EXPLANATORY MEMORANDUM TO

The Fruit Juices and Fruit Nectars (Amendment) Regulations (Northern Ireland) 2011

2011 No. 47

1. Introduction

1.1 This explanatory memorandum has been prepared by the Food Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Articles 15(1)(a) and (e), 16(1) and 47(2) of the Food Safety (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.

2. Purpose of the Rule

2.1 These Regulations amend the Fruit Juices and Fruit Nectars Regulations (Northern Ireland) 2003 to make a small linguistic change in relation to mixed juice products containing fruit juice and fruit juices from concentrate and to nectars obtained wholly or partly from one or more concentrated products, in order to alleviate translational difficulties across Member States of the EU. It also introduces a table laying down the minimum Brix levels for fruit juices from concentrate.

3. Legislative Background

3.1 This rule implements Commission Directive 2009/106/EC which took effect from 1 January 2011 and makes two amendments to Council Directive 2001/112/EC.

3.2 It should be noted that these Regulations should have come into force on 1 January 2011 in order to implement Commission Directive 2009/106/EC. The delay in implementation arose from the desire to introduce the amending Regulations in Northern Ireland, England, Scotland and Wales at the same time. The EU Commission has noted the delay and asked for a timetable by the end of March regarding plans to implement the Directive.

4. Parity or Replicatory Measure

4.1 This Rule applies to Northern Ireland only. Parallel legislation is being made in England, Scotland and Wales.

5. European Convention on Human Rights

5.1 As this Rule is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Policy background

6.1 The amending Regulations introduce changes to the existing rules on fruit juices which arise as a result of an amendment to Council Directive 2001/112/EC on Fruit Juices and Fruit Nectars. These changes were proposed and agreed by Member States in order to further align EU rules with the Codex Standard on Fruit Juices. This will help ensure a level playing field in international trade of this commodity and assures consumers additional protection in terms of fruit juice quality.

6.2 These Regulations amend the Fruit Juices and Fruit Nectars Regulations (Northern Ireland) 2003 (S.R. 2003 No. 305) (as amended) by—

a) providing that a fruit juice from concentrate must comply with the minimum Brix levels specified in Schedule 6, read together with the Notes to that Schedule;
b) making a small linguistic change to the labelling and description of mixed juice products containing fruit juice and fruit juices from concentrate, and of nectars obtained wholly or partly from one or more concentrated products;
c) amending Schedule 1 (Reserved Descriptions For Designated Products) so that item 3 (Fruit juice from concentrate) of Schedule 1 cross-references to Schedule 6 (Minimum Brix Levels For Fruit Juices From Concentrate); and
d) adding a new Schedule 6 which provides 'Minimum Brix Levels For Fruit Juices From Concentrate'.

7. Consultation outcome

7.1 The Food Standards Agency in NI consulted over 80 interested parties throughout Northern Ireland, including consumer and health professional groups, manufacturers and industry bodies, enforcement bodies, individuals and other government departments. No concerns were raised by UK stakeholder organisations.

7.2 One response was received to the consultation in Northern Ireland which endorsed the proposals.

8. Equality Impact

8.1 These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the section 75 groups.

9. Impact

9.1 An Impact Assessment is attached to this memorandum. This impact Assessment has been prepared by Defra.

10. Contact

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Title:

The Fruit Juices and Fruit Nectars (England) (Amendment) Regulations 2011

Lead department or agency:
Department for Environment, Food and Rural Affairs

Other departments or agencies:

Impact Assessment (IA)
IA No: DEFRA 1040
Date: 09/02/2010
Stage: Final
Source of intervention: EU
Type of measure: Secondary legislation
Contact for enquiries: Michelle McQuillan 0207 238 4352

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Fruit Juices and Fruit Nectars (England) Regulations 2003 require revision to implement Commission Directive 2009/106/EC of 14th August 2009 which introduces two amendments to EC Directive 2001/112/EC laying down rules on fruit juice.The changes discussed are:

1) A small linguistic change in relation to mixed juice products containing fruit juices and fruit juices from concentrates, which will help to alleviate translational difficulties across Member States.

