



Department
for Environment
Food & Rural Affairs

Fruit Juices and Fruit Nectars (England) Regulations 2013 Post Implementation Review

November 2018



© Crown copyright 2018

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.3. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ or email PSI@nationalarchives.gsi.gov.uk

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at

Defra Helpline

Seacole Building
2 Marsham Street
London
SW1P 4DF
United Kingdom

PB [insert PB number]

www.gov.uk/defra

Annex 1: Post Implementation Review

Title: Fruit Juices and Fruit Nectars Regulations 2013 PIR No: Original IA/RPC No: 1350 Lead department or agency: Defra Other departments or agencies: Contact for enquiries: Michelle McQuillan, William Southard	Post Implementation Review
	Date: 30/09/2018
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 28/10/2013
	Recommendation: Keep
	RPC Opinion: N/A

1. What were the policy objectives of the measure?

- 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.

2. What evidence has informed the PIR?

Following advice from the Better Regulations (BRU) team in Defra, this is a low evidence review of the implementation and the business response to the Fruit Juices and Fruit Nectars Regulations 2013. This review was carried out in October 2018 through reviewing stakeholder engagement prior to the Regulation's introduction in 2013, survey data from members of the British Soft Drinks Association (BSDA) and the British Fruit Juice Association (BFJA), and available market intelligence on consumer attitudes to fruit juice labelling.

3. To what extent have the policy objectives been achieved?

The evidence suggests that the Regulations were successful in achieving the original objectives and were received positively by businesses. The survey feedback suggested that BSDA and BFJA members generally have a favourable opinion of Regulations, particularly as these Regulations introduced the optional restoration of aroma to juice and juice concentrates. There is no indication that this caused unnecessary burdens on business, as the Regulations are applied throughout the industry with very little indication of non-compliance. However, market intelligence data suggests that there is some concern from consumers around understanding of labelling of sugar in fruit juice, juice drinks and smoothies. It is not possible to say with any certainty that this is in relation to fruit juice as the question related to a combination of three

different product categories which are regulated differently and of which only fruit juice is the subject of this review.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: [Click here to enter text.](#)
date.

Date: [Click here to enter a](#)

Further information sheet

4. What were the original assumptions?

It was assumed that most of the value-range juice manufacturers would 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. It was assumed that breaches of the legislation were likely to be small as the industry is generally compliant, and we would not expect the change in the sanctions regime to alter this.

5. Were there any unintended consequences?

There is little indication from any of the evidence reviewed that there were any unexpected consequences or costs from the Regulations. In BFJA feedback following the survey, their members indicated this was due to the revision of the Regulation becoming more relevant to the practical realities of production. The BSDA stated in their response to the original consultation on the regulations that the change in approach towards Improvement notices, would potentially increase the cost of compliance. However, in their response to the Post Implementation Review, they state that the Regulation is applied throughout the industry with very little indication of non-compliance.

6. Has the evidence identified any opportunities for reducing the burden on business?

The stakeholder survey suggested that the Regulations continue to be fit for purpose. One area highlighted by businesses for improvement was around sugar and nutrition labelling. They mentioned that it would be beneficial for fruit juice manufacturers to be able to highlight to their consumers that fruit juice does not contain added sugar.

7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?

There has been little indication so far from business how UK's implementation compares with that in other EU member states.

Contents

Annex 1: Post Implementation Review	3
Introduction	7
Policy objectives	7
Review of regulations.....	8
Evidence gathered for review	9
Review of evidence.....	10
Has the policy successfully achieved its objectives?.....	10
Were there any unexpected consequences or costs from the Regulations?.....	12
Could we revise the Regulations to reduce cost to business?	13
How do UK Regulations in this area compare with that in the EU?.....	13
Conclusions	14
Limitations of this review.....	14

Introduction

In 2013, The Fruit Juices and Fruit Nectars (England) Regulations implemented the Council Directive 2012/12/EU, which amended Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption. The Regulations also consolidated all existing Regulations in England concerning fruit juices and similar products, including fruit nectars. Its primary aim is to ensure consistency in the minimum quality for products labelled as fruit juices and fruit nectars, and that consumers are not misled.

