

REGULATORY APPRAISAL

Title of proposed measure

The Jams and Similar Products (Wales) Regulations 2003

Purpose of intended effect of measure

(i) The objective

To maintain and simplify the consumer protection measures relating to jams and similar products – by implementing in Wales the provisions of EC Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for Human Consumption.

The Regulations are a product quality and consumer information measure. They do not have any food safety or consumer health objective.

(ii) Devolution

The Regulations relate to Wales only. Separate, equivalent legislation will be made in England, Scotland, and Northern Ireland.

(iii) The Background

The Jams and Similar Products Regulations 1981 provide current UK rules in this area. The Regulations implement EC Directive 79/693, which was agreed in 1979.

Directive 2001/113 was agreed in December 2001, and replaces the 1979 Jams Directive. It lays down compositional standards which products must meet in order to be labelled as “jam”, “jelly”, “marmalade” etc. (i.e., products must contain at least a minimum amount of characterising ingredients such as fruit and sugar). The Directive also restricts the ingredients that may be added to products in addition to the characterising ingredients of fruit, sugar etc., and the treatments to which these ingredients may be subjected (e.g., heating, chilling, freezing, freeze drying etc.) Finally, the Directive includes specific labelling requirements for jams and similar products. The Directive does not apply to Jams used in the manufacture of biscuits, pastries and other bakery products

The Directive therefore protects the interest of consumers, and allows the free movement of jams and similar products within the Community. The Directive replaces the existing EC Directive relating to jams and similar products (79/693) which was agreed in 1979.

The rules contained in Directive 2001/113 are very similar to those in the existing 1979 Directive, which it replaces. The new Directive differs on only two small points:

- (a) Where products contain residual sulphur dioxide at a level above 10mg per kg, it must be declared in the list of ingredients. (Sulphur dioxide is often used as a preservative in lower quality fruit ingredients)
- (b) It contains a more restrictive and more specific list of ingredients which can be added to jam and similar products. Also some further additional ingredients are now specifically permitted to be added to certain products: leaves of *Pelargonium odoratissimum* in products made from quince; and spirits, wine and liqueur wine; nuts; aromatic herbs and spices in all products.

Additional UK Provisions: Reserved Descriptions and Reduced Sugars Products

The current Jams and Similar Products Regulations also contain compositional requirements for the following products not covered by either the 1979 Directive, or the new Directive:

- fruit curds (produced from fat or oil, sugar and egg, with either fruit or a flavouring material).
- mincemeat (i.e., the filling of traditional mine pies).
- “UK Standard Jelly”. (similar to the reserved description for “jelly”, but with a lower requirement for fruit content).

Member States are prohibited from making additional national rules relating to jams and similar products that go beyond the requirements of the Directive. However, the UK is free to make rules relating to fruit curds and mincemeat, as these products are different from those covered by the Directive. The case with UK Standard Jelly is not so clear, because it is a very similar product to “Jelly” and “Extra jelly”. Responses to an interested parties letter issued in August 2002 indicate that stakeholders strongly support the retention of the reserved descriptions for fruit curds and mincemeat. Therefore it is proposed to retain

these provisions in their current form. Advice from the industry is that UK Standard Jelly is not currently produced in significant quantities, if at all. Therefore, it is proposed that the reserved description for this product will not be continued in the new domestic Regulations.

The Directive requires as a general rule that Jams and Similar products must have a minimum soluble solids content (i.e., a sugars content) of 60%. However, the Directive provides for Member States to allow the reserved descriptions to be used for products with a lower sugars content “to take account of certain particular cases”. The current Jams Regulations contain provisions relating to “reduced sugar” products with percentage limits for the soluble solids content, and products in which sugar has been wholly or partly replaced by sweeteners. Products containing sweeteners must be labelled to that effect, and are subject to certain other labelling requirements by virtue of Additives Regulations and the Food Labelling Regulations 1996.

Responses to the Agency’s interested parties letter suggested that the soluble solids limits for reduced sugar products could be set lower. It was noted that Agency Guidance on “reduced sugar” claims for foods in general require that such claims are used only where there is a reduction of 25% from the standard product. This effectively means that the upper end of the current range cannot be used. It was also noted that new intense sweeteners make it technically viable to manufacture products at a lower soluble solids content. On the basis of these comments, the draft Regulations propose a reduction in the limits to 25% and 50% (the current range is between 30% and 55%). The provisions allowing products containing sweeteners to have a lower soluble solids content will continue.