2) The introduction of minimum Brix levels for fruit juices from concentrate. (Brix values provide a measure of quality by setting minimum soluble solids (sugar content) for fruit juices.)

Government intervention is necessary in order to ensure consistency for industry across the EU and ensure consumers are guaranteed a minimum quality product.

What are the policy objectives and the intended effects?

1) The policy objectives are to protect consumers and provide the consistency and a level playing field for the fruit juice industry particularly when trading in fruit juice from concentrate.

2) The intended effects are :

- a linguistical clarification removing any ambiguity with the labelling of mixed juices containing both fruit juice and fruit juice from concentrate where the words “partially **made with** concentrate” are replaced with “partially **from** concentrate”.
- To introduce minimum Brix values for fruit juice from concentrate which will help ensure better consistency in product quality and that industry are applying the same minimum levels.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1- Do Nothing. Failure to update the Fruit Juice and Fruit Nectar Regulations to keep them in line with Council Directive 2001/112/EC may lead to infraction procedures against the UK. This could also leave industry at a disadvantage against other Member States who are applying the Brix levels enshrined in directive 2009/106/EC, leaving the UK no legal basis in cases of dispute.

Option 2 - Introduce changes now. This will allow for consistency in labelling across the EU for juice mixtures of "not from concentrate" and "from concentrate". The introduction of minimum Brix levels will ensure that all manufacturers will have to comply with the levels previously governed by voluntary codes of practice thereby creating a more level playing field.

Option 2 is the chosen option as this delivers additional consumer protection measures to ensure a minimum fruit juice quality. Manufacturers are also keen to see a level playing field across Europe with rules aligned where possible with the FAO/WHO worldwide Codex standard on fruit juices and fruit nectars.

This is also the only option which ensures our EU obligations are fully met; failure to implement the measure could lead to infraction proceedings. Results of the consultation exercise raised no objections to this course.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 2-3 Years **What is the basis for this review?** PIR. **If applicable, set sunset clause date:** Month/Year	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For final stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: ---------- Date: ----------

Summary: Analysis and Evidence

Policy Option 2

Description: Introduce the Fruit Juices and Fruit Nectars (England) (Amendment) Regulations 2011

Price Base Year 2009	PV Base Year N/A	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: -0.01**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.002		N/A	**N/A**
High	0.16		N/A	**N/A**
Best Estimate	0.07[1]		0	**0.07**

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

There will be one-off familiarisation cost to manufacturers of fruit juices and canned fruit of approximately £283 and to English local authorities of approximately £9000. There will also be a re-labelling cost to one affected England-based fruit juice manufacturer, of approximately £7200, due to the linguistic change on the labels of fruit juices containing juice both "not from concentrate" and "from concentrate". Lastly, there will be further relabelling costs to England-based canned fruit manufacturers, of up to £144,000, due to the setting of minimum Brix levels.

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

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

No monetised benefits have been identified.

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

The inclusion in law of defined Brix levels will help further ensure consistency in product quality, allowing England-based fruit juice and canned fruit juice manufacturers to compete with EU-based counterparts on the same terms. This should ensure product quality for consumers and provide trading standards officers with a benchmark against which to judge the authenticity and quality of fruit juices.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5

[1] Our best estimate of transitional costs is the mid-point of the identified total transitional cost range of approximately £16k to £160k. Please See Evidence Base for further detail.

Assumptions

- There will be familiarisation costs for both industry and English local authorities.
- There will relabelling costs for mixtures of juices containing both fruit juice and fruit juice from concentrate. Relabelling costs are based on one identified affected manufacturer.
- There will be no relabelling costs associated with the setting of minimum Brix values for fruit juices from concentrate, as UK producers already adhere to a code of practice which recommends the same levels as now required by law.
- There will be costs for affected canned fruit manufacturers, associated with the setting of minimum Brix levels, and these manufacturers will re-label or reformulate in response to the amended regulations. Affected manufacturers will choose the lowest cost option where reformulation has no material impact on consumers' perception of products.