Defra committed to consolidate all rules on fruit juice to simplify the landscape of legislation in this area, at the same time as implementing the new EU provisions. This report embodies the legal requirement to review The Fruit Juices and Fruit Nectars (England) Regulations 2013.

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Policy objectives

The primary objectives of the Regulations are:

- 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 Red Tape Challenge 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 an improvement notice approach.

The new Regulations consolidated all existing rules on fruit juices and fruit nectars into one new set of regulations. This honours the Government's Red Tape Challenge (RTC) commitments to reduce regulatory burden on industry. This reduced the number of

regulations on fruit juice to one, aiming to make it easier for industry and enforcement authorities by having all the domestic fruit juice rules together in one set of Regulations.

Similarly, a change to the existing enforcement regime was also taken forward, with a move from the existing frontline criminal sanctions to a more proportionate and targeted regime using improvement notices.

Review of regulations

Post Implementation Reviews (PIRs) can take different forms, ranging from a light approach for low impact and non-controversial regulations, to a detailed approach for high impact and controversial regulations. The following aspects have been considered when deciding the extent of the review for the Regulations:

- The Annual Net Direct Cost to Business (EANDCB) predicted by the original Impact Assessment of the Regulations in 2013 was £-1.16m. This represents a saving for business and is considerably below the *de minimis* +/-£5m threshold required for independent scrutiny. As a result, this review was out of scope for RPC and RRC clearance.
- Defra regularly meets with major stakeholders in the fruit juice sector, including the British Fruit Juice Association and British Soft Drinks Association (BDSA), whose members represent over 90% of the total fruit juice market in the UK. These meetings offer stakeholders (specifically businesses which are subject to the Regulations) the opportunity to regularly engage with officials on the regulations and express their views or concerns.
- Feedback received to date indicates that the Regulations are widely supported by market actors that are subject to them; and
- Given the Regulations implement part of the body of legislation that will be rolled over into UK law through the European Union (Withdrawal) Bill to support stability during EU exit, there is little or no ambition to amend the Regulations before exit.

Considering the above, and following advice from the Better Regulations (BRU) team in Defra, a light-touch review was undertaken, without an evaluation of policy impacts through a re-run impact assessment. Therefore, this is a low evidence review of the implementation and the business response to the Fruit Juices and Fruit Nectars (England) Regulations 2013.

Evidence gathered for review

This review was carried out in October 2018 through appraising stakeholder engagement from 2013-2018, short surveys of members of the British Soft Drinks Association (BSDA) and British Fruit Juice Association (BFJA), and available consumer market intelligence.

Stakeholder engagement since the introduction of the Regulations was typically conducted through meetings, officials participating in the BSDA's fruit juice forum, conference participation, phone calls, or email correspondence. Throughout this engagement, opinions were invariably favourable towards the new Regulations.

We also asked major fruit juice associations to survey their members, as they represent large numbers of fruit juice processors, importers and packers in the UK. Of their members, those that market fruit juice, either as a raw material or finished retail pack were asked for comments. Summaries of the survey data were provided to Defra for the purpose of this review.

The British Soft Drinks Association has around 10 member companies producing fruit juice, representing more than 90% of the total fruit juice market in the UK. There are also 6 associate members producing fruit juice materials used in manufacture of retail packs. Members were surveyed by email through the BSDA's Fruit Juice Committee mailing list, consisting of approximately 20 member companies which also includes the retailers. Members were surveyed once more at the following Fruit Juice Committee meeting where 8 member companies were represented. The summary of responses was based upon the 10 responses received, although the BSDA pointed out that members who did not respond had ample opportunity to voice any alternative opinions.