(iv) Risk Assessment

The current UK rules relating to jams and similar products are very similar to those being introduced by Directive 2001/113. However, if the Directive were not implemented in the UK, consumers would not benefit from the new labelling information required, and from the strengthening of the rules in this area. Industry would not benefit from the clarification of the provisions.

In addition, the rules in the UK would be out of line with those in the rest of the community, this would create significant difficulties for UK businesses exporting produce to the rest of the Community, and would place UK industry at a competitive disadvantage. Directive 2001/113 is directly applicable in all Member

States. Failure by the UK to bring into effect implementing legislation may lead to infraction proceedings from the Commission.

(vi) Issues of equity and fairness

The provisions of Directive 2001/113 apply to all businesses throughout the Community. There is no disadvantage for Welsh businesses.

Options

Option 1 - Do nothing

Option 2 – Implement Directive 2001/113 by drafting new Jams and Similar Products Regulations, with no additional UK rules.

Option 3 – Implement Directive 2001/113 by drafting new Regulations, and in addition, making additional UK rules in respect of fruit curds, mincemeat and reduced sugars products.

Discussion

Option 1 – *Benefits* - Under this option, the current rules would continue, with which industry and enforcement bodies are familiar. No changes in product formulation or labelling would be necessary. There would be no direct cost to the industry.

Disadvantages - However, consumers would not receive the more detailed labelling information required by the new Directive. More significantly, this option would leave UK rules out of line with the rest of the Community. This could make it difficult for UK producers to export their produce to other Member States, and may require different labelling for exports.

Most importantly, failure to implement the new Directive would leave the Assembly open to infraction proceedings from the Commission. This is not a viable option therefore.

Option 2 – *make implementing legislation; with no UK provisions for reduced sugar products, fruit curds or mincemeat.*

Benefits - this option will benefit consumers by laying down clear compositional and quality standards for jams and similar products, and providing them with additional labelling information and other consumer protection measures. The UK industry would benefit from a level playing field and the free movement of products throughout the community.

Disadvantages - This option would give rise to the same disadvantages as option 3 (see below). In addition, if no provisions were made in respect of reduced sugar products, this would mean that although such products could continue to be sold, they could no longer be described as jam, jelly marmalade etc. This would cause considerable consumer confusion, and probably lead to a reduction in fruit content for such products, as the limits for fruit content would no longer apply. In addition, there would be considerable costs to industry as a result of the need to re-label such products (i.e., with a sales name other than jam, jelly marmalade etc.) Reduced sugar and no sugar jams are an important part of the jams market, making up 12% of total sales in 2000.

Were the requirements for fruit curds and mincemeat to be dropped, it is highly likely that the quality of products on the market would deteriorate (as has been the case with other foods for which the compositional requirements have been repealed). The fruit curds sector generates annual retail sales of around £5-6m. This compares with retail sales in 2000 of £89m for jams and £62m for marmalades.

Option 3 – *make implementing legislation; continue, with slight amendments, provisions for reduced sugar products; continue requirements for fruit curds and mincemeat.*

Benefits – This option would deliver the same benefits as option 2 (see above). In addition, this option would continue to allow the sale of reduced sugar products (thus maintaining a breadth of consumer choice), and possibly allow more reduced sugar products to be marketed; and maintain the quality of fruit curds and mincemeat for the consumer. In addition responses to a recent consultation exercise on whether to retain provisions for curds and mincemeat in the new SI indicated an overwhelming majority in favour of retention.

Disadvantages – The Regulations will require a small labelling change for those products containing more than 10mg/kg of residual sulphur dioxide. A more restrictive list of ingredients which can be added to jams etc will only be allowed.

Financial Implications for Wales

We do not anticipate these Regulations will carry any additional cost implications for the Welsh Assembly Government. The local Authorities Co-ordinating Body on Regulatory Services (LACORS) has confirmed in writing to the Agency that it does not anticipate any additional resources will be necessary for local authorities in Wales to enforce the provisions of the proposed domestic legislation.

In providing information on the cost to businesses of complying with these requirements, figures provided by trade organisations/individual companies are on a UK basis only. No breakdown by country or region is available. It is therefore not possible to estimate actual costs to the industry in Wales. Typical costs to individual businesses have however been provided below.

Costs for charities and voluntary organisations

No significant costs are expected.

