

REGULATORY APPRAISAL

1 TITLE OF PROPOSAL

The Fruit Juices and Fruit Nectars (Wales) Regulations 2003

2 Purpose and intended effect of measure

Transposition in Wales of EU Council Directive 2001/112/EC relating to fruit juices and certain similar products.

New legislation will replace the Fruit Juices and Fruit Nectars Regulations 1977 (as amended) which currently apply to the whole of Great Britain. These new Regulations shall come into force on 12th July 2003 and extend to Wales only. England, Scotland and Northern Ireland have separate, parallel legislation.

The legislation will assist consumers by requiring a clearer distinction between juice obtained directly from fruit and that obtained by the reconstitution of concentrate. This will be achieved by the use of the product name 'fruit juice' for juice produced directly from fruit; and the use of the name 'fruit juice from concentrate' for that made by reconstituting fruit juice concentrate. In future, the wording 'from concentrate' will be an integral part of the product name, thus drawing the attention of consumers more readily to the method of production.

Juices made by mixing fruit juice and fruit juice from concentrate will be labelled as 'fruit juice' with the additional wording 'partially made from concentrate'. An explanation of these terms is given below.

These product names will be used in the labelling of juice and also to describe juice where it is included and labelled in the ingredients listing of other foods. When so used in labelling, the word 'fruit' will be replaced by the name of the fruit or fruits in question, for example 'orange juice'.

It is worth noting that the labelling requirements outlined in the new Regulations will only affect manufacturers of fruit juice from concentrate and manufacturers of other food products which require the use of labelled fruit juice from concentrate as an ingredient. For example, a business using the juice squeezed from oranges in the production of a food product will not be subject to the requirements of the Regulations unless the ingredient used is a labelled fruit juice.

The legislation will also permit the addition of vitamins and minerals to fruit juice (with prescribed labelling), whilst maintaining existing rules on the addition of sugar, acidifying agents and ascorbic acid. In addition, the new Regulations will bring methods permitted for the production of concentrated citrus juices (e.g. orange, grapefruit) more in line with those allowed in some

major producing countries, such as the USA, where water-extracted juice can be incorporated in juice pressed from the fruit.

Terms

Fruit juice - is pressed directly from the fruit and the juice is **not** concentrated. This form of juice is often described as 'direct' or 'not from concentrate'.

Fruits grown abroad (e.g. citrus) can be transported to the UK where the juice is extracted and sold as 'freshly squeezed' juice. Alternatively, the juice may be extracted in the country of origin and transported under refrigerated conditions to the UK where it is often subjected to mild pasteurisation during packing to enhance preservation. This juice is normally located in chilled cabinets in retail outlets.

It is expensive to transport juice in this way and, as an alternative, juice can be concentrated in the country of origin by evaporation under reduced pressure to reduce its volume. The concentrated juice can then be transported in a frozen state more easily and cheaply to the country of sale.

Fruit juice from concentrate - is made by reconstitution of the concentrate in the country of sale by the addition of the same amount of water originally removed. Such juice, which is normally pasteurised during packing, usually differs slightly in taste from fruit juice (direct juice) due to its processing. It is normally located on ambient shelves in retail outlets, but is, sometimes, placed in chilled cabinets and sold at similar prices to fruit juice not prepared from concentrate.

Although the current legislation requires that, when fruit juice is made from concentrate, the pack has to bear the declaration 'made with concentrated ...x... juice', this declaration is not always displayed in a way that is immediately apparent to consumers.

Fruit juice partially made from concentrate - is a mixture of fruit juice from concentrate and fruit juice. This juice is usually displayed in the chill cabinet.

The following are not regulated by this legislation:

The labelling term 'freshly squeezed' applies to juice that is made directly from fruit (not from concentrate) and there is usually a short time between juice extraction and the sale of the product. The Food Standards Agency has advised this short time should be two weeks or less. Where freshly squeezed juice has been pasteurised, this should be indicated on the label. Freshly squeezed juice is displayed in chill cabinets and should be kept refrigerated.

