
STATUTORY INSTRUMENTS

2018 No. 41

The Soft Drinks Industry Levy Regulations 2018

PART 3

Sugar content and exempt soft drinks

Sugar content condition: fruit juice

- 5.—(1) The following are to be treated for the purposes of Part 2 as fruit juice—
- (a) fruit purée and concentrated fruit purée, as they are defined in regulation 3(1) of the Fruit Juice Regulations; and
 - (b) a product that complies with the specification in any of the following Schedules to the Fruit Juice Regulations—
 - (i) Schedule 2 (fruit juice), except that in paragraph 2 of that Schedule, “and without prejudice to entries numbers 4 and 7 of Schedule 11,” is to be treated as omitted;
 - (ii) Schedule 3 (fruit juice from concentrate);
 - (iii) Schedule 4 (concentrated fruit juice);
 - (iv) Schedule 5 (water extracted fruit juice); or
 - (v) Schedule 6 (dehydrated fruit juice and powdered fruit juice),and where the specification is made by reference to a listed EU instrument as amended from time to time, that specification also applies for the purposes of this sub-paragraph.
- (2) In paragraph (1)—
- (a) “the Fruit Juice Regulations” means the Fruit Juices and Fruit Nectars (England) Regulations 2013⁽¹⁾; and
 - (b) “listed EU instrument” means—
 - (i) Council [Directive 98/83/EC](#) on the quality of water intended for human consumption⁽²⁾;
 - (ii) Regulation [\(EC\) No 1935/2004](#) of the European Parliament and of the Council on materials and articles intended to come into contact with food⁽³⁾;
 - (iii) Regulation [\(EC\) No 1925/2006](#) of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods⁽⁴⁾;
 - (iv) Regulation [\(EC\) No 1332/2008](#) of the European Parliament and of the Council on food enzymes⁽⁵⁾; and

(1) [S.I. 2013/2775](#).

(2) OJ No L330, 5.12.1998, p 32, last amended by Commission Directive (EU) 2015/1787 (OJ No L 260, 7.10.2015, p 6).

(3) OJ No L 338, 13.11.2004, p 4, last amended by Regulation [\(EC\) No 596/2009](#) of the European Parliament and of the Council (OJ No L 188, 18.7.2009, p 14).

(4) OJ No L 404, 30.12.2006, p 26, last amended by Commission Regulation (EU) 2017/1203 (OJ No L 173, 6.7.2017, p 9).

(5) OJ No L 354, 31.12.2008, p 7, last amended by [Commission Regulation \(EU\) No 1056/2012](#) (OJ No L 313, 13.11.2012, p 9).

- (v) Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives⁽⁶⁾.

Sugar content condition: vegetable juice

- 6.—(1) The following are to be treated for the purposes of Part 2 as vegetable juice—
- (a) juice from vegetables;
 - (b) juice from concentrate from vegetables;
 - (c) concentrated juice from vegetables;
 - (d) water extracted juice from vegetables;
 - (e) dehydrated or powdered juice from vegetables;
 - (f) vegetable purée; and
 - (g) concentrated vegetable purée.
- (2) “Juice from vegetables” means the fermentable but unfermented product—
- (a) which is obtained from the edible part of a vegetable;
 - (b) which has the characteristic colour, flavour and taste typical of the juice of the vegetable from which it comes;
 - (c) which does not incorporate parts or components of pips, seeds or peel unless they cannot be removed by good manufacturing practice;
 - (d) which has not been manufactured using any treatment other than an authorised treatment; and
 - (e) to which no calorific mono-saccharides or di-saccharides have been added.
- (3) Juice from vegetables includes juice—
- (a) which is produced from one or more kinds of vegetables mixed together;
 - (b) which contains restored flavour, pulp and cells, extracts or edible oils (or any one or more of them) obtained by a suitable physical means from the same species of vegetable;
 - (c) which contains edible salts, spices, aromatic herbs and vinegar; and
 - (d) which is mixed with vegetable purée during production.
- (4) “Juice from concentrate from vegetables” means the product—
- (a) obtained by reconstituting concentrated juice from vegetables with potable water that meets the criteria set out in Council Directive 98/83/EC on the quality of water intended for human consumption, as those criteria are amended from time to time;
 - (b) prepared by a suitable physical process that maintains the essential physical, chemical, organoleptical and nutritional characteristics typical of the juice from vegetables produced from the species of vegetable from which it comes;
 - (c) which has not been manufactured using any treatment other than an authorised treatment; and
 - (d) to which no calorific mono-saccharides or di-saccharides have been added.
- (5) Juice from concentrate from vegetables includes products—
- (a) in which the concentrated juice from vegetables used in its production is mixed with—
 - (i) juice from vegetables;
 - (ii) vegetable purée; and

(6) OJ No L 354, 31.12.2008, p 16, last amended by Commission Regulation (EU) 2017/1399 (OJ No L 199, 29.7.2017, p 8).

