

<b>Title:</b> Fruit Juices and Fruit Nectars Regulations 2013 <b>IA No: 1350</b> <b>Lead department or agency:</b> Defra <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 28/10/2013		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Michelle McQuillan 0207 238 4352			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> RPC Opinion Status

**Cost of Preferred (or more likely) Option**

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?	
£10.96 m	£10.97m	-£1.05m	No	NA

**What is the problem under consideration? Why is government intervention necessary?**  
 Existing rules on the labelling and composition of fruit juices are overly complex and ambiguous. Government intervention is necessary as revised EU rules were adopted in April 2012 and need to be implemented by 28 October 2013 by way of a Statutory Instrument (SI). In addition under the Hospitality, Food and Drink Red Tape Challenge Defra committed to consolidate rules on fruit juice to simplify the complex landscape of food legislation at the same time as implementing the new EU provisions. These changes will benefit UK industry by providing clearer, less burdensome rules and by allowing industry to continue to compete on an equal footing with the rest of Europe.

**What are the policy objectives and the intended effects?**  
 a) To reduce unnecessary burdens on business, to clarify the rules for them and give them a level playing field by transposing the new EU rules into national law;  
 b) to simplify the regulatory landscape for businesses by consolidating all existing fruit juice regulations in line with RTC commitments;  
 c) To identify and remove any gold plating in existing fruit juice rules and use copy out as the norm when implementing 2012/12/EU;  
 d) To provide for more proportionate enforcement by replacing existing criminal sanctions with civil sanctions.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Do nothing. Continue with business as usual (the baseline).  
 Option 1 (chosen)– Introduce new rules on fruit juice labelling and composition which comply with Council Directive 2012/12/EU, simplify the existing landscape, remove existing gold-plating of EU rules and provide for more proportionate enforcement. The changes include a move from mandatory to optional restoration of aromas, prohibiting the addition of sugar, additional labelling provisions and providing for water extracted juices. There will be benefits to UK industry through cost savings, greater clarity and by ensuring a level playing field and consistency when trading in the juice market. 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. Existing criminal sanctions for breaching the regulations will also be replaced with civil sanctions in line with Ministry of Justice guidance and follows a similar approach to the Food Information Regulations and Fish Labelling Regulations.  
 Option 1 is our chosen option as this effectively and proportionately regulates the sector by setting minimum rules and employing new civil sanctions.

<b>Will the policy be reviewed? It will be reviewed. If applicable, set review date:</b> October 2018					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: George Eustice Date: 28/10/2013

# Summary: Analysis & Evidence

# Policy Option 1

Description: Introduce the Fruit Juices and Fruit Nectars (England) Regulations 2013

## FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low:	High:	Best Estimate: 10.96

COSTS (£m)	Transition Years		Annual (Constant Price)		Total Cost (Present Value)
	Total (Constant Price)	Average (excl. Transition)	Low	High	
Low	Optional	Optional	Optional	Optional	Optional
High	Optional	Optional	Optional	Optional	Optional
Best Estimate	£0.95m	£0	£0	£0	£0.95m

### Description and scale of key monetised costs by 'main affected groups'

**Industry: EU Regulation-(i)** Transition costs of familiarisation with the new regulation will be £4,000 (present value), with equivalent annual cost (EAC) of £400. **(ii)** One-off relabelling cost to the industry will be £938,000 (PV), equivalent to £109,000EAC.

**Government:** The enforcement body will face transition cost of about £13,000 (PV) and EAC £1,500.

**Consumer:** No cost.

### Other key non-monetised costs by 'main affected groups'

**Industry: EU regulation (i)** For products that are not labelled in line with the descending order of fruit ingredients, manufacturers may face some re-labelling and reformulation costs. These costs are deemed negligible as very few manufacturers, if any at all, will be affected **(ii)** We have assumed that all businesses affected by lowered Brix standard would choose to re-label. It is possible that some of them would reformulate rather than re-label, but these costs should not exceed the estimated re-labelling costs.

BENEFITS (£m)	Transition Years		Annual (Constant Price)		Total Benefit (Present Value)
	Total (Constant Price)	Average (excl. Transition)	Low	High	
Low	Optional	Optional	Optional	Optional	Optional
High	Optional	Optional	Optional	Optional	Optional
Best Estimate	£0	£1.38m	£1.38m	£1.38m	£11.91m

### Description and scale of key monetised benefits by 'main affected groups'

The total cost savings from not restoring aromas will be £1.38m per annum or £11.91 in total (PV). This assumes that 80% of value/economy juices, which are made from concentrate, currently restore aromas (volatile flavours lost during juice processing) at a cost of 0.5p per litre and will no longer do so. Industry suggested that 0.5p is the best estimate.

### Other key non-monetised benefits by 'main affected groups'

**Industry: (i) Consolidation (Red Tape Challenge)** - Industry benefits from one encompassing set of regulations that will replace two existing sets of guidance; **(ii) EU Regulation** -The new regulation allows industry to respond to consumer demand for choice and to drive competition in the market; and **(iii)** There will be benefits to the UK fruit juice industry of a level playing field and consistency when trading in the juices. **Consumers:** It allows more choice to consumers as aromas are used to differentiate between products. **Government:** Improved clarity will ensure better compliance and ease any trade issues.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Assumptions: (i) Not all the manufacturers will choose to do away with aromas when it becomes optional to restore them but 80% of the manufacturers producing ambient private juices will; (iii) number of manufacturers who produce fruit juice & soft drinks manufacturers who produce fruit juice as part of their range is assumed to be 75 over the next 10 years.

The net present value is mainly driven by the savings from optional aroma restoration. The analysis is therefore sensitive to industry's response to the revised rules.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual 2009) £m:			In scope of OITO?	Measure qualifies as
Costs: £0.09m	Benefits: £1.14m	Net: -£1.05m	No	N/A

## Executive Summary

### i) What is the problem?

Revised EU rules relating to the labelling and composition of fruit juices and fruit nectars were adopted in April 2012. The UK has until 28 October 2013 to implement the new provisions of Council Directive 2012/12/ EU into national law to avoid infraction proceedings. In addition under the Hospitality, Food and Drink Red Tape Challenge Defra committed to consolidate rules on fruit juice to simplify the complex landscape of food legislation at the same time as implementing the new EU provisions and replace the criminal sanctions with civil sanctions in line with MoJ guidance.

### ii) What solution is proposed?

To consolidate all existing national measures on fruit juice together; to identify and rectify any gold plating or under-implementation; to implement 2012/12/EU by way of copy out and to introduce more proportionate enforcement provisions by moving from criminal to civil sanctions. Most of the costs arise from labelling requirements. The benefits arise from the increased flexibility of allowing fruit juices to have volatile aromas (flavours recovered during the processing of juices) restored where appropriate to the product, rather than the previous mandatory requirement to restore any aromas lost during fruit juice processing.

### ii) Risks

We have assumed that most of the value-range juice manufacturers will stop fully restoring aromas to their juices when it is no longer mandatory and achieve some savings. If they choose to maintain the status quo the savings will not be realised but there will still be benefits of improved legal clarity particularly where fruit aromas are not available or of too poor quality to restore. Moving from criminal to civil sanctions and the use of improvement notices is in line with Government policy for more proportionate regulation of non food safety breaches of legislation such as in this case. Breaches of the legislation are likely to be small as the industry is generally compliant, and we would not expect the change in the sanctions regime to alter this.

Table ES1: Summary of Costs and Benefits (net present value)<sup>1</sup>

<b>Costs</b>	
<u>Businesses/ Industry</u>	
Familiarisation	£0.004m
Labelling	£0.94m
<u>Government</u>	
Familiarisation	£0.01m
<b>Benefits</b>	
<u>Businesses/ Industry</u>	
Cost Savings on aroma restoration	£11.91m

<sup>1</sup> Costs and Benefits are appraised over 10 years time period and are presented in present value terms, in 2013 prices.