The labelling term 'pure' which the Food Standards Agency has advised should only be used for fruit juice or fruit juice from concentrate to which no sugar, permitted acids or ascorbic acid have been added.

Fruit Nectars: These products contain some fruit juice but are not made exclusively from fruit juice. They may contain other ingredients, such as flavours, colours, sweeteners and preservatives that are not permitted in fruit juice. Fruit nectar drinks may contain a high proportion of added water. These soft drinks are often displayed in retail outlets near fruit juices. There are other forms of fruit juice drinks that are sold in a concentrated form suitable for dilution by the consumer.

2.1 Background

The Fruit Juices and Fruit Nectars Regulations 1977 (as amended) implemented Council Directive 93/77/EEC. Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption was adopted in Brussels on 20 December 2001. This Directive replaces Council Directive 93/77/EEC on 12 July 2003. The Directive requires Member States to bring into force, before 12 July 2003, the laws, regulations and administrative provisions necessary to comply with this Directive. The proposed new Fruit Juices and Fruit Nectars (Wales) Regulations [2003] will meet this requirement.

The marketing of products, which fail to comply with these Regulations, will be prohibited from 12 July 2004. However, products, which were labelled and placed on the market (i.e. ready for sale) before 12 July 2004, in accordance with The Fruit Juices and Fruit Nectars Regulations 1977 (as amended in 1982, 1991 and 1995), may continue to be sold until stocks run out.

2.2 Risk assessment

Failure to implement this Directive in Wales will risk infraction proceedings. With regards to the health benefits that the changes in this legislation will bring to the consumer, as we understand it, nutrient intakes are generally adequate (except for some vulnerable groups) even though energy intake is in decline. Therefore from a public health perspective there is no need for fortification. But our view is that it is acceptable to fortify as long as safe, and not accompanied by a misleading claim.

2.3 Business sectors affected

All organisations involved in the production and marketing of fruit juices and fruit nectars and those selling products of which fruit juice is an ingredient.

Our best estimate of the number of affected producers is 30, however even more manufacturers of foods containing fruit juice as an ingredient are also likely to be affected by the Regulations. This estimate is based on the British Soft Drinks Association, which has just under 20 members producing concentrated juice itself and the Office of National Statistics'

Interdepartmental Business Register (IDBR), which records 20 producers of fruit and vegetable juices. Both sources are likely to leave out smaller producers, but given that small companies cannot feasibly invest in the technology needed to package fruit juice from concentrate, we believe the estimate to be reasonable.

2.4 Issues of equity and fairness

Council Directive 2001/112/EC applies to all Member States and is required to be implemented throughout the European Community with effect from 12 July 2004. There is no disadvantage for businesses in Wales. Regulations will apply equally to the voluntary sectors and to charities that are involved in the production of fruit juice.

3 Options

Option 1

Do nothing.

Option 2

Transpose the provisions of the Directive by further amending The Fruit Juices and Fruit Nectars Regulations 1977.

Option 3

Transpose the provisions of the Directive by revoking the Fruit Juices and Fruit Nectars Regulations 1977 (as amended in 1982, 1991 and 1995), and replace with a new Statutory Instrument.

4 Benefits

Option 1

Advantages

Producers would not be required to change the labelling of their products.

Disadvantages

Failure to transpose this EU Council Directive into national legislation would risk infraction proceedings by the Commission.

Consumers would not benefit from the easier identification of juices prepared by diluting concentrate.

Producers would continue to be disadvantaged by requiring suppliers to exclude water-extracted juice from citrus juices.

Options 2 and 3

Advantage applicable to Option 3 only

The fruit juice legislation will be available as a single set of unamended Regulations, more understandable to consumers, industry and enforcement authorities.