The British Fruit Juice Association (BFJA) were also surveyed, which has approximately 60 members. Membership includes contract packers and shipping members, and SMEs which supply larger drinks manufacturers. Although we were unable to determine exactly how many respondents fed into the BFJA's summary, similarly to the BSDA, there was ample opportunity for members to comment. BFJA members were surveyed firstly via their monthly newsletter, with incites again requested again via committee email. Lastly, available market intelligence about consumer attitudes were considered, including understanding of food information on fruit juices.

The following review attempts to address the following questions:

- **Has the policy successfully achieved its objectives?**
- **Were there any unexpected consequences or costs from the Regulations?**
- **Could we revise the Regulations to reduce cost to business?**
- **How do UK Regulations in this area compare with that in the EU?**

Review of evidence

Has the policy successfully achieved its objectives?

Business opinion and implementation

Overall feedback suggests that the Regulations were successful in achieving the original objectives.

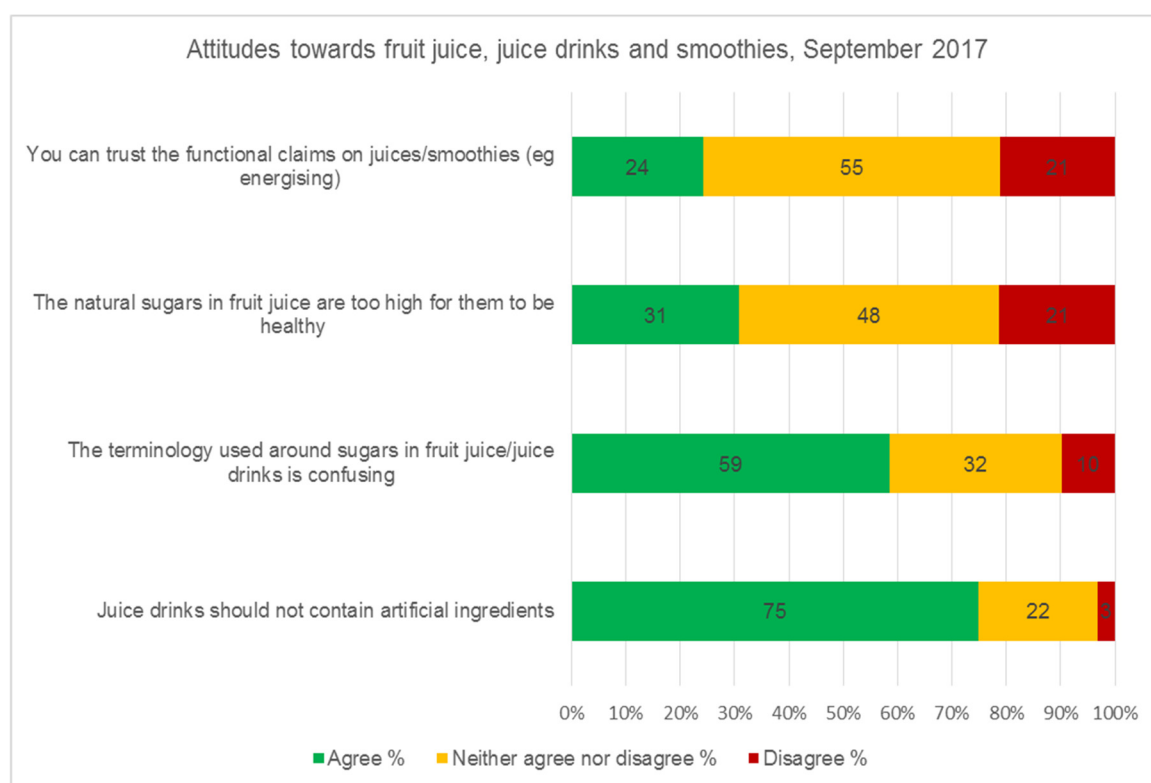
Previous stakeholder engagement found that the Regulations were generally well received. The consolidation of the transpositions of the existing directives 2001/110/EC, 2009 /106/EC and the new 2012/12/EU into one single Statutory Instrument in England was praised for providing greater clarity and ensuring a level playing field and consistency when trading in the juice market.