## Evidence Base (for summary sheets)

### Policy Landscape

1. One of the Government priorities is to reduce unnecessary burdens on business and remove burdensome or outdated regulations where they are no longer needed. As part of the Red Tape Challenge Exercise covering the Hospitality theme, a review of all existing rules covering food labelling and compositional standards was carried out. One of the conclusions of this RTC exercise was that when Defra were implementing revised EU rules covering fruit juice it would also consolidate all existing rules on fruit juice and remove any identified gold plating (over implementing or going beyond EU rules) or under implementation of existing EU fruit juice provisions (See Table 3 for detail).
2. We have used copy out when implementing the revisions to fruit juice directive 2001/110/EC contained in 2012/12/EU. We held a 6 week consultation from 25 March to 6 June 2013 to seek the views of stakeholders on the new Regulations and the costs and benefits estimated in the Consultation Stage IA.

### Background

3. EU rules on fruit juice are important to ensure that consumers make informed choices based on effective labelling. The rules help protect the consumer by ensuring any products described as a “fruit juice” will meet minimum legal compositional and labelling requirements. Council Directive 2001/112/EC relating to fruit juices and similar products lays down rules governing the composition and labelling of these products and has been implemented into English law by the Fruit Juices and Fruit Nectars (England) 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 incurred significant costs on UK industry in re-labelling in 2003. However in subsequent years the European Commission, industry and all Member States were keen to see the Directive updated to take account of technical progress since its adoption in 2001 and to also bring it in line, where possible, with existing international standards for fruit juices, particularly the revised Codex<sup>2</sup> Standard for fruit juices and nectars adopted in 2005.
4. 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 (England) (Amendment) Regulations 2011. This introduced new minimum Brix<sup>3</sup> levels for fruit juices from concentrate largely in line with Codex. 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

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<sup>2</sup> Codex is an FAO/WHO body 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.

<sup>3</sup> Brix values provide a measure of quality by setting minimum soluble solids contents (sugar level) for fruit juices.

Parliament on a 2nd more detailed set of amendments was reached at the end of 2011. This IA is primarily concerned with the impacts of implementation of this 2nd set of revisions.

5. . The revisions agreed include permitting aromas, which can be lost during processing, to be optionally added back as necessary, and preventing the addition of mandarin juice to orange juice without indicating this on the labelling. It also removes sugar from the list of authorised ingredients that can be added to fruit juice, includes tomatoes in the list of fruits that can be used for fruit juice production and permits freezing as an authorised way of storing fruit.
6. This Impact Assessment estimates (i) the costs, benefits and risks of implementing the revised EU Directive and (ii) seeks benefits from consolidation of regulations in the sector under the RTC initiative.

Note: The cost and benefit impacts assessed in this document relate to England only. Scotland, Wales and Northern Ireland will be separately preparing their own impact assessments.

## Problem under consideration

7. Government intervention is required to implement revised EU rules on fruit juice and nectars by 27 October 2013 by way of a Statutory Instrument (SI). Industry has a further 18 months transition period to exhaust stocks labelled before that date. Under the Hospitality, Food and Drink **Red Tape Challenge** Defra also committed to consolidate all rules on fruit juice to simplify the complex landscape of food legislation at the same time as implementing the new EU provisions. These changes will benefit UK industry by providing clearer, less burdensome rules and by allowing industry to continue to compete on an equal footing with the rest of Europe.

## Rationale for intervention

8. In general, government intervention is required in the area of food labelling in order to ensure that consumers/purchasers of food and drink are sufficiently informed about what they are purchasing. In the absence of the requirement to provide accurate information on food labels, consumers may make sub-optimal purchases as a **result of the** imperfect and asymmetric<sup>4</sup> information.
9. Government intervention is necessary in order to transpose Council Directive 2012/12/EU into our national law which needs to be done by way of updating the existing Fruit Juices and Fruit Nectars (England) Regulations 2003 (as amended). 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 we would want to avoid. The minimum infraction fine that can be imposed on the UK is 9.6 million Euros. Implementation is in the interests of the UK as it allows our industry to compete on an equal basis with the rest of Europe. It will also ensure consumers are protected by guaranteeing a minimum fruit juice quality.
10. Unnecessary regulation can impose costs on industry. Existing rules on fruit juice will be consolidated into a new single Statutory Instrument which will honour the Government's RTC commitments to reduce regulatory burden on industry. This will see the number of regulations on fruit juice decrease to one, making it easier for industry and enforcement authorities by having all the fruit juice rules together in one set of Regulations.

## Policy objective

11. The objective is to reduce unnecessary burdens on business and clarify rules on fruit juices. We also aim to simplify the regulatory landscape for businesses by consolidating all existing fruit juices regulation in line with RTC commitments. We have identified small issues of gold plating or under implementation in the existing fruit juice rules which have been removed and are described more

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<sup>4</sup> Producers of food and drink know more about the qualities of the product than consumers.



fully in Table 3. In addition under the Government guidelines for implementing EU legislation we have used copy out as the norm when implementing 2012/12/EU to avoid any issues of over or under implementation; finally our objective to provide for more proportionate enforcement will be met by replacing existing criminal sanctions with civil sanctions.

12. Our aims are to implement the new rules contained in 2012/12/EU into national law. Implementation of these new measures will provide a level playing field for industry 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 month 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 re-labelling to be built in as part of a products' refresh cycle, although the costs to the industry have not been adjusted for this off-setting effect.

## Options considered

13. **Baseline** - Do nothing. (i) Failure of the UK to update the Fruit Juices and Fruit Nectars (England) Regulations 2003 to align them with Council Directive 2012/12/EU would constitute a failure to comply with our EU obligations. It may lead to infraction proceedings being brought about by the European Commission and a hefty fine. This would also leave UK industry at a competitive disadvantage against other Member States and industry would not benefit from many of the favourable changes which have been already welcomed by fruit juice manufacturers. (ii) Business would not benefit from consolidation measures and removal of gold plating.
14. **Option 1** – (i) Consolidate all existing Fruit Juice Regulations into a new single England Fruit Juice SI. 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 and (ii) introduce the changes required by Council Directive 2012/12/EU. This provides consistency for UK industry across the EU and ensures that consumers are guaranteed a minimum quality of product. The majority of changes are favourable to the UK particularly the move from compulsory to optional restoration of aromas to juice. Ambiguity around how much and what aromas should be present had caused trade difficulties (particularly with Germany) so the flexibility of adding back aromas as appropriate to the product will remove the current compliance problems. This is particularly the case for fruit juices like pineapple, where adding back aromas would be detrimental to the taste, and many tropical juices, where the aromas are unavailable. This move is also in line with the international Codex fruit juice standard which opts for optional restoration of aromas.

### Key Revisions contained in Directive 2012/12/EU

15. The most substantial changes in the new amending Directive and of particular relevance to the UK are listed below:
  - 1) **Processing methods**
    - a) Move from mandatory to optional restoration of aromas to fruit juice and fruit juice from concentrate in line with Codex.
    - b) Permitting 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.
    - c) Permitting the freezing of fruit as an approved method of preservation.
  - 2) **Sugar Prohibition**
    - a) Prohibition of sugar addition to fruit juices.
    - b) Prevention of 'no added sugar' claims on fruit juices.
    - c) 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.

- d) Prevention of the use of “no added sugar claims” on nectars containing added sweeteners.
- e) Lowering of Brix values for blackcurrant, guava, mango and passion fruit to realign with Codex levels.

### 3) **Labelling**

- a) Requirement for the product name to reflect the fruits represented in the ingredients list in descending order of their quantity in the product.
- b) Inclusion of tomatoes in the list of fruits used in fruit juice production.
- c) 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.

### 4) **Other Measures**

The new directive introduces a number of small technical adaptations and linguistic improvements not listed. These include a definition of flavour and referencing the water directive for restoration of fruit juice. These minor revisions, have negligible expected cost and benefit impacts, and are not discussed in detail. The changes are important though as they provide further clarity and will facilitate interpretation, avoiding future areas of dispute.

### **Move from Criminal to Civil Sanctions**

16. In line with Ministry of Justice guidance a change to the existing enforcement regime is proposed with a move from the existing criminal sanctions to a more proportionate and targeted regime using improvement notices. Escalation to a criminal offence would happen only if there is failure to comply with an improvement notice, with an offender being liable, on summary conviction, to a fine not exceeding level 5 (£5000) on the standard scale of fines laid down in the Criminal Justice Act. Businesses will have the opportunity to appeal against an improvement notice to the First-tier Tribunal.