Risks

- There is a strong risk of infraction proceedings against the UK if these Regulations are not implemented. Failure to transpose the amending Commission Directive into national legislation could result in this course of action.

Direct impact on business (Equivalent Annual) £m):			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0.001947-0.019262	**Benefits:** N/A	**Net: - 0.001947-0.019262**	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England		
From what date will the policy be implemented?			TBC Est01/04/2011		
Which organisation(s) will enforce the policy?			Local Authorities		
What is the annual change in enforcement cost (£m)?			nil		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** N/A	**Benefits:** N/A	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**

Statutory equality duties[2] Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	16
Small firms Small Firms Impact Test guidance	No	16
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	16
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	16
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	16
Human rights Human Rights Impact Test guidance	No	16
Justice system Justice Impact Test guidance	No	16
Rural proofing Rural Proofing Impact Test guidance	No	16
Sustainable development Sustainable Development Impact Test guidance	No	16

Evidence Base (for summary sheets) – Notes

References

No.	Legislation or publication
1	Consultation stage: www.defra.gov.uk/corporate/consult/fruit-juice/index.htm Consultation stage IA – Dec 2010
2	http://www.legislation.gov.uk/uksi/2003/1564/contents/made Fruit Juice Regulations 2003
3	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:212:0042:0044:EN:PDF Fruit Juice Directive2009/106/EC
4	

Evidence Base

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs (EAC)[3]	0.009	0.009h	0.009	0.009	0.009	0.009	0.009	0.009	0.009	0.009
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0.009	0.009	0.009	0.009	0.009	0.009	0.009	0.009	0.009	0.009
Transition benefits	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Annual recurring benefits	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total annual benefits[4]*	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

[2] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

[3] Equivalent Annual Costs – the profile shows the EACs for the mid-point of the identified total cost range of approximately £16k to £160k.

Evidence Base (for summary sheets)

Problem under consideration

It is proposed to revise the Fruit Juices and Fruit Nectars (England) Regulations 2003 to implement Commission Directive 2009/106/EC which introduces two amendments to EC Directive 2001/112/EC. EC Directive 2001/112/EC lays down rules on fruit juices and fruit nectars. These changes were introduced to better align current EU rules on fruit juice with the worldwide Codex Standard on Fruit Juices and Nectars.[5] 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 in their purchases. The changes discussed are:

1) A small linguistic change in relation to mixed juice products containing fruit juices and fruit juices from concentrates, which will help to alleviate translational difficulties across Member States.

2) The introduction into the Regulations of minimum Brix levels for fruit juices from concentrate[6].

Rationale for intervention

Intervention is required to implement EU Directive 2009/106/EC. The Fruit Juices and Fruit Nectars (England) Regulations 2003 require two amendments. These regulations apply to England only separate but parallel Regulations will be implemented in Scotland, Wales and Northern Ireland.

The amendments are:

1) Linguistic change to the description of mixed juices containing fruit juice and fruit juice from concentrate

This is a very minor linguistic change for the labelling of mixed juices containing both fruit juice and fruit juice from concentrate where the words "partially **made with** concentrate" are replaced with "partially **from** concentrate". This aligns the text with terminology already in use elsewhere in the directive when describing juices from concentrate and allows for more consistent translation into national legislations across each Member State.

2) Brix levels

One of the functions of setting specific compositional standards for certain food and drink products is to ensure consumers can be assured of a minimum quality when making purchasing decisions. The introduction of minimum Brix levels for fruit juice from concentrate is important as it ensures such juices meet a minimum value associated with that particular variety of fruit juice. Brix levels can vary naturally but most fall within a certain range. In the UK, an industry code of practice ensures that signatories produce fruit juice from concentrate which already adhere to minimum Brix values. The values being set in the proposed amending regulations are in line with what the industry currently works to and represent levels which produce a juice of acceptable quality for the consumer. Government intervention is necessary in order to ensure consistent standards for industry across the UK and EU to work to, and also to ensure consumers are guaranteed a juice of at least a minimum quality standard.