- (iii) concentrated vegetable purée;
 - (b) which contain restored flavour, pulp and cells, extracts or edible oils (or any one or more of them) obtained by a suitable physical means from the same species of vegetable; and
 - (c) which contain edible salts, spices, aromatic herbs and vinegar.
- (6) “Concentrated juice from vegetables” means—
- (a) the product obtained from juice from vegetables by the physical removal of a specific proportion of its water content, being at least 50% where the product is intended for direct consumption;
 - (b) which has not been manufactured using any treatment other than an authorised treatment; and
 - (c) to which no calorific mono-saccharides or di-saccharides have been added.
- (7) Concentrated juice from vegetables includes products which contain restored flavour, pulp and cells, extracts or edible oils (or any one or more of them) obtained by a suitable physical means from the same species of vegetable.
- (8) “Water extracted juice from vegetables” means the product—
- (a) obtained by diffusion with water of—
 - (i) pulpy whole vegetables whose juice cannot be extracted by any physical means; or
 - (ii) dehydrated whole vegetables;
 - (b) which has not been manufactured using any treatment other than an authorised treatment; and
 - (c) to which no calorific mono-saccharides or di-saccharides have been added.
- (9) “Dehydrated or powdered juice from vegetables” means the product —
- (a) obtained from juice from vegetables of one or more vegetable species by the physical removal of virtually all of its water content;
 - (b) which has not been manufactured using any treatment other than an authorised treatment; and
 - (c) to which no calorific mono-saccharides or di-saccharides have been added.
- (10) “Vegetable purée” means the fermentable but unfermented product obtained by a suitable physical process such as sieving, grinding or milling the edible part of whole or peeled vegetable without removing the juice, and to which no calorific mono-saccharides or di-saccharides have been added.
- (11) “Concentrated vegetable purée” means the product obtained from vegetable purée by the removal of a specific proportion of its water content, in respect of which, if flavour has been restored to it, such flavour has been recovered from the same species of vegetable, and to which no calorific mono-saccharides or di-saccharides have been added.
- (12) In this regulation—
- “authorised treatment” means a treatment which falls within the following paragraphs of Schedule 10 (authorised treatments) to the Fruit Juices and Fruit Nectars (England) Regulations 2013—
- (a) paragraph 1; and
 - (b) paragraph 2 but as if—
 - (i) reference to “fruit” where it first occurs were to “vegetable”; and

- (ii) for “concentrated fruit juice” to the end of the paragraph were substituted “concentrated juice from vegetables, if the product obtained in this way is juice from vegetables or juice from concentrate from vegetables”;

“pulp and cells” means the products obtained from the edible parts of the vegetable without removing the juice; and

“vegetable” means any kind of vegetable (excluding tomatoes) that is sound and appropriately mature and—

- (a) fresh; or
- (b) preserved by—
 - (i) physical means; or
 - (ii) a treatment, including a post-harvest treatment,
 and also includes aromatic herbs and aloe vera.

(13) In this regulation, reference to a flavour which is restored or recovered is a reference to a flavour—

- (a) which is obtained during the processing of vegetables by applying suitable physical processes (including squeezing, extraction, distillation, filtration, adsorption, evaporation, fractionation and concentration) to obtain, retain, preserve or stabilise the flavour quality; and
- (b) which is obtained from the edible parts of the vegetable.

Sugar content condition and exempt soft drinks: milk and milk-based drinks

7.—(1) The following are to be treated for the purposes of Part 2 as milk—

- (a) drinking milk;
- (b) recombined milk;
- (c) reconstituted milk;
- (d) fermented milk;
- (e) buttermilk;
- (f) whey;
- (g) reconstituted whey; and
- (h) recombined whey.