The surveys found that both BSDA and BFJA members generally have a favourable opinion of the Regulations, particularly as these regulations clarified the optional nature of the restoration of aroma to juice and juice concentrates. This was an aspect of previous regulations that was particularly difficult for UK producers to comply with, where aroma restoration for some juices was either not possible or unviable. This aligns with feedback from previous stakeholder engagement, as the shift to optional aroma restoration was well received, reflective of a diverse market of high and low value products.

There is no indication from stakeholders that this caused unnecessary burdens on business. Feedback from the BSDA indicated the Regulations were successful in creating a level playing field for a regulated commodity product that is traded in a global market while also addressing the adaption to technological developments which had been made in the industry since the previous 2003 rules. The BFJA echoed this in their opinions, saw the regulations main purpose to ensure a level playing field for industry, members reported no unforeseen consequences as a result of the Regulations.

Consumer confidence

It was expected that consumers would be positively affected by most of the changes in the Regulations. For example, sugar is no longer permitted to be added to fruit juices reflecting current industry practice of generally not adding sugar to most juices. As sugar addition to fruit juices is not permitted, the use of the 'no added sugar' claims no longer features on fruit juice packaging. This health claim could be misleading as the statement would be true of all juices. Similarly, the naming of mixed juices now needs to more accurately reflect the proportions of the different juices added.



Mintel Report on Fruit Juice, Juice Drinks and smoothies - UK
November 2017

Market intelligence data from Mintel in 2017 suggests that 59% of consumers find the terminology around sugars in fruit juice and juice drinks confusing. While this might suggest that there is still confusion around food information to consumers in this area, this data is limited for several reasons:

- It is not possible to say with any certainty that this view is directly in relation to fruit juice as the question related to the combination of three different product categories (fruit juice, fruit juice drinks and smoothies). These are all regulated differently, of which only fruit juice is the subject of this review
- This data relies on stated behaviours and does not necessarily correspond with revealed behaviours (how consumers use information to influence purchasing decisions and consumption).
- It is not possible to compare the results to previous years as this was the first year that these specific questions were asked. There is also no evidence to suggest that this is an additional burden, or a burden as a resulting from the of The Fruit Juices and Fruit Nectars (England) Regulations 2013.

Were there any unexpected consequences or costs from the Regulations?

There is little indication from any of the evidence reviewed that there were any unexpected consequences or costs from the Regulations.

Stakeholders of the BSDA indicated that there were no unexpected consequences. The BSDA stated in their response to the original consultation on the Regulations that the change in approach towards Improvement notices, would potentially increase the cost of compliance. However, in their response to the Post Implementation Review, they state that the Regulation is applied throughout the industry with very little indication of non-compliance, something the BSDA monitors through its Fruit Juice Quality Control Scheme, a scheme monitoring retail product in the market place.

Survey data found that BSDA members were particularly keen on the optional restoration of aroma to juice and juice concentrates. In response to the consultation for the 2013 regulations, the BSDA detailed how mandatory restoration of aromas in Fruit Juice production was not always practical and often impossible. This was argued due to the lack of availability of tropical fruit aromas and for juices like pineapple, where aromas were not of suitable quality to be restored and would be detrimental to the juice. Aroma addition to juices used in small quantities in a product was both a manufacturing challenge and of no practical benefit to the consumer.

This change however, was seen as favourable to UK manufacturers/producers. Ambiguity around how much and what aromas should be present had caused trade difficulties with some EU countries, so the regulatory flexibility now provided legal certainty for UK industry. It was also recognised that this move was in line with the international Codex fruit juice standard which opts for optional restoration of aromas.

In their response to the consultation on the 2013 regulations, BSDA members indicated that there was likely to be an equal split of costs between relabelling and reformulation. Respondents suggested that while reformulation has a costly approval process initially, some savings were made in the quantity of juice used. This is because new products would use Codex Brix values from the outset.

It was estimated in the Impact Assessment carried out to accompany the 2013 regulations that the above costs could affect around 30 Stock Keeping Units (SKUs) across the whole market. Using a relabelling cost of £1800 per SKU, it was estimated that this would incur a total cost of £54,000. However, BSDA members did not provide a response about additional costs and gave little indication that the costs were of this scale.