Advantages applicable to both Options 2 and 3

The risk of infraction proceedings by the Commission would be avoided.

Consumers would benefit by more easily identifying juice prepared from concentrate from amongst a range of products.

The real significance is that some consumers are misguided in their overall understanding of the terms “from concentrate” and “not from concentrate”. As illustrated in the FSA Fruit Juice Labelling Report 2002¹, 46% believe the term “not from concentrate” to mean that the product is “not concentrated”. Some consumers are also under the impression that the chilled “from concentrate” juice is better than the non-chilled one and are being misled into paying for a higher priced product. The Mintel report² shows that the average price per litre of chilled juices was £1.95 compared to £0.89 for a litre of long-life in 2002.

The provision to permit the incorporation of water extracted juice will be of benefit to producers because it will bring production practices permitted in the EU more in line with those in some of the countries from which juices are imported. It is possible that the removal of the need for special orders might lead to a slight reduction in costs for Welsh fruit juice packers.

The legislation will also permit the addition of vitamins and minerals to fruit juice (with prescribed labelling), whilst maintaining existing rules on the addition of sugar, acidifying agents and ascorbic acid.

Disadvantage applicable to both Options 2 and 3

Producers would need to redesign the labelling for some of their products.

¹ FSA (2002), *Fruit Juice Labelling Report*, London: FSA

² Mintel (2002), *Fruit Juice and Juice Drinks*, Mintel

Disadvantage applicable to Option 2 only

The 1977 Regulations have already been amended three times. Further amendment would lead to legislative complexity and lack of clarity.

5. Costs for business, charities and voluntary organisations

5.1 Compliance costs

Fruit juices and certain similar products intended for human consumption are already subject to The Fruit Juice and Fruit Nectars Regulations 1977 (as amended) and the labelling provisions of the Food Labelling Regulations 1996.

The changes in legislation are not expected to affect charities or voluntary organisations.

Financial Implications for Wales

We do not anticipate these Regulations will carry any additional cost implications for the Welsh Assembly Government. The Small Business Service, LACORS (Local Authority Co-ordinators of Regulatory Services), DEFRA and DTI were included in the public consultation. LACORS have confirmed that they do not anticipate any additional resources will be necessary to enforce provisions of the 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 only basis. No breakdown by county 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.

5.2 Costs for a typical business

The British Soft Drinks Association (BSDA) represents many of the major producers of fruit juices in the UK and has estimated, via lobby-groups, that there will be a one-off re-labelling cost to the industry of around £7 million. UK annual sales of fruit juice are currently £1 billion.

Many businesses, including those using labelled fruit juice as an ingredient in other food products, will be required to produce new or redesigned packaging for certain products to meet the new labelling requirements. However, in some instances, producers have been able to time the introduction of the new labelling in conjunction with routine pack redesigns, which take place periodically. Companies have already started to introduce the changes. We have not been able to estimate the number of product lines affected.

Marketing of products which fail to comply with this Regulation but which were labelled and placed on the market before 12 July 2004, in accordance with the existing regulations, may continue to be sold until stocks run out. It is anticipated that such stocks held in warehouses and retail premises will comprise 'products' that have a low turnover. A 'product' is defined as fruit juice or nectar present in a labelled retail pack before 12 July 2004.

6. Small Firms Impact Test

During the consultation process the Food Standards Agency has endeavoured to establish the proportion of small businesses (employing less than 50 staff), in the fruit juice industry.

We have undertaken a Small Firms Impact Test on three small businesses, which will assist in determining whether they will be disadvantaged by the costs involved in changes to existing legislation. These are likely to be predominantly labelling changes. The test comprises a set of questions designed to establish how a small business will be affected.

The Small Business Service and the Federation of Small Businesses have been included in our consultation process. In addition, small businesses that respond to the consultation have been contacted to determine if there are any special issues that are particularly significant to them.