### **Consolidation and Copy Out**

17. All rules relating to fruit juice are being consolidated in one new Regulation in line with Defra’s RTC commitments. This will help reduce burdens for business. The existing rules have been reviewed and any gold plating identified has been removed and the text of the original directive used (see Table 3 for full details). These are fairly minor points of detail but which ensure our industry is not disadvantaged. Implementation of the new revised Directive 2012/12/EU has also involved copy out in line with Government policy to further avoid gold plating or under implementation of EU rules.
18. For the purposes of this IA, the issues above are discussed more fully and the costs-benefit and risks explored in further detail.

## Affected groups

19. There will be three main groups affected by the changes in Directive 2012/12/EU:
- **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 amended Directive.
  - **Local Authority Trading Standards officers** will also need to familiarise themselves with the changes to legislation arising from the proposal;
  - **Her Majesty’s Court and Tribunals Service (HMCTS)**, through potential changes in court business and new business for the First-tier Tribunal; and
  - **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 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 juices manufactured in the EU will not contain added sugar.

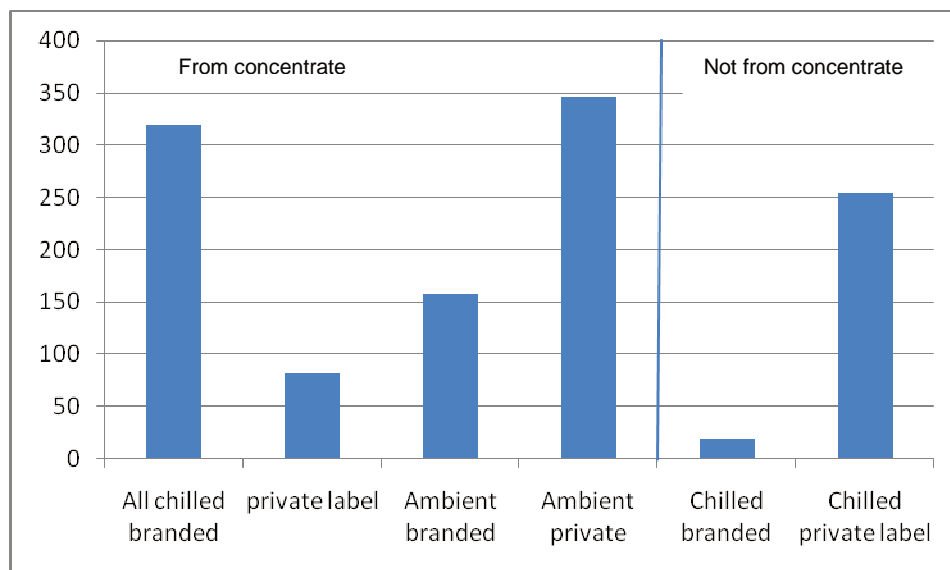
## Fruit Juice Manufacturing Sector

20. Businesses manufacturing and processing fruit juices will be the main group affected, principally in terms of the changes to composition and labelling requirements and familiarisation with the amended Directive.

### Background

21. The total global market for juice and nectars<sup>5</sup> is estimated at around 39.9 billion litres representing some 90.2 billion Euros in value terms.<sup>6</sup>
22. The EU is a very significant player in the world juice market and according to the European Fruit Juice Association (AIJN) Market Report 2012 it secures 27% market share by volume. Total EU consumption in 2011 was estimated at around 10.7 billion litres, a decline of 2.2% from 2010 figures. Fruit juice itself accounted for 7 billion litres and nectars 3.7 billion litres. The report shows the total fruit juice and fruit nectars market for the UK is 1.4 billion litres.
23. Germany has the largest EU fruit juice and nectar market followed by France, with the UK in third position. Brazil is the main exporter of orange juice to the EU accounting for around 80% with the US and Spain a long way behind. China is the leading apple juice exporter and Thailand the main pineapple producer. Other popular flavours in the top ten juices by consumption include passion fruit, mango and cranberry.
24. Figure 1 below shows the split of the total UK production by type of juice. According to AIJN's 2012 report, the total UK Fruit juice market is 1.2 billion litres -split between branded-496 million litres and Private label-683 million litres. Share of fruit juice from concentrate (FC) is 778 million litres which can further be classified into ambient<sup>7</sup> branded (158 million litres); ambient private label (346 million litres); chilled<sup>8</sup> branded (20 million litres) and chilled private label (255 million litres). Not-from-concentrate (NFC) fruit juice comprises 401 million litres of the total market.

**Figure 1: UK fruit juice consumption 2011 (million litres)<sup>3</sup>**



Source: European Fruit Juice Association's 2012 report

<sup>5</sup> Nectars are defined in the new Fruit Juice Regulations 2013. These compose of water, fruit juices/ purees and sugar or honey or sweeteners. The minimum juice/puree content is laid down by the regulations and is dependent on the type of fruit used ranging from 25-50%.

<sup>6</sup> AIJN European Fruit Juice Association Market Report 2012 Liquid Fruit.

<sup>7</sup> Ambient juices do not need to be refrigerated before opening and can be stored at room temperature. Ambient juice tends to be From Concentrate and normally found on the shelf.

<sup>8</sup> Chilled juices require storage in the chiller or refrigerator. Chilled juices can be Not-from-concentrate, from-concentrate or freshly squeezed. They are normally found in the chilled section and in refrigerator compartments.



25. According to 2012 Mintel figures, own label accounts for more than half the value and volume sales<sup>9</sup> at around 64 % of the fruit juice market and is valued at £723m with volume sales of just over 700 million litres.
26. According to the Inter-Departmental Business Register (IDBR) from the 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 range<sup>10</sup>.
27. Orange juice accounts for some 54% of the UK market<sup>11</sup> 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.
28. The UK market for nectars (25-99% juice content) represented 189 m litres in 2011 according to the 2012 AIJN report with the bulk of this being accounted for by branded products. Of this smoothies were reported to account for 16 m litres.

#### Other juice uses

29. Fruit juice is also used in other products as an ingredient most notably fruit juice drinks and in canned fruit as a packing media. Ingredient use might also include confectionery and ice lollies.

### The Enforcement Sector

30. Enforcement of the rules on fruit juices is the responsibility of Local Authorities and Trading Standards officers and Environmental Health Officers will need to familiarise themselves with the new requirements in order to make sure that the new rules of fruit juice are adhered to. In line with Government objectives to ensure there is effective and proportionate means of enforcement of EU obligations, a change to the enforcement regime is proposed which will make use of improvement notices - backed up by criminal offences for a failure to comply with such notices - rather than frontline criminal offences. This standardised approach to enforcement is now being used for other food compositional legislation including the recent Food Information Regulations and Fish Labelling Regulations.<sup>12</sup>
31. This will involve serving an improvement notice to a trader where an authorised officer has reasonable grounds for believing that the trader has not complied with, or is unlikely to comply with an obligation in EU law. Indeed enforcement bodies already use the compliance/improvement notice approach for a number of other regulations so introducing this approach should not be overly burdensome and can be seen in the broad sense as a trivial change. As with any new or amended regime there may be some additional checks to begin with to test the level of compliance but it is anticipated that there will be no significant additional costs on an ongoing basis. Annexe 3 shows a simple flow chart of the enforcement process.
32. Note- The change in enforcement regime, although an RTC measure, will be carried out at the same time as introducing the new EU regulation to help avoid any familiarisation costs arising from the RTC measures themselves.

### Consumers

33. Consumers will be positively affected by most of the changes in the regulations. For example, sugar will no longer be permitted to be added to fruit juices reflecting current industry practice of not adding sugar to most juices. The use of the 'no added sugar' claims will no longer feature on fruit juice packaging: this claim confuses consumers to believe that juices in general may contain added

<sup>9</sup> Mintel Report on Fruit Juice , Juice Drinks and smoothies - UK November 2012

<sup>10</sup> Source: 'UK Business: Activity, Size and Location 2012' – Office for National Statistics – Tables B3.1 and B3.4

<sup>11</sup> A medium glass of Orange juice comprises recommended five-a-day campaign to promote healthy eating in the UK.

<sup>12</sup> The Fish Labelling Regulations 2013 SI No. 1768.

sugars but that the particular product using this claim does not. 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.