The BFJA survey found no members reporting unforeseen consequences following the implementation of these Regulations. In their feedback following the survey, they indicated

this was due to the revision of the Regulation becoming more relevant to the practical realities of production.

Could we revise the Regulations to reduce cost to business?

Feedback from the BSDA survey suggests that the Regulation continues to be fit for purpose. There were no proposals on how we could revise the Regulations to reduce costs to business.

Similarly, the BFJA survey stated that they understood the Regulation's purpose to create a level playing field for a regulated commodity product and that reduction of costs to business was not one of the aims of this legislation. The BFJA did not have a suggestion on how to reduce costs to industry whilst retaining the overall purpose of regulating a widely used commodity.

However, some suggestions were made about how the Regulations could be improved by adding nutritional information. Specifically, BSDA members proposed it would be beneficial for fruit juice manufacturers to be able to highlight to their consumers that fruit juice cannot contain added sugar.

The BSDA pointed to primary authority advice that states 'Provided all appropriate legislation is complied with, including the Annex in the Nutrition and Health Claims Regulation (EC) No 1924/2006, the claim 'as with all fruit juices, this product contains no added sugar' or a similar phrase with the same meaning, may be used on fruit juices where applicable.'. They state that this advice is based on Regulation 1169/2011 – a claim can be made even if all products in that category are the same so long as the qualifier is used, i.e. as with all juice.

While the BFJA make clear that the legislation continues to be fit for purpose, their members also stated that it would be beneficial to highlight to their consumers that 'fruit juice cannot contain added sugar', without a caveat such like 'as with all juice products'.

How do UK Regulations in this area compare with that in the EU?

There was little indication from stakeholders how these Regulations compare with that of the EU as this legislation implements Council Directive 2001/112/EC as amended particularly by 2012/12/EU. This Directive on fruit juice is applicable across all 28 EU Member States and has been transposed into the legislation of the EU28. As the legislation is transposed by Member States, as opposed to directly applicable Regulations, there may be minor transposition differences in language, but we are not aware of any

significant differences. No issues have been raised with the European Commission by the EU 28 since the 2013 Regulations were implemented.

Conclusions

Given the overall support for the Regulations and little indication of additional burden to business or consumers, it is recommended that we retain the Regulations unchanged.

The Regulations are considered by stakeholders to be mostly successful in achieving their original objectives, and no unexpected consequences have been identified as having arisen from their implementation. There was little feedback from stakeholders how these Regulations compare to other EU Member States. However, market intelligence data suggests that there is considerable concern from consumers around labelling of sugar in fruit juice, juice drinks and smoothies.

Some minor improvements have been suggested by stakeholders around labelling of juices to indicate they do not contain added sugar. Both the BSDA and BFJA members stated that it would be helpful to be able to indicate that all juices contain 'no added sugar' on packaging,

EU regulation 1169/2011 states that 'food information labelling shall not mislead, particularly by making the suggestion that a food possesses special characteristics - When in fact all similar foods possess such characteristics, for instance by specifically emphasising the presence or absence of certain ingredients and/or nutrients. Sugar addition to fruit juices is not permitted under the Fruit Juice and Fruit Nectars Regulations 2013, so a claim relating to 'no added sugar' would be true of all fruit juice products. The Commission have previously indicated that such claims of 'no added sugar' on fruit juice were not permitted.

We will consider the suggestions made and will keep them in mind as we continue to develop policy in this area, in the shorter and the longer term.

Limitations of this review

As stated above, this is a particularly light touch evidence review. Key limitations to consider include that a limited number of stakeholders took part in the survey, although the BSDA pointed out that members who did not respond had ample opportunity to voice any alternative opinions. Further, market intelligence data is very limited, for the reasons outlined in the review.

It is also important to note that there is a possibility of overlap in membership with the BSDA and BFJA in terms of larger juice manufacturer and retailers.