Generally, the Regulations are welcomed and are wanted by the small business sector, who are keen to stop larger companies benefiting from consumer misinterpretation. They now hope to see a greater level of consumer awareness with respect to the appropriate fruit juice definitions and are not especially worried about the financial impact of relabelling.

One concern in particular is the fact that the term "freshly squeezed" is not covered by the Regulations. As these juices are produced within the UK, it is the UK market that is directly affected. The current uncontrolled use of this term is beneficial to large foreign companies producing "not from concentrate" juices, as consumers are unable to clearly differentiate between the different types of fruit juice.

7. Competition assessment

The fruit juice and nectars sector is dominated by own-label products (around 80% of the total value of the sector according to Mintel, 2002, Fruit Juice and Juice Drinks). Own-label products are produced mainly by two firms, who thus have a high overall market share between them. However, due to the countervailing power exerted by supermarkets, the potential negative impact on competition of this high concentration is believed to be significantly

reduced and the regulation is unlikely to increase the current levels of concentration in the market.

The Directive's labelling requirements will create some compliance costs arising from the need to produce new or redesigned packaging for certain products. The relatively low costs of the proposal would not be expected to have significant implications for competition, particularly within the context of the wider market in which it is likely that the affected business products compete. This view is based on the likelihood that there is some substitution on the demand and supply side for producers of fruit juices and nectars with producers of juice drinks, soft drinks and mineral waters (Intel, 2002). However, even when using a narrow definition of the market we believe that there are unlikely to be any significant impacts on competition.

Though labelling changes do represent a fixed cost, which is likely to have a disproportionate impact more on smaller producers, we do not believe that the costs are significant enough to alter competition. Given that some producers have already started to introduce the required changes as part of their routine pack redesigns, and there will be a lead-time of 18 months before the regulations are introduced, we believe that the impact on producers will be reduced.

In addition, the proposed regulation does not restrict innovation and for the first time permits the addition of vitamins and minerals to fruit juices and nectars.

The regulation also affects producers of goods, which include fruit juices in its ingredients. As the proposal will only impose relatively low re-labelling costs (only the ingredients lists have to be changed) on many producers producing a wide range of food products, no negative impact on the competition between such producers is expected.

On the basis of the above, we do not expect that the proposed regulation will have a significant negative impact on competition in any of the affected markets.

(For further details of the competition filter please see www.offt.gov.uk).

8. Enforcement, Sanctions, Monitoring and Review

Enforcement of the Wales Regulations will be the responsibility of Local Authority Trading Standards and Environmental Health Departments.

It is expected that the monitoring of new retail packs will continue as part of existing enforcement procedures. Consequently, additional costs to enforcers are not anticipated because the new legislation does not specify any increased monitoring.

The penalty on conviction for an offence under the regulations is in respect of the provisions of these requirements, a fine not exceeding level 5 on the standard scale.

The effectiveness of these Regulations will be monitored via feedback from stakeholders.

9 Consultation

A written 12-week public consultation exercise on implementation of the Directive took place in February 2003. Over 40 consumer groups, manufacturers, retailers, trade associations and other industry bodies, enforcement bodies, health professional groups, individuals and other government departments were consulted in Wales. 24 responses were received UK-wide, representing input from all of these groups. 10 of the responses commented on the content of the SI.

10 Summary and recommendation

Option 3 is the favoured option, since it will enable the legislation for fruit juices and fruit nectars to be presented as a single piece of legislation which will also consolidate the Fruit Juices and Fruit Nectars Regulations 1977 as amended. Consumers, industry and enforcement authorities will more easily understand the Regulations.

The new legislation will ensure clearer labelling of the product which will benefit consumers.

There will be a one-off cost for labelling to industry.

The UK is required to make provision for the enforcement of the new EC fruit juice and fruit nectars requirements to ensure compliance with our Community obligations and to deliver the intended consumer and industry benefits.

Declaration:

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

Signed by the responsible Minister

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Date

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