## Costs and Benefits of the Options

34. This section sets out the familiarisation costs, reformulation and/or one-off labelling costs and benefits as well as any recurring costs and benefits.
35. Industry views were gathered and represented through the BSDA which represents the vast majority of the fruit juice manufacturers in the UK. They have indicated that the revised Directive will not impact greatly on the sector. Overall, relatively small impacts are associated with the proposed changes and that this new legislation would generally be cost neutral. The costs that do arise will principally be one-off costs associated with meeting any re-labelling requirements and initial familiarisation with the new legislation.
36. There are two options:

**Baseline** - Do nothing. Failure to update the Fruit Juices and Fruit Nectars (England) Regulations 2003 to keep them in line with Council Directive 2012/12/EU may lead to infraction procedures. This would also leave UK industry at a competitive disadvantage against other Member States and industry would not benefit from many of the favourable changes which have been welcomed by fruit juice manufacturers.

**Option 1** – (i) **RTC** - Consolidate all existing Fruit Juice Regulations for England into a single new Fruit Juice SI and move from criminal to civil sanctions. 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 change in enforcement regime will ensure a more proportionate and targeted regime using improvement notices. (ii) **EU Regulation** - Introduce the changes required by Council Directive 2012/12/EU. This provides consistency for UK industry across the EU and ensures consumers are guaranteed a minimum quality product.

### Baseline Option- Do Nothing

37. This is the business as usual option where the existing Regulations would not be updated and there would be no consolidation of the regulations.
38. This option would result in the UK failing to comply with its EU legal obligations. This would be detrimental to the UK's standing in the EU as it may result in infraction proceedings by the European Commission with the risk of a significant infraction fine. A minimum fine of 9.6 million Euros is possible. The UK would also be at a competitive disadvantage if it does not take account of the new provisions which in most cases are more flexible and beneficial to industry. It is therefore in the interests of all that we amend our rules within the 18 month timeframe set out in the directive.
39. In addition failure to consolidate the existing two regulations and the new changes into one consolidated SI will be a failure on our commitment under the RTC agenda to simplify and reduce the number of regulations where possible.

### Costs

40. There are no incremental costs. This is the baseline to which all other options are compared. 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 we would want to avoid for reputational reasons. The minimum infraction fine that can be imposed on the UK is 9.6 million Euros. This potential cost has not been accounted for in the option appraisal.

### Benefits

41. There are no incremental benefits. This is the baseline against which all other options are appraised.

## Option 1

42. Option 1 would see the changes laid down in Council Directive 2012/12/EU introduced in England in line with the Directive's 18 month transposition deadline. It would also see consolidation of all existing Fruit Juice Regulations in England into a single new Fruit Juice SI under RTC commitments. 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 re-labelling costs incurred should partly be offset by this additional 18 month transition period to allow the exhaustion of stocks .
43. The costs and benefits associated with Option 1 are discussed in the following sections. For ease the details of the new EU measures and associated costs and benefits are discussed first followed by RTC measures and new enforcement provisions.

## Costs

### New measures in 2012/12/EU

#### Familiarisation costs

##### *Industry*

44. 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<sup>13</sup> is up rated by 30% to take account of overheads in line with standard cost model methodology. As mentioned above, the total number of England-based fruit juice manufacturers as of 2012 is 45. 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, for the purpose of calculating costs we have increased the figure of 45 to 75 assuming there are 30<sup>14</sup> manufacturers in the Soft Drinks industry who will need to familiarise themselves with the new regulation. Although this is not based on specific information, we believe it is reasonable to assume there will be a number of general soft drinks companies producing fruit juice and similar products who will need become familiar with the revised regulations. We believe increasing the number by 30 is likely to be conservative – it may be that the true number is somewhat lower.

##### *Public sector*

#### One-Off Familiarisation Costs

45. Local authorities will also need to become familiar with the updated regulations. It is estimated that it would take one Trading Standards officer, per local authority, 2 hours to read and become familiar with the regulations and disseminate them to key staff. The average hourly pay rate for Inspectors of standards and regulations<sup>15</sup> is up-rated by 30% to account for overheads, in accordance with the standard cost model<sup>16</sup>. Familiarisation costs to local authorities are estimated at £13,000.

<sup>13</sup> £26.40 including uprating, from the Annual Survey of Hours and Earnings 2012 (provisional).

<sup>14</sup> The additional manufacturers are divided between medium and large firms, as they are included as soft drinks companies with fruit juice divisions, and are therefore likely to be larger companies.

<sup>15</sup> £18.72 including uprating, also 2012 Annual survey of Hours and Earnings.

<sup>16</sup> <http://www.berr.gov.uk/files/file44503.pdf> [http://www.statistics.gov.uk/downloads/theme\\_labour/ASHE-2009/2009\\_occ4.pdf](http://www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occ4.pdf)

**Table 1:** Familiarisation costs for Fruit Juice businesses by size of business

	Fruit Juice Manufacturers (England)	Total Familiarisation Cost
Micro	2	£106
Small	30	£1,584
Medium	25	£1,320
Large	18	£951
Total	75	£3,960

## Other Costs

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

### 1) Processes

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

## Background

47. The current EU Directive requires mandatory restoration of aromas to all fruit juices and nectars. Restoration is necessary in fruit juice production because volatile flavouring components are lost during processing. In many cases these are collected during the production process and then added back to the juice to restore it to as far as possible its original state. However, it is recognised that there are technical difficulties in fully restoring all aromas to certain juices. For juices such as pineapple the aromas are of too poor quality to add back and would affect product quality. Grape juice from concentrate, which is widely used in fruit juice blends and juice drinks, has no recovered aroma available. For many of the tropical juices such as mango, guava, passion fruit, papaya etc the aromas are not recovered or not available in sufficient quantities and fruits such as peach, pomegranate and cranberry also have little or no available aromas.
48. The reality of fruit juice processing was therefore to a certain extent at odds with the legal requirements of the Directive and the UKs desire to see a change to “optional” restoration was one of our main drivers. The move to optional restoration of aromas is also of significant trade benefit to the UK in helping resolve trade issues relating to UK orange and apple juices. For reasons of competitive product pricing and consumer demand, some UK manufacturers did not add back certain high value aromas (orange and apple) for economy and value priced ranges resulting in some German testing laboratories considering the UK to be in breach of the Directive. The UK market is unique in Europe in this aspect, and value or economy products are a significant proportion of the market, representing approx 30% - 40% of the market. The Directive requires juices to be representative of an average juice but a lack of a definition for an average juice and the absence of accepted levels of aromas make the mandatory restoration provisions in the directive difficult to adhere to. The move from mandatory to optional restoration therefore brings clarity to the issue. Aroma restoration will still take place but it will allow industry to restore appropriately based on consumer preferences and the pricing and marketing strategy appropriate to the product in the market place.

## Costs of the measure

### Industry

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

### Consumers

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

## Benefits of the measure

### Industry

51. 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 estimated that adding the additional top notes to fully restore aromas costs them around an extra 0.5p- 2p per litre<sup>17</sup>, but has suggested to Defra 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. Following consultation we have revised the estimated saving to reflect the lower range figure of 0.5p per litre rather than the range 0.5p- 2p per litre used in the consultation IA. Using figures taken from the 2012 AIJN report and based on the assumption that all value/economy juices are ambient and private label<sup>18</sup> 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 £1.73 million per annum at 0.5p per litre million 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.

52. It is unlikely that all of the ambient private (mostly value/economy range) will no longer restore aroma. For the purpose of this IA we assume around 80% of ambient and private label from concentrate juice will opt not to restore aromas.<sup>19</sup> Consequently, the estimated cost savings are projected to be £1.38 million per annum<sup>20</sup> and around 0.4% of the total value of the ambient and private label from concentrate juice sector. The BSDA response to the consultation suggested that our estimated benefits of not restoring aromas were not practically realisable as industry will maintain the status quo and carry on with current practices. However, we know that prior to discussions on revising the Directive industry did not always fully restore aromas to many value end orange and apple juices. Following concerns by Germany, UK industry reverted to fully restoring aromas to avoid any issues of compliance. One of the main reasons the UK sought amendment to the directive was to provide for optional restoration of aromas on the grounds that many aromas were unavailable but also to provide legal clarity around UK industry practices for those value end where all aromas are not restored. We believe that it is therefore valid to assume that most of those products at the value end of the market that earn profits from very small margins may revert to not restoring aromas and save costs. We have revised our estimates to reflect the lower end estimate of a potential 0.5p per litre saving previously given to us by industry. We do not accept that industry will not change some of their practices now that they have the legal freedom to do so.