Guideline Brix values for fruit juices from concentrate have recently been agreed in the Codex Alimentarius Commission and the European Commission was keen to adopt similar Brix standards in the EU to ensure EU manufacturers were not disadvantaged in international trade.

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[4] For a description of non-monetised benefits, please see summary pages and main evidence base section.

[5] Codex is a WHO/FAO body which sets international food standards to facilitate trade and protect consumers. The Codex General Standard on Fruit Juices and Fruit Nectars is STAN 247-2005

[6] Brix values provide a measure of quality by setting minimum soluble solids (sugar content) for fruit juices. The Brix to acid ratio is an easy way to tell if a juice is sweet or acidic (sour); the higher the ratio, the sweeter the juice.

Policy objective and intended effect

1) To remove ambiguity from the description of juice mixtures containing both fruit juice and fruit juice from concentrate, and to reduce the time and costs associated with the translation of descriptions across Member States.

2) The introduction of minimum Brix values will ensure consistency across fruit juice products, and assure consumers of a minimum quality when purchasing a fruit juice from concentrate. It will also assist with detecting adulteration and testing of juices, with consequent benefits for the consumer.

Options considered

1) Do nothing - Do not adopt the proposal
2) Introduce proposed changes as above

Option 2 is the chosen option.

Background to the changes proposed

The aim of the amending Regulations is to introduce changes to the existing rules on fruit juices which arise as a result of an amendment to Council Directive 2001/112/EC on Fruit Juices and Fruit Nectars. These changes were proposed and agreed by Members States in order to further align EU rules with the Codex Standard on Fruit Juices. This will help ensure a level playing field in international trade and assures consumers additional protection in terms of fruit juice quality. The Commission Directive introduces only two amendments: a very minor linguistic change to the naming of mixed juices consisting of fruit juice and fruit juice from concentrate; and the introduction of minimum Brix levels (sugar content) for fruit juices from concentrate.

Other more technical and detailed changes are also currently being discussed in Europe but these will take much longer to agree and will require consideration by the European Parliament. Thus a much longer timescale of around 2-3 years is envisaged before further changes are required. The Commission has been keen to progress this first set of amendments to ensure Europe has in place its own minimum Brix requirements. Although the Brix levels are broadly similar to that recently set in the Codex standard, there are some fruits where the levels differ and are more appropriate to the fruit varieties and growing conditions found in Europe. In the absence of legal European rules manufacturers could be forced to accept the levels in Codex and therefore creating disadvantage.

The major fruit juice manufacturers and packers in the UK already adhere to an industry Code of Practice (COP), which recommends minimum Brix levels for fruit juice from concentrate. The values laid down in the proposed amending Regulations are identical to that set out in that COP, and the industry has indicated that these can be implemented at low cost. The proposals are supported by industry and, indeed, were put forward by the trade themselves.

1) Linguistic change –

For consistency, a minor change to the labelling of mixtures of fruit juice and fruit juice from concentrate is proposed. The UK can accept this is more consistent with the terminology used in the reserved descriptions[7] but has, during discussions, questioned the overall benefit. It will require re-labelling for mixtures of juices containing **both** fruit juice and fruit juice from concentrate; however these products account for only a very small proportion of the UK market (thought to be around four products).

2) Addition of Brix levels – The EU currently has no legally specified Brix levels for fruit juices from concentrate so it is important that the figures are in line with EU manufacturing practices. Brix levels, broadly speaking, represent the sweetness of a juice. Fruit juice can be made in two distinct ways. It can be obtained directly from the pressing of the fruit, in which case it is known as 'not from concentrate' and the reserved description "X juice" is used (where X represents a type of fruit). Alternatively, to

[7] Reserved descriptions are names set out in law for certain commodities which define their composition and often require specific labelling requirements. The Fruit Juice and Fruit Nectar Regulations lay down reserved descriptions for fruit juice products.

minimise cost, the juice may be extracted and concentrated in the country of origin and transported to processors in various countries, where it is reconstituted by the addition of the same amount of water originally removed. This type of juice is described as 'from concentrate' and the reserved description "X juice from concentrate" must be used. The Brix levels being proposed are to be applied to "from concentrate juice" only and are required to ensure that restored juices meet a minimum Brix level.