(2) “Drinking milk” means the normal mammary secretion of milking animals obtained from one or more milkings, which has nothing added to it or extracted from it, other than as described in paragraph (3), and is intended for consumption as a liquid or for further processing.

(3) Drinking milk includes a product—

- (a) the natural fat content of which has been altered in order to meet a specification in point III of Part IV of Annex VII to Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products(7);
- (b) which is heat-treated or filtered, or both;

(7) OJ No L 347, 20.12.2013, p 671, last amended by Commission Delegated Regulation (EU) 2016/1226 (OJ L No 202, 28.7.2016, p 5).

- (c) which has been enriched with milk proteins, mineral salts or vitamins, in accordance with Regulation (EC) No 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods; or
- (d) in which the lactose content has been reduced by conversion to glucose and galactose by the addition of lactase, or removal of lactose.

(4) “Recombined milk” means a product resulting from combining only milk-fat and milk-solids-non-fat in their preserved forms, together with the addition of such amount of water (if any) as may be required to re-establish the ratio which those constituents have in drinking milk.

(5) “Reconstituted milk” means a product resulting from the addition only of water to the dried or concentrated form of drinking milk, in such amount as may be required to re-establish the ratio which water bears to solids in drinking milk.

(6) “Fermented milk” means an acidified product which is produced by fermentation of drinking milk, recombined milk or reconstituted milk, or a mixture of them, and in which—

- (a) after pasteurisation, lactic acid has been produced by starter cultures of microorganisms; and
- (b) after fermentation, those microorganisms are live, viable and abundant, unless the product has been subject to heat treatment after fermentation.

(7) Fermented milk is not milk for the purposes of section 29 if calorific mono-saccharides or di-saccharides are added in its production, other than those which were present in the drinking milk, recombined milk or reconstituted milk from which it was produced.

(8) “Buttermilk” means the product which—

- (a) remains after the butter-making process has been applied to drinking milk, recombined milk, reconstituted milk, cream, fermented milk or a mixture of them and which contains less than 0.6% milk fat; or
- (b) is produced by fermentation of drinking milk, recombined milk or reconstituted milk, which fermentation occurs—
 - (i) spontaneously by the action of lactic acid-forming bacteria or aroma-forming bacteria; or
 - (ii) by inoculation of heated drinking milk, recombined milk or reconstituted milk with pure bacterial cultures,

and includes such a product which is pasteurised or sterilised.

(9) Buttermilk is not milk for the purposes of section 29 if calorific mono-saccharides or di-saccharides are added in its production, other than those which were present in the drinking milk, recombined milk, reconstituted milk, cream or fermented milk from which it was produced.

(10) “Whey” means the fluid separated from the curd which—

- (a) is obtained during the manufacture of cheese, casein or similar products; and
- (b) results from the coagulation, through the action of rennet type enzymes, other suitable enzymes or acid, of drinking milk, recombined milk or reconstituted milk.

(11) Whey is not milk for the purposes of section 29 if calorific mono-saccharides or di-saccharides are added in its production, other than those which were present in the drinking milk, recombined milk or reconstituted milk from which it was produced.

(12) “Reconstituted whey” means a product resulting from the addition only of water to the dried or concentrated form of whey in the amount necessary to re-establish the ratio which water bears to solids in whey.

(13) “Recombined whey” means a product resulting from combining only the solid constituents of whey in their preserved forms, together with the addition of such amount of water (if any) as may be required to re-establish the ratio which those constituents have in whey.

(14) In paragraphs (5) and (12) references to the “dried or concentrated form” of drinking milk or whey are to the product obtained by only the removal of water from the drinking milk or whey.

Exempt soft drinks: milk substitute drinks

8.—(1) For the purposes of section 30(3)(a), the specified quantity of calcium is 120 milligrams per 100 millilitres of soft drink.

(2) The conditions specified for the purposes of section 30(3)(b) are that the soft drink—

- (a) is derived from a plant, including legumes, cereals, nuts or seeds;
- (b) is capable of being used for all or most of the uses for which drinking milk is used;
- (c) has a consistency which is the same as or similar to drinking milk; and
- (d) is not carbonated.

(3) In paragraph (2) “drinking milk” has the meaning given in regulation 7.

Exempt soft drinks: alcohol substitute drinks

9.—(1) The conditions specified for the purposes of section 30(4)(b) are—

- (a) condition 1; and
- (b) one or more of conditions 2, 3 and 4.