53. There is a number of non-monetised benefits associated with this regulation. It;

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<sup>17</sup> This information was provided by BSDA.

<sup>18</sup> Private label refers to retailers own brands.

<sup>19</sup> In assuming that 80% of the manufacturers in this category we have attempted to address two things from the change to optional restoration(1) our lack of information on what business will do in the future but that we believe some businesses particularly economy juice ambient manufacturers working to low profit margins will choose to make these savings if possible (2) the possibility that some ambient juice manufacturers would choose not to stop restoring aromas for the fear of losing quality or product's characterising taste due to addition of aromas.

<sup>20</sup> We assume a constant market size.



- 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.

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

### Consumers

55. The main benefits for consumers relate to improved choice. It is also assumed that any benefits accrued to businesses are passed on to consumers. Permitting the optional restoration of aromas means a more diverse range of products will be available as aromas help to differentiate products. Fruit aromas can be collected and refined in order to produce different aroma profiles so that brands can be marketed with different taste and aroma profiles. If legislation seeks to set inflexible aroma requirements then products could become uniform and reduce choice on the market place. In a competitive market, changes to ongoing business costs – such as a reduction in the costs of adding aromas – are passed on to consumers. Therefore the £1.38m savings to industry identified above may in fact be passed through to consumers in the form of lower prices.
56. 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%.
57. Consumers remain protected as juices still meet minimum standards.

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

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

### Costs of the measure

#### Industry



59. There will be some re-labelling 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”.
60. The average re-labelling cost for 1 SKU<sup>21</sup> is approximately £1,800.<sup>22</sup> 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, and for those lines that are affected the redesign and labelling changes will be small. For example we expect that approximate re-labelling costs may be in the region of: 6 SKU x £1800 = £10,800. The BSDA did highlight in their response to the consultation that the term Water Extracted Juice is not solely for juices obtained by water extraction of dried fruit but also pulpy whole fruit whose juice cannot be extracted by physical means, so additionally there may be some changes to ingredients lists on blended products containing other water extracted juices. However they endorsed the estimates for this measure in the IA and did not expect the costs to industry to be above £10,800.

### *Consumers*

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

### **Benefits of the measure**

#### *Industry*

61. 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. 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 the worldwide Codex which contains a category for water extracted juices should also help industry avoid trade disputes or import difficulties in the naming of such products.

### *Consumers*

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

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

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

### **Costs of the measure**

#### *Industry*

<sup>21</sup> Stock Keeping Unit

<sup>22</sup> *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.

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

#### *Consumers*

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

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

#### *Industry*

66. It has not been possible to monetise the benefits in relation to the freezing of fruits but it is likely to be very small as this measure is just providing flexibility for industry particularly for fruits processed in small volumes or where there are seasonality issues. Fruit processors may need to adapt some of their equipment which is currently geared for chilling to freezing. Overall it is expected that the majority of juice processing will remain unchanged with processing occurring very quickly after harvesting and freezing will be used only where needed.
67. However, there are some (non-monetised) benefits. It will allow industry to use frozen fruit in times of shortage and hence smooth the price of fruit juice made from soft fruits throughout the year. At the height of harvest, fruit that can't be processed can be frozen to be processed at the end of the season when the processing factory can catch up. This is particularly important for soft fruits such as raspberries and strawberries.
68. It will also assist in the processing of new and upcoming exotic fruits going for juice production such as noni fruit where the processing facilities don't exist in the country where the fruit is grown. Freezing of such fruit allows the fruit to be preserved and then transported to processing factories for juicing. This also means that there will be benefits for the UK producers where these fruits are sourced from the UK.

#### *Consumers*

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

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

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

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

## Costs of the measures

### Industry

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

72. There will be one off reformulation or re-labelling 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 conservative, 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 re-labelling costs have been calculated as part of the Defra-commissioned study into assessing the costs of labelling changes on the UK.<sup>23</sup> The results from this work indicate that the average cost for re-labelling per SKU is approximately £1800. The approximate re-labelling costs for 10 SKUs would therefore be  $10 \times £1800 = £18,000$ . The actual cost may in fact be less than £18000 as some manufacturers might choose to reformulate rather than re-label. We assume that they would only do this if the net cost of reformulation is less than that of re-labelling. Therefore, £18000 can be seen as an upper bound on the possible cost.

#### 1.2(b) Removing ‘no added sugar’ claims for fruit juices

73. The use of “no added sugar” claims on fruit juices is generally not a widespread practice but some main stream NFC manufacturers do currently use them, particularly on juices marketed towards children. We are aware of one major manufacturer, who would be affected by the requirement to re label as a result of removing the no added sugar claim. Information from industry suggests that one-off costs associated with the removal of ‘no added sugar’ claim will be around £850,000<sup>24</sup>. Industry will have until 28 April 2015 to fully comply with the rules. The industry had information on the impending implementation of the new regulation and the impending 18 months implementation period since the regulation was adopted in April 2012. The industry will need to comply with the new rules from 28 October 2013 and will have until 28 April 2015 to exhaust stocks manufactured and labelled before 28 October 2013. We therefore believe that the estimated costs are maximum figures and the industry may not necessarily incur all these costs.

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

74. The voluntary statement will alleviate some of the concerns expressed by industry relating to possible consumer confusion at the sudden loss of no added sugar descriptors and that as a result they may choose no added sugar fruit juice drinks as an alternative, a completely different category of drink which is outside the scope of the regulations. The voluntary nature of the statement will allow manufacturers to choose whether they feel they need to explain to consumers about the new requirements. It is difficult to anticipate uptake of this voluntary statement but it seems more likely that because the required labelling changes for adding the clarifying statement will be voluntary and time limited, the 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

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<sup>23</sup> *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.

<sup>24</sup> Personal communication from BSDA

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

### **Benefits of the measures**

76. There may be non-monetised benefits for industry and consumers. The measure also fits into the Government's health agenda of reducing sugar intake. Indeed, the School Food Regulations in England have prohibited the addition of sugar to fruit juices since 2007.

#### *Industry*

77. 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 except possibly some grapefruit juices, this will have minimal affect on the industry. Industry may choose to portray the changes as a positive message in their marketing of juices to consumers. The main benefits relate to the optional use of a voluntary clarifying statement regarding the lack of added sugar in juices and it is up to the industry to decide whether they wish to take advantage of this.

#### *Consumers*

78. Only a small number of products currently contain added sugar so consumers are unlikely to be affected as such juices will be sourced with higher natural sugar levels if for particular products such as grapefruit they would be too unpalatable to consume. Only a small proportion of juices currently contain "no added sugar" claims but its demise may help alleviate any possible consumer confusion about the presence of added sugars in juices. 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. Consumers may be better informed if industry chooses to make the voluntary statement. Overall, consumers can be assured though that in the future no fruit juices will contain any added sugar.

### **1.2 (d) Prevention of "no added sugar" claims on nectars containing added sweeteners**

79. 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<sup>25</sup>. The new rules on nectars though will prevent use of any "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.

### **Costs of the measure**

#### *Industry*

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

#### *Consumers*

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

### **Benefits of the measure**

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<sup>25</sup> Nectars are reserved description for a mixture of fruit juice, water and sweeteners with a prescribed minimum quantity of fruit juice in it.