Compliance costs for industry

(i) Implementation costs

Labelling requirements: (applies to options 2 and 3) The regulations contain a new requirement whereby a product containing more than 10mg/kg of residual sulphur dioxide (used as a preservative in the fruit ingredients) must declare the sulphur dioxide in the list of ingredients. It is expected to effect around 300-400 products. Re-labelling costs per product are expected to be comparatively low, because of the way in which products are commonly labelled (i.e., by means of a simple paper label stuck onto glass jars). Re-labelling costs are estimated at around £100 per product. These costs will be mitigated by the transitional period until July 2004 provided by both the Directive and the domestic Regulations and will be absorbed into normal branding changes. No other labelling changes are required.

(ii) Policy (ongoing) costs

Reduced sugars products: It is not anticipated that the changes to the provisions in this area will give rise to any additional costs to industry. Reducing the upper limit to 50% will incur no additional costs, because reduced sugars products on sale are currently known to be within this limit (i.e., because separate Agency Guidance provides that a “reduced sugar” claim may only be used where there is a reduction of at least 25%. A 25% reduction from the “standard” jam product (at around 65%) would give a soluble solids content of around 49%). Reducing the lower limit may have the effect of new products containing intense sweeteners coming onto the market, thus widening consumer choice.

Repealing the reserved description for UK Standard Jelly: Advice from the industry is that UK Standard Jelly is not currently produced in significant quantities, if at all. However, if any companies are currently producing this product, costs may arise from the need to add more fruit in order for the product to meet the reserved description for “jelly”.

(iii) Costs for a typical business

For costs to a typical small business, see “litmus test” below.

(iv) Additional costs to Enforcement Bodies

LACORS (Local Authorities Co-ordinating Body on Regulatory Services) has confirmed in writing to the Agency that it does not anticipate any additional resources will be necessary for local authorities in the UK to enforce the provisions of the proposed domestic legislation on an ongoing basis.

Consultation with small business: the “small firms impact test”

Three small firms were contacted concerning the impact the regulations would have on their business. Some were unaware of the regulations as some expected Trading Standards to notify them if anything came up.

Business one: Does not make jam. Makes high quality extra jam in 60-80kg lots. They could not or would not provide figures for their total annual jam production. They make marmalade in the same quantity as the extra jam, also make jelly in the same size lots but not as much as extra jam. No mincemeat, fruit curd or sweetened chestnut puree is produced. As this firm does not use dried fruit there will be no impact from the provisions for declaring residual sulphur dioxide. They market high quality products to the gourmet market and will not be adversely

affected by the regulations. The impact therefore on this business will be minimal.

Business two: Were unaware that there were any new regulations in progress. They manufacture Extra jam (24000kg annually), Jelly (8000kg annually) Marmalade 15000kg annually) mincemeat (150kg annually) and lemon curd (300kg annually). As the business was unaware of the regulations it was not aware of the impact it would have. They did not use dried fruit and felt the additional declaration of Sulphur Dioxide residues above 10mg/kg would not be an issue. Therefore it was generally felt that the impact on this business would be minimal.

Business three: This business makes jam, extra jam, jelly, marmalade and fruit curd, around 170000kg per annum in 340g jars. This business welcomes the reduction in sulphur dioxide residue permitted as a quality improvement. This will therefore not be an issue for this business. The restriction of ingredients will have no impact on the business and therefore the impact of these regulations will be minimal.

Competition Assessment

A competition filter assessment has been carried out in line with guidance.

The results of the competition filter conclude that it is unlikely that the Jam and Similar Products Regulations will have a deleterious effect of the competition within the UK industry.

The favoured option, Option 3, would be expected to impact on those manufacturers, which package and label their own jam and similar products as well as packers and retailers of jams etc. Some reformulation of the product and/or relabelling may be required. It will not effect food processors who use jam in their products as bakery jams are excluded from the scope of the new regulations.

The total jams market is valued at around £80m of which jam makes up approximately half. The remaining 50% are split between three main categories covering extra jam at 28%, reduced sugar jam at 13% and pure fruit jam at 7%, the remaining 2% accounts for "other" jams. The marmalade market is valued at around £59m, of which the majority (57%) is thin cut and the remainder medium and thick cut.

Most firms produce more than one type of product, e.g. different kinds of jams, marmalades and other sweet spreads (such as chocolate spreads or honey). Consumers also tend to purchase a range of such goods. This suggests some substitutability both on the demand and supply sides. There is some concentration among producers of jams and marmalades, but given the degree of substitutability and the low impact of the regulation the regulations are unlikely to affect the market structure or have a significant effect on competition.