(2) Condition 1 is that—

- (a) the soft drink—
 - (i) is in packaging comparable to, and marketed in a way that is comparable to, the particular kind of alcoholic beverage to which it is similar; and
 - (ii) is not marketed in a way which is directed at, or is likely to appeal particularly to, people under eighteen years of age; and
- (b) when the soft drink is advertised or sold, it is advertised or sold as a direct replacement for the particular kind of alcoholic beverage to which it is similar.

(3) Condition 2 is that the soft drink is made from an alcoholic beverage by a process of de-alcoholisation by which the alcoholic strength of the beverage is reduced to 1.2% or lower.

(4) Condition 3 is that—

- (a) the soft drink is manufactured using a fermentation or distillation process during which—
 - (i) alcohol is produced; but
 - (ii) the alcoholic strength of the product of fermentation or distillation never exceeds 1.2%; and
- (b) such product is not diluted or mixed with any other substance, unless, in the case of a product of distillation, that substance has dissolved into the product.

(5) Condition 4 is that the soft drink is manufactured by blending an alcoholic beverage of cider, beer, wine or made-wine with fruit juice, with or without the addition of water or other ingredients, to make a soft drink that is similar to the alcoholic beverage used in its production.

Exempt soft drinks: for medicinal or other purposes

10.—(1) Paragraph (2) applies to a product for use for—

- (a) medicinal purposes which meets the description in paragraph (3)(a);
 - (b) infants or young children which meets the description in paragraph (3)(b), (c) or (d); or
 - (c) total diet replacement for weight control which meets the description in paragraph (3)(e).
- (2) To the extent that the product is, or is capable of being, a soft drink, it is an exempt soft drink.
- (3) The descriptions of products are—
- (a) medical foods, as defined in regulation 2 of the Medical Food (England) Regulations 2000⁽⁸⁾, which meet the specification in regulation 3(1)(a) of those Regulations;
 - (b) infant formula, as defined in Article 2(c) of Commission [Directive 2006/141/EC](#) on infant formulae and follow-on formulae and amending [Directive 1999/21/EC](#)⁽⁹⁾, which complies with regulations 5, 6, 8, 10, 11, 12, 14(1), (2) or (3) and 15 of the Infant and Follow-on Formula (England) Regulations 2007⁽¹⁰⁾;
 - (c) follow-on formula, as defined in Article 2(d) of Commission [Directive 2006/141/EC](#) on infant formulae and follow-on formulae and amending [Directive 1999/21/EC](#), which complies with regulations 5, 7, 9, 10, 11, 12, 14(1), (2) or (3) and 16 of the Infant and Follow-on Formula (England) Regulations 2007;
 - (d) baby foods and processed cereal-based foods, as defined in the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003⁽¹¹⁾, which comply with the requirements of regulations 5 to 7 of those Regulations;
 - (e) specially formulated foods intended for use in energy-restricted diets for weight reduction which—
 - (i) comply with the compositional requirements in Schedule 1 to the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997⁽¹²⁾ as it applies in England; and
 - (ii) when used as instructed by the manufacturer, replace the whole of the total daily diet.

Sugar content condition: designated food labelling obligation

11. The mandatory nutrition declarations in Articles 9(1) and 30(1)(b) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers⁽¹³⁾ are designated for the purposes of Part 2 as food labelling obligations⁽¹⁴⁾.

⁽⁸⁾ [S.I. 2000/845](#). Relevantly amended by [S.I. 2007/3521](#) in respect of the definition of “Directive” in regulation 2. That definition is used in the definition of “medical food” and in regulation 3(1)(a).

⁽⁹⁾ OJ L No 401, 30.12.2006, p 1.

⁽¹⁰⁾ [S.I. 2007/3521](#). Relevant amending instruments are [S.I. 2011/1043](#) and [2013/3243](#).

⁽¹¹⁾ [S.I. 2003/3207](#).

⁽¹²⁾ [S.I. 1997/2182](#). Schedule 1 is amended by [S.I. 2016/688](#) (in relation to England).

⁽¹³⁾ OJ L No 304, 22.11.2011, p 18.

⁽¹⁴⁾ See the definitions of “sugars” in section 59(1) which refers to a designated food labelling obligation defined in subsection (3), being an obligation designated by regulations made by the Commissioners.