## Industry

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

## Consumers

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

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

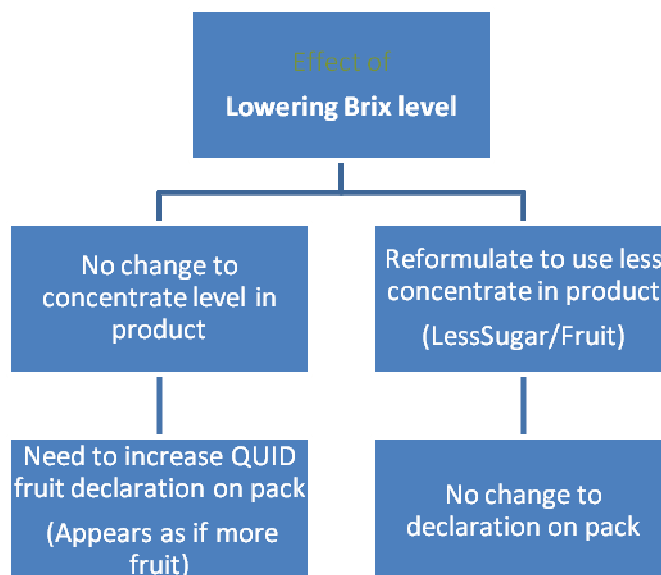
84. The most recent amendment to the Fruit Juice Directive in 2009 introduced minimum Brix<sup>26</sup> levels for a range of fruit juices from concentrate. For four of the fruits, blackcurrant, guava, mango and passion fruit, the minimum Brix levels set by the EU were higher than those in the Codex standard as the figures reflected European industry practices. Setting higher Brix levels was in response to European manufacturers working to higher levels which are representative of EU manufacturing practices. This was a protective measure for EU suppliers to keep out lower Brix juices (and lower quality) but the European Parliament was particularly concerned by these differences and felt there were possible trade advantages for non-EU products working to the lower minimum Brix levels in the Codex standard. As a result, the Directive has been amended so that the Brix levels for blackcurrant, guava, mango and passion fruit are aligned with the Codex Standard.
85. 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)<sup>27</sup> declarations on pack. Alternatively, they can adjust their labels to increase the QUID percentage of fruit as they will base their calculations on the lower minimum Brix. Figure 2 summarises the options available to the manufacturers in order to comply with the new regulations.
86. Initial responses from industry suggested that reformulation was more likely be their route of choice as this avoids any label amendment and the industry could take the opportunity for a small cost saving. However it is difficult to say for sure which route will be chosen and will depend on decisions within individual companies. Following consultation, industry suggested an equal split between reformulation and relabeling. As we only have information on estimates for relabeling costs for the purposes of this IA we have assumed that industry will relabel. This is conservative, in that if the industry finds it cheaper to reformulate than they will do so.

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

<sup>26</sup> 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.

<sup>27</sup> Quantitative ingredient declaration labelling shows the percentage of a particular ingredient in a food.

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



## Costs of the measure

### Industry

87. It is difficult to say for certain whether industry will reformulate or relabel as this is a commercial decision which is likely to be dependent of a number of factors. If industry choose to relabel they will need to change their labels to increase the Quantitative Ingredient Declaration (QUID) percentage of fruit if they base their calculation on the new lower minimum. This will incur labelling costs but as these fruits do not constitute a significant amount of the market, or are used in combination with other fruits, in practice only a small amount of products would need to be changed. The European Association and UK trade Associations currently work to the higher Brix levels for these fruits but have plans to review their code of practice in the light of the changes to European and domestic regulations. With industry having until 28 April 2015 to fully comply with the rules and the small number of affected parties, the likely costs are deemed to be very small. As part of the consultation process industry were asked to provide an estimate of the number of products affected and any costs associated with a re-labelling route. In their response the BSDA indicated that responses from their members suggested that there is likely to be a fairly equal split between relabelling and reformulation. They pointed out that both of these routes involve some cost, although with reformulation some savings are made in the quantity of juice used but the reformulation requires a costly approval process initially (see para 93). As new products are developed the Codex Brix values will be used from the outset. The label change would typically only affect the ingredient list but would be dependent on the fruits used in the product. It is estimated that this could affect around 30 SKUs in the whole market and assuming all the manufacturers choose to re-label rather than reformulate the total cost to the industry would be £54,000.

### Consumers

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

## Benefits of the measure

### Industry

89. Industry would have preferred to keep the minima for the four fruits at existing levels as this represents their current practices. However, the changes mean that by working to a lower minimum Brix level for these fruits industry could reformulate products slightly and reduce the amount of concentrate ingredient to enable the juice level to tie in with the existing level they declare on pack.



A reduction on the amount of fruit ingredient may mean industry could enjoy some small costs savings for those fruits. However, this is likely to be fairly small and might be offset by initial approval costs relating to nutrition declarations. Overall we do not have sufficient information to monetise the overall savings of reformulation, but have instead assumed all industry will re-label.

### 1.3 Labelling

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

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

#### Costs of the measure

##### *Industry*

91. 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*

92. There will be no costs of the measure on consumers.

#### Benefits of the measure

##### *Industry*

93. 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*

94. More informed choices -Consumers will benefit from clearer labelling information to help them make more informed choices, for the products to which the change applies. 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 composing of high value fruits or used in small amounts cannot be highlighted at the expense of the lower value of those juices making up the greatest proportion of the products in order to make the product more appealing to purchase. However possible consumer confusion is an issue as some juices used in small amounts have very strong flavours likely to impart the characterising flavour to the product. If this juice is listed later in the product name consumers may not realise the true flavour.

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

95. 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.

#### Costs of the measure

##### *Industry*

96. Tomato juice accounts for around 9.7 million litres of the UK juice market. The inclusion of tomato juice within the Directive will generally be cost neutral for juice suppliers as industry already adheres to an industry code of practice which is very similar to the requirements of the directive. Most tomato juice products are already labelled in accordance with the directive for consistency on the shelf with other juice products in any given branded range. Industry estimates that around 90% of products are already compliant. The remaining 10% may need to alter their labels or reformulate which accounts for around 3 products costing  $3 \times \text{£}1800 = \text{£}5,400$ .
97. Products labelled as containing tomato juice as an ingredient or packed using tomato juice may need to check that the juice complies and there may be a small number of products that will need to be reformulated or relabelled. This cost has not been taken into account but it is more likely to affect the EU suppliers of tomato based products.

#### *Consumers*

### **Benefits of the measure**

#### *Industry*

98. 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*

99. 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.
100. There will be some small consumer benefits from consistency through the creation of a legal minimum standard. However in practice since, industry already adhere to a code of practice which is similar to the requirements of the Directive therefore consumers are unlikely to notice any differences.

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

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

### **Costs of the measure**

#### *Industry*

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

#### *Consumers*

103. There will be no costs to consumers of this measure.

### **Benefits of the measure**

## Industry

104. 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

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

### 1.4 Other measures

106. The new Directive introduces other small changes. However these primarily relate to improving clarity and reducing ambiguity and are likely to be cost neutral.
- Water used for restoration needs to meet Council Directive 98/83/EC the Drinking Water Directive.
  - Definition of flavours for purposes of fruit juice.
  - Addition of certain particular designations for fruit juices in certain countries.

### 1.5 RTC Measures – Civil Sanctions

107. Under measures agreed as part of our RTC commitments we have changed to a new and more proportionate approach to enforcement in line with other recently altered food legislation. The new SI effectively and more proportionately regulates the fruit juice sector by employing more proportionate civil sanctions using improvement notices with a backstop criminal offence rather than the existing frontline criminal sanctions. This will mean escalation to a criminal offence would happen only if there is failure to comply with an improvement notice, with an offender being liable, on summary conviction, to a fine not exceeding level 5 on the standard scale of fines. Businesses will have the opportunity to appeal against an improvement notice to the First-tier Tribunal. The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 can be found here; <http://www.justice.gov.uk/downloads/tribunals/general/consolidated-TPFTT-GRC-Rules2009-6-04-12.pdf>

## Benefits

### Industry

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

### Government

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

110. Information provided in the food standards enforcement actions report for 2011/12<sup>28</sup> shows that there were 66 food standards prosecutions in the UK; 48 of those in England and even fewer food labelling offences. For fruit juice specifically, the likelihood is that prosecutions are extremely few or possibly none at all. It is therefore likely that the magnitude of benefits from the new enforcement procedures is small, if anything.

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

111. As part of the RTC commitments the changes in 2012/12/EU are being implemented through the creation of a new consolidated set of Regulations. The two existing Regulations will be revoked and combined with the new revisions to provide a complete set of new rules making it easier for business by working to only one consolidated set of rules. Guidance will also be updated and improved. We have ensured that when implementing the amendments, copy out has been used as the norm. Existing rules have been reviewed and small amounts of gold plating and under implementation identified which will be removed (see Table 3).

### **Costs**

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

### **Benefits**

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

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<sup>28</sup> UK Local Authority Food Law Enforcement: 1 April 2011 to 31 March 2012  
<http://www.food.gov.uk/multimedia/pdfs/board/fsa121106.pdf>

## Overall Costs and Benefits

114. The summary of Option 1 is presented in Table 2 below and is as follows. All monetised costs and benefits relate to EU measures. The costs and benefits of the RTC measures are non-monetised.

