiries.

8. IMPLEMENTATION AND DELIVERY PLAN

The changes introduced by Directive 2012/12/EU will be implemented in a consolidation of the existing Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 and the 2011 amendment into the new Fruit Juices and Fruit Nectars (Scotland) Regulations 2013. It is proposed to bring the Regulations into force as soon as possible. The required implementation date is 28 October 2013.

Post Implementation Review (PIR)

A PIR should be undertaken, usually three to five years after implementation of the policy, but, exceptionally, a longer period may be more appropriate. A PIR should examine the extent to which the implemented Regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences.

Basis of the review: The Fruit Juices and Fruit Nectars (Scotland) Regulations 2013 will be reviewed after 5 years from the date of coming into force and the conclusions of the review to be set out in a published report.
Review objective: To check that the new Regulations are still relevant and not causing any issues for manufacturers or local authorities.
Review approach and rationale: <ol style="list-style-type: none">1. Re-evaluate the estimated costs and benefits.2. Consider feedback from industry, enforcement and consumers as a result of informal discussions in the normal course of business.
Baseline: Option 2 (preferred) will be the baseline for review if the new Regulations are put in place.
Success criteria: <ol style="list-style-type: none">1. Success will be measured by positive feedback from manufacturers and local authorities2. A measure of success could also be determined by any enforcement actions being taken by local authorities due to introduction of newly defined Brix levels3. The industry also conduct their own surveillance of the quality of juices on the UK market and this information could provide information on whether the measure is working

Monitoring information arrangements:

Monitoring is carried out through normal "business as usual" activities via routine discussions and meetings as well as feedback and enquiries from consumers, industry, enforcement bodies and NGOs. These exchanges with stakeholders will be documented and help to assess whether the policy aims have been met, and to identify positive and negative impacts.

Reasons for not planning a PIR:

N/A

9. SUMMARY AND RECOMMENDATION

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 will also help avoid trade disputes as levels are comparable 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 new Regulations.

Summary Costs and Benefits Table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: economic, environmental, social policy and administrative
1	No cost to Government of introducing new Scottish Statutory Instrument.	Possible infraction fines. Possible loss of international trade if products do not comply with EU standard.
2	Guaranteed product quality for consumers. Industry working to consistent legal standard throughout EU.	Familiarisation costs for industry and local authorities. Possible relabelling and/or reformulation costs for industry.

Option 2 is considered to be the preferred option.

DECLARATION

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's Name, Title & Department:

Michael Matheson, Minister for Public Health.

Contact point for enquiries and comments

Russell Napier
Food Standards Agency in Scotland
St Magnus House
25 Guild Street
Aberdeen
AB11 6NJ

Telephone: 01224 285155

E-mail: Russell.Napier@foodstandards.gsi.gov.uk