The inclusion of Brix levels in law will have direct benefits for the consumer, at a minimal additional cost. It will help guarantee product quality and ensure that competitive international trade in fruit juice is supported by consistent quality standards across the EU. It will also assist with detecting adulteration and testing of juices by setting down legal minima not previously in place. The values being proposed are in line with UK trade practices. UK fruit juice manufacturers already adhere to Brix levels, which have been laid down across Europe through an Association of the Industry of Juices and Nectars from Fruits and Vegetables of the European Union Code of Practice (AIJN). The AIJN represents the major European fruit juice manufacturers, and its code represents a consensus on minimum Brix values manufacturers must achieve in order to ensure product quality and meet minimum standards. The values in the amending Regulations have been derived directly from the code, so in practice there will only be small associated costs arising from the inclusion of Brix levels in UK law.

Options

Option 1- Do nothing. Failure to update the Fruit Juices and Fruit Nectars (England) Regulations 2003 to keep them in line with Council Directive 2001/112/EC may lead to infraction procedures. This would also leave UK industry at a competitive disadvantage against other Member States as its current code of practice would have no legal basis.

Option 2 - Introduce amending regulations. This is the chosen option. This will allow for consistency in labelling across the EU for mixed juices and juices made from concentrate. The introduction of minimum Brix levels will ensure that all manufacturers will have to comply with the levels previously governed by voluntary codes of practice.

While we note that these Regulations apply to England only, separate but parallel regulations will be implemented in Scotland, Wales and Northern Ireland. **Therefore, the geographic scope of this impact assessment is England only.**

The markets affected by the amended regulations

Fruit juice manufacturing

According to the Inter-Departmental Business Register (IDBR) from the ONS there are 40 fruit and vegetable juice manufacturers in the UK; 35 of these are located in England and 5 in Wales. Based on the number of employees[8] 30 are defined as micro businesses, 5 as small and 5 as medium. There are also 235 soft drinks manufacturers in the UK, some of which may also produce fruit juices as part of their range.

The market for fruit juices is quite concentrated. Own label brands account for approximately 60% of sales, with a further 32% accruing to just 6 brands[9].

Retail value of all fruit juice sales was approximately £1.8bn in 2009, down by 4.5% on 2008 figures. In volume terms, consumption of fruit juice peaked in 2007, before year-on-year falls of 3.4% and 3.1% respectively in 2008 and 2009[10]. The sector breakdown between chilled and ambient juices[11], based on litres consumed, is given in the table below

[8] Standard definitions of business size based on number of employees are as follows: Micro - less than 10; Small – less than 50; Medium – less than 250; Large – 250 or more.

[9] Mintel, *Fruit Juices and Fruit Juice Drinks,* November 2008.

[10] The 2010 UK Soft Drinks Report, BSDA: http://www.britishsoftdrinks.com/PDF/2010%20soft%20drinks%20report.pdf

[11] Ambient juice does not need to be refrigerated before opening but can be stored at room temperature. Ambient juice tends to be from concentrate.

Types of Juice	Percentage share
Ambient juice	45
Chilled 'Not From Concentrate'	25
Chilled 'From concentrate'	21
Smoothies	5
Freshly squeezed	4

Source: 2010 UK Soft Drinks Report, BSDA.

Given that the amended regulations affect mixed juices, blended from fruit juice and juice from concentrate, and juices from concentrate, approximately 66% - the ambient juice and chilled 'from concentrate' sectors - of the fruit juices market will be affected by this legislation.

Canned fruit manufacturing

Current estimates suggest that there are approximately 10 manufacturers of canned fruit in the UK[12], and we assume that these