- There is a one-off familiarisation cost for the industry which amounts to £4,000 (PV) and EAC £400.
- It is estimated that around 10 grapefruit juice manufacturers will face the re-labelling costs of about £18,000 (PV) due to prohibition of added sugar to fruit juices in the new regulation (EAC £2,000).
- Manufacturers with product lines with misleading descriptor 'no added sugar' will have to re-label in order to remove the descriptor which will incur a transitional cost of about £850,000 (PV) to the industry (EAC £99,000).
- Reversion to the Codex Brix values for blackcurrant, guava, mango and passion fruit juices from concentrate might result in re-labelling costs for an estimated one-off cost of £54,000.
- Manufacturers of water-extracted juices will also face a re-labelling cost of about £11,000 in order to label their product as 'water-extracted juice' (EAC £1,300).
- Manufacturers of tomatoes will face a re-labelling cost of about £5,000 (EAC £600) 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 of £11.9 million (PV)) or in equivalent annual terms the benefits will be between £1.4 million.

All other costs and benefits are non-monetised.

**Table 2: Summary of Costs and Benefits**

	Year 0	Year 1	Year 9	Total cost/benefit	Annual Cost or Benefits/EA	PV
<b>COSTS</b>						
<b><i>Industry</i></b>						
Familiarisation (transition)	£3,960	£0	£0	£3,960	£460	£3,960
Cost of removing the description from the labels 'no added sugar'	£850,000	£0	£0	£850,000	£98,749	£850,000
Cost of relabeling for the water extracted juices manufacturers	£10,800	£0	£0	£10,800	£1,255	£10,800
cost of relabelling Tomatoes Juice	£5,400	£0	£0	£5,400	£627	£5,400
cost of relabelling in line with Brix	£54,000	£0	£0	£54,000	£6,273	£54,000
Cost of Relableing the Grapefruits juice	£18,000	£0	£0	£18,000	£2,091	£18,000
<b>Total Industry Costs</b>	<b>£942,160</b>	<b>£0</b>	<b>£0</b>	<b>£942,160</b>	<b>£109,456</b>	<b>£942,160</b>
<b><i>Government</i></b>						
Familiarisation (transition)	£13,216	£0	£0	£13,216	£1,535	£13,216
<b>Total Government Costs</b>	<b>£13,216</b>	<b>£0</b>	<b>£0</b>	<b>£13,216</b>	<b>£1,535</b>	<b>£13,216</b>
<b>TOTAL COSTS</b>	<b>£955,377</b>	<b>£0</b>	<b>£0</b>	<b>£955,377</b>	<b>£110,991</b>	<b>£955,377</b>
<b>BENEFITS</b>						
<b>Minimum savings</b>	£1,384,000	£1,384,000	£1,384,000	£13,840,000	£1,384,000	£11,913,038
					£0	
<b>TOTAL BENEFITS</b>	<b>£1,384,000</b>	<b>£1,384,000</b>	<b>£1,384,000</b>	<b>£13,840,000</b>	<b>£1,384,000</b>	<b>£11,913,038</b>
<b>NET BENEFIT</b>						
<b>Total Net (Benefit)</b>	<b>£428,623</b>	<b>£1,384,000</b>	<b>£1,384,000</b>	<b>£12,884,623</b>	<b>£1,273,009</b>	<b>£10,957,661</b>



## Risks and Assumptions

### Risks:

115. Failure to transpose the directive into national law could result in infraction proceedings from the EU. The fines that could result from infraction may be around 9.6 million Euros; however, we do not consider infraction costs in our appraisal.

### Assumptions:

In carrying out this analysis following assumptions have been made

1. The fruit juices industry is a mature industry and grows steadily and the number of existing manufacturers who need to be familiar with the new regulations is inflated from 45 to 75 to take into account the soft drinks manufacturers who also produce some fruit juice drinks as part of their product range. Any prospective entrants will not be disproportionately affected by new regulations.
2. Any reformulation costs are likely to be met from within the manufacturers' product development requirements over the three years between 28 April 2012 (the adoption of the directive) and 28 April 2015 (the deadline of 18 months to exhaust the older stock after the regulations have been introduced as national law on 28<sup>th</sup> October 2013).
3. Currently all the manufacturers restore aromas.
4. On implementation of the new regulations, 80% of the manufacturers who produce fruit juice in the category Ambient Private will choose not to restore aromas.
5. The inclusion of tomatoes in the list of fruits used in fruit juice production will require 3 products to be relabelled.

## Administrative Burden Costs

116. The administrative burden due to familiarisation costs amounts to only around £4000. Small businesses will also face these transition costs as there is no provision for their exclusion from the regulations (EU), and to do so would render the regulations ineffective.

## Small business assessment

117. Small businesses will also face any transition costs as there is no provision for their exclusion from the regulations (EU), and to do so would render the regulations ineffective. The cost assessment earlier in this Impact Assessment demonstrates the relatively small transitional cost on small and, indeed, all business. The benefits to businesses, large and small, will significantly outweigh the transitional costs.

## Consultation

118. A non formal six week consultation was carried out from 25 April to 6 June 2013 which sought stakeholder views on the new consolidated regulations. The British Soft Drinks Association (BSDA) who represent the majority of UK fruit juice manufacturers had previously 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"<sup>29</sup>.

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<sup>29</sup> BSDA Press Release 14 December 2012 "Soft drinks industry welcomes European Parliament vote on Fruit Juice Directive" (BSDA website [www.britishsoftdrinks.com](http://www.britishsoftdrinks.com))

119. A total of 4 responses were received to the formal consultation, two from local authority trading standards bodies and two from trade associations one representing the fruit juice industry (BSDA) and the other, retailers. All generally indicated their support for Option 1. Only BSDA addressed technical issues raised in the consultation stage IA and this additional information has been included in this Final IA. The response from the BRC (British Retail Consortium) focussed almost exclusively on the use of improvement notices and raised some concerns in that regard.
120. BRC believe that the current enforcement system works well. They see no evidence to suggest that civil sanctions will lead to improved outcomes in terms of securing compliance with the Regulations. They also suggest that there is also no evidence to suggest that this procedure will lead to a reduction in the administrative burden on businesses or enforcers. They felt that that, on the contrary, it might be more likely to increase the administrative burden on businesses. This is because enforcers may choose to issue more Improvement Notices- which require just grounds for believing an offence has been committed, than they brought criminal prosecutions- which requires proof beyond reasonable doubt than an offence has been committed.
121. We do not accept this and believe the use of improvement notices is more proportionate and is generally supported by enforcement bodies. The Ministry of Justice in its guidance has advised a move away from the use of criminal sanctions where possible for non food safety breaches in legislation such as this. The enforcement provisions in the new SI therefore effectively and proportionately regulates the sector by setting minimum rules creating a level playing field and will initially now employ more proportionate improvement notice provisions with a backstop criminal offence rather than the existing frontline criminal sanctions. A criminal offence may be committed only if a notice is not complied with by the trader. There is additional protection before criminal prosecution can take place in that a trader can choose to appeal against the notice to the First-tier Tribunal. If the trader appeals against the notice, then only if any such appeal is unsuccessful could prosecution take place. If the trader does not take the opportunity to appeal against the notice and fails to comply with it then the backstop criminal offence will apply. This same standardised approach is being taken in the case of other food legislation currently being revised such as the Food Information (England) Regulations and the Fish Labelling Regulations just recently introduced.
122. The other three respondents were in favour of the move to improvement notices with Trading Standards feeling this was a more proportional way of dealing with these types of compositional breaches. The BSDA, acting on behalf of the fruit juice industry, felt that this change in approach was unlikely to yield much in the way of cost savings because currently the vast majority of non-compliance incidents are resolved informally and amicably by the food business; their home authority and the enforcing authority and not by criminal sanctions.
123. The response from the BSDA indicated that they supported the introduction of this legislation which will reduce complexity for them. The BSDA acknowledged they had been consulted widely throughout the process leading up to this legislation and, there are no surprises with the industry generally in favour of the regulation. BSDA indicated they had already had the opportunity to feed into the IA and endorsed the figures in the IA. They did provide some further information concerning some of the Impact Assessment questions on water extracted juices and the relabeling costs as a result of changes to the Brix levels discussed in section 1.2(e). BSDA also felt that the savings in the IA on the move from mandatory to optional restoration of aromas were not practically realisable as they suggested that the industry will maintain the status quo and carry on with current practices of fully restoring aromas. However up until recently industry did not fully restore all aromas to many value orange and apple juices but reverted to full restoration in order to avoid a dispute over interpretation of the directive within the EU. In fact it was for this reason that the UK sought amendment to the directive to provide for optional restoration for these juices as well as the fact that some aromas are unavailable. The estimates used are figures previously provided to us by BSDA and we believe that the changes now adopted in the EU will provide industry with the flexibility not to fully restore aromas particularly for apple and orange juices as it allows for better product differentiation. For this reason we believe our assumptions to be valid and the cost savings shown in the IA relating to aroma restoration to be realistic. .