The number of products affected by the change to the use of the words conserve and preserve is thought to be around 350 products. The cost to industry of being no longer able to use these terms in isolation and changes in the use of other ingredients is estimated at around £30,000. An additional £60,000 may be expected for changes to labelling requiring the declaration of Sulphite over 10 mg/kg which will effect around 800 products including those in the industrial jams market.

A typical cost for labelling changes to a product is estimated at around £100 per product label. Changes required by smaller jams manufactures may be more minimal as a number of these tend to be the speciality manufacturer making premium products and less likely to be using sulphited fruit. Some products which use only the term conserve or preserve may still additionally now need to include the reserved description jam or extra jam.

Option 3 would allow innovation into reduced-sugar spreads and this is beneficial for the level of competition in this market, which is characterised by renewed innovation.

The overall impact of the new regulations will result in some relabelling costs but these are likely to be absorbed with other changes to labels such as glucose syrup labelling. The main manufacturers have been aware of the new regulations for some time and the further transition period until 12 July 2004 will also provide manufacturers with more opportunity for phased label changes.

Enforcement and Sanctions

Enforcement of the domestic regulations will be the responsibility of Local Authorities.

The domestic regulations make it an offence to:

- offer for sale a food described using one of the reserved descriptions, that does not meet the compositional requirements of Directive 2001/113;
- offer for sale a jam or similar product that is not labelled in accordance with the requirements of Directive 2000/36.

The penalty on conviction for an offence under the domestic regulations is a fine not exceeding level 5 on the standard scale (currently £5,000). This is in line with the penalty provided by the FLR, and other Regulations on the composition and labelling of foods.

The Food Standards Agency has produced detailed Guidance Notes for businesses (on which interested parties have been consulted) explaining the provisions of the domestic regulations. It is anticipated that this Guidance will assist individual businesses to ensure their compliance with the requirements of the domestic regulations, and ensure a consistent approach to enforcement. The guidance will be available at the same time the regulations come into force and will be available from the Agency and its website at www.food.gov.uk.

Monitoring and Review

The Regulations will be monitored via feedback from stakeholders as part of the ongoing policy process.

Consultation

(i) Within Government

The Regulations do not directly impact upon the work of any other Government Departments. However, the Small Business Service have been consulted (see above), and LACORS, DEFRA and DTI were included in the public consultation (see below).

(ii) Public Consultation

A full 12 week public consultation exercise with industry, enforcement and consumer groups was undertaken throughout the UK in April 2003, and was freely available on the Agency's website. No responses were received in Wales but 4 responses were received UK wide.

No substantive changes to the Regulations were requested although some comments were received relating to the more restrictive list of ingredients which can be added to jam and similar products. This is laid down in the directive and the UK cannot act independently. Comments were also received on the changes in use of the terms preserve and conserve. The directive does not legislate on the use of these terms and therefore the use of conserve or preserve are no longer restricted and could be used to describe products not covered by the regulations. However if these terms are used on products covered by the regulations then they must also now be accompanied by the appropriate reserved description.

An earlier consultation indicated the majority in favour of retaining UK controls on mincemeat and fruit curds. These provisions are now included in the regulations and maintain the status quo. As required, the Commission has been notified under the Technical Standards Directive of these additional UK only measures.

Some comments relating to the draft Guidance Notes requested further clarification, and changes have been made where appropriate. In addition, some further information has been provided on the estimated costs arising from the Regulations, and this has been included in this final RIA

Summary and Recommendation

	Costs	Effect
Option 1	None	Would not deliver improved consumer protection measures of the new Directive. UK rules would be out of line with rest of EU. Would leave UK at risk of infraction proceedings from Commission.
Option 2	~£100,000 Note - cost of opening up the market for reduced sugar jams and lack of controls on mincemeat and fruit curds is difficult to estimate)	Would deliver full consumer protection measures provided by the Directive. Would likely lead to consumer confusion in relation to reduced sugar products and may lead to products with only minimal sugar reduction using the term as a marketing tool. Would likely lead to deterioration

in the quality of fruit curds and mincemeat.

Option 3 £100,000

Would deliver full consumer protection measures provided by the Directive, while maintaining consumer choice in relation to reduced sugar products, and maintaining the quality of fruit curds and mincemeat.

It is recommended that **Option 3** be adopted, and the Jams and Similar Products Regulations 2003 have been drafted accordingly. This option will deliver the full consumer benefits of the Directive, and fulfil the UK's community obligations by providing for its enforcement.

Minister's Declaration

I have read the Regulatory Appraisal and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister

Date

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