



Department
for Environment
Food & Rural Affairs

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Fruit Juices and Fruit Nectars Regulations 2013

**A summary of responses to the consultation and
government reply**

November 2013

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Any enquiries regarding this document should be sent to us at:

Food Policy Unit, Department for Environment, Food and Rural Affairs
Area 3A Nobel House, 17 Smith Square, London SW1P 3JR

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Introduction

This paper summarises the responses to the public consultation which sought views on the introduction of new consolidated Fruit Juices and Fruit Nectars (England) Regulations 2013. Under the Hospitality, Food and Drink theme of the Red Tape Challenge Defra committed to consolidate existing fruit juices and fruit nectars legislation to simplify the regulatory landscape for businesses when implementing new EU rules on this policy area. New provisions on fruit juice were agreed in 2011 and Council Directive 2012/12/ EU needs to be implemented into national laws by 28 October 2013. The existing rules of fruit juice have therefore been revised to implement the provisions of 2012/12/EU and consolidate all the rules together with the removal any gold plating. Copy out of the directive text has been used as the norm and the structure of the new Regulations has been significantly reviewed and revised to make it simpler for business to follow.

Key Revisions contained in Directive 2012/12/EU

The most substantial changes in the new amending Directive and of particular relevance to the UK are listed below:

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.

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.

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.

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.

Improvement Notices

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

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.

The Options considered

The consultation process gathered further evidence and views on the impacts of the new rules. Two options were considered as part of the exercise.

Baseline - Do nothing.

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. Business would not benefit from consolidation measures and removal of gold plating.

Option 1 – Is the preferred option.

This introduces the changes required by Council Directive 2012/12/EU and consolidates all existing Fruit Juice Regulations into a single Fruit Juice SI for England. This provides consistency for business and ensures consumers are guaranteed a minimum quality product within the EU. Consolidation will ensure the rules on fruit juice are brought together in one place making it easier for manufacturers and enforcement officials who need to refer to the legislation. The majority of changes are favourable to the UK particularly the move from compulsory to optional restoration of aromas to juice. 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.

Following consultation Option 1 is the chosen option as it introduces a level playing field for UK industry and allows them to take advantage of several beneficial changes to the EU

rules on fruit juices and nectars. It also ensures we fully meet our all our European obligations.

Responses to the Consultation

A 6-week consultation from 25 March to 6 June 2013 was conducted seeking the views of stakeholders on the new SI and the costs and benefits estimated in the Consultation Stage IA. Five responses were received in total; two from trade associations and three for enforcement bodies. The table below gives a breakdown by type.

Organisation type	No of Respondents
Industry Trade Association	2
Local Authority Body	3
TOTAL	5

All five respondents offered general support to the introduction of the new Regulations. Some reservations were expressed about some of the details of the proposals, notably from BSDA as regards the magnitude of some of the estimates for savings included in the IA, and as a result some downward revisions were made to those estimates. BRC questioned the move from criminal to civil sanctions as they felt the current enforcement system worked well. However MoJ guidance advises a move away from the use of criminal sanctions where possible for non food safety breaches in legislation a 2nd choice option. As a result of the comments received these options were then discounted as being impractical.

Discussion of Responses

Trade Association views

The British Soft Drinks Association (BSDA) represents the interests of producers and manufacturers of soft drinks, fruit juices represent the bulk of UK fruit juice processers. BSDA were supportive of the move from mandatory to optional aroma restoration as it resolves ambiguity and gives practical benefit of authorising current UK practice, where aroma restoration has never been either possible or practical. This concerns juices such as pineapple and other tropical fruits, where aromas have never been available and the manufacture of multi juice products where aroma addition to juices used in small quantities in a product is both a manufacturing challenge and of no practical benefit to the consumer. It also enables better product differentiation between economy and high value products therefore improving consumer choice.

BSDA also provided some additional information regarding the size of the water extracted juice market and highlighted that this term would also cover pulpy whole fruit whose juice cannot be extracted by physical means, where there may be some changes to ingredients lists on blended products containing other water extracted juices. The consultation asked some question regarding the reversion to the codex brix values for blackcurrant guava

For four of the fruits, blackcurrant, guava, mango and passion fruit, where the minimum Brix levels have been lowered to revert to those in the Codex standard BSDA indicated that there is likely to be a fairly equal split between relabelling and reformulation. Both of these routes involve some cost, although with reformulation some savings are made in the quantity of juice used the reformulation requires a costly approval process initially. 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. BSDA also noted that it has been the practice by industry to list the fruits in descending order so the new requirement to do so would not generate additional cost. It was noted that tomato juice products of BSDA members were already be labelled in accordance with the new directive simply for consistency on shelf with other juice products in any given branded range therefore there would be little affect. Some reservations were as regards the magnitude of some of the estimates for savings included in the consultation IA, and as a result some downward revisions were made to those estimates.

Local Authority views

Local authorities and environmental health bodies who responded generally supported the new rules on fruit juices and fruit nectars. They particularly supported the move to improvement notices.

Use of Improvement Notices

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). Businesses will have the opportunity to appeal against an improvement notice to the First-tier Tribunal.

BSDA noted that currently the vast majority of non-compliance incidents are resolved informally and amicably by the food business, their home authority/primary authority and the enforcing authority. BSDA believe it is important that this practical arrangement is retained. Improvement notices should only be used as a last resort when informal discussions fail to reach agreement. It is vital that the legislation itself sets out good practice in this area otherwise wide variation between enforcement authorities is inevitable. If the new approach were to result in a shift from informal to formal dispute resolution this would increase the cost of compliance.

The response from the British Retail Consortium (BRC) focussed almost exclusively on the use of improvement notices and raised some concerns in that regard. 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.

In response to these points Defra believe the move to the of improvement notices is more proportionate and note that it 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.

The Trading Standards Institute believes that an Improvement Notice approach will be more beneficial to enforcement officers because it is likely to be a more proportionate enforcement action for any non-compliance, and it is to be hoped that Improvement Notices will be a faster and simpler method of achieving compliance. However, any savings cannot be quantified. One trading standards body commented that it is envisaged that businesses which initially fail to act on informal advice from Trading Standards will be likely to comply with an Improvement Notice and avoid costly action through the criminal courts. Once the regime becomes established, issues are more likely to be resolved at an early stage prior to the issue of an Improvement Notice.

Next Steps

The results of the consultation have now been fully analysed. Option 1 is the chosen option as it will benefit industry by encompassing one set of regulations that will replace two existing sets, allows industry to respond to consumer demand for choice and to drive competition in the market and benefits the UK fruit juice industry of a level playing field and consistency when trading in the juices. For consumers it allows more choice and for

government improved clarity will ensure better compliance and ease any trade issues. This conclusion was endorsed by the Government's Home Affairs Committee and its Reducing Regulation Committee.

List of respondents

British Retail Consortium

British Soft Drinks Association

East of England Trading Standards Association (EESTA)

Trading Standards Institute

Trading Standards South East Ltd