## Enforcement

124. The Regulations will be enforced by Trading Standards officers in local authorities and Environmental Health Officers in the London boroughs. In line with Ministry of Justice guidance a change to the existing enforcement regime is proposed with a move from the existing criminal sanctions to a more proportionate and targeted regime using improvement notices. Escalation to a criminal offence would happen only if there is failure to comply with an improvement notice, with an offender being liable, on summary conviction, to a fine not exceeding level 5 on the standard scale of fines. Businesses will have the opportunity to appeal against an improvement notice to the First-tier Tribunal.

## Legal implementation and Copy-out:

125. The new Fruit Juice and Fruit Nectars SI implements Council Directive 2012/12/EU by way of copy out and consolidates all other existing national rules on fruit juice thereby fulfilling Defra's RTC commitments to consolidate all existing rules on fruit juice. In addition those previous rules on fruit juice have been reviewed and small amounts of gold plating and under implementation identified and rectified. In line with Government policy to implement EU obligations at as late as possible the new rules will be brought in on or after the 28th October 2013 the latest possible transposition date allowed by the directive. Existing frontline criminal sanctions for breaching the regulations are replaced with improvement notices backed up by a criminal offence for a failure to comply with the rules in line with Ministry of Justice guidelines. MOJ ministerial clearance has been obtained. A review period of 5 years has been built into the new SI in line with Government requirements.
126. These Regulations apply to England only and separate SIs are being introduced in Scotland, Wales and Northern Ireland.

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

Where (2003 Regulations)	Gold Plating / Under Implementation	Issue	Solution
<b>Regulation 3</b> <b>Application of Designated product</b>	Under implementation	Text in Regulations 3 is less strict than the directive which applies it to a designated product' <i>intended for human consumption and 'ready for delivery to the ultimate consumer or to a catering establishment'</i>	Text in italics deleted from new Regulations
<b>Regulation 4</b> <b>Sale of food 'with a label' vs. used in trade</b>	Under implementation	Regulation 4 relates to sale of food 'with a label' whereas Article 2(1) of Directive 2001/112/EC is more general and relates to the use of the product name 'in trade' to designate products.	Amended to use directive wording "used in trade"
<b>Regulation 4</b> <b>Application to derivatives</b>	Gold Plating	Article 2(1) of Directive 2001/112/EC provides that the product names listed in Annex I shall only apply to the products referred to in Annex I and must be used in trade to designate them. Our Regulation 4 goes further and not only covers the 'reserved description' but also ' <i>any derivative thereof</i> ' and ' <i>any word or description substantially similar thereto</i> '.	Remove reference to any derivative thereof' and 'any word or description substantially similar thereto'
<b>Regulation 4(b) relates to the use of a reserved description when being used as an ingredient</b>	Duplication	Ingredients provisions already covered by FIR	Tentatively delete and include in guidance
<b>Regulation 5(a) does not allow for use of the alternative names mentioned in Article 3.1(b) of the Directive</b>	Under implementation	Omitted because none of the names covered in Annex III relate to English terminology or apply to UK products, also now amended with further additions in new revision	Include reference to alternative names mentioned in Article 3.1(b) and Annex III to allow their use
<b>Regulation 5(c) relates to the addition of pulp and cells.</b>	Gold plating	Regulation 5(c) requires that any pulp and/or cells added to a fruit juice, a <u>concentrated fruit juice or a fruit juice from concentrate</u> must be indicated on label. Directive appears to only explicitly requires this in the case of fruit juice so application to the others would appear to be an over implementation. Believe it was the intention added pulp and cells should also be labelled when added and this is an oversight in directive.	Under consideration as to whether to retain existing text of Regulations. Industry tells us that if they add pulp and cells this will always be labelled. They are supplied separately from the juice by processors therefore to add them is an additional cost which they would want to make a selling point of.
<b>Regulation 6</b> <b>Applies requirements of regulations 35, 36(1) and (5) and 38 of the FLR to the mandatory indications required by</b>	Gold Plating	No justification for this and as the provisions in Regulation 6 of the 2003 Regulations will largely be covered by the provisions in Articles 12 and 13 of FIR.	Delete

**regulation 5 of the 2003 Regulations.**

<b>Schedule 5, note 1</b>	Gold Plating	This is additional explanatory text to assist readers that for a mixture of two fruits consisting of 50% of each fruit then you reduce the minimum juice requirements by 50% for each of the two fruits.	Remove and include in guidance notes. Industry has said it is helpful.
<b>No such provision in 2001/112/EC.</b>			

## One in Two Out

127. This measure falls under Defra's commitments under the RTC Hospitality sector to consolidate rules on fruit juice. This Impact Assessment includes measures from an EU origin, as well as from the Red Tape Challenge. The EU driven measures are outside the scope of OITO. The Red tape Challenge measures have no cost, and the benefits are expected to be very small – they are a straightforward consolidation of the regulations and removal of small amounts gold plating and therefore represent a 'Zero Net Cost'.

## Summary of the preferred option

128. Option 1 is the chosen Option. This option is welcomed by business and ensures we meet our EU legal obligations to implement EU Council Directive 2012/12/EU by 28 October 2013. Government intervention is necessary to transpose this directive into national law by way of an SI. Failure to implement the Directive would leave the UK open to infraction proceedings by the European Commission and a significant fine. Option 1 provides consumers with improved measures to protect the minimum quality of juices while allowing business the option of diversification and new product development.

129. 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 may be mitigated by a further 18 months transition period to allow for the exhaustion of existing stocks. Industry has been aware that these changes were going to come into force. This may have allowed them to alleviate the cost of label changes by aligning required label changes with voluntary, market-driven label changes. However we have not adjusted the costs for this factor and costs represent the changes industry has to make to be compliant with the new regulations. The reason why we have not adjusted for these costs is that not all businesses would be aware of the changes before they come into force. The UK fruit juice industry have indicated their support for the majority of changes and BSDA have indicated that they believe there will be relatively small impacts from most changes and that the legislation is generally cost neutral.

130. The improved legal clarity in the preferred option will be beneficial to industry and help alleviate 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 the UK and the EU manufacturers are not disadvantaged.

## Annex 1: Post Implementation Review (PIR) Plan

**Basis of the review:** These Regulations include a review clause which will require the Fruit Juices and Fruit Nectars (England) Regulations 2013 , to 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:**

1. Check that Regulations are still relevant and not causing any issues for manufacturers or local authorities.

**Review approach and rationale:**

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 1 ( chosen) will be the baseline for review if new Regulations put in place.

**Success criteria:**

1. Success will be measured by positive feedback from manufacturers and local authorities.  
2. A measure of success could also be determined by any enforcement actions been taken by local authorities. This will also provide an opportunity to gain a measure of how the use of the new enforcement Regime is working using Improvement Notices. We will also seek updates from the FTT of any issues coming before it.  
3 We work closely with fruit juice stakeholders attending regular stock take meetings with industry and we will be able to seek their feedback on how the new rules are working and any issues arising from the new regulations . s

**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 will help to assess whether the policy aims have been met, and to identify positive and negative impacts. Fruit juice is also currently included as one of the commodities checked under the National Co-Ordinated Risk Based Food Sampling Programme carried out by the Food Standards Agency. Any issues with fruit juices and the regulations are likely to come to light through this annual surveillance programme carried out by Local Authorities.

**Reasons for not planning a PIR:** N/A



## **Annex 2: Specific Impact Tests**

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

#### **Race equality issues**

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

#### **Gender equality issues**

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

#### **Disability equality issues**

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

### **Competition Assessment Impact Test**

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

### **Small Firms Impact Test**

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

### **Sustainable Development Impact Test**

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

Annexe 3: Simple flow chart of the enforcement process (labelling chain of events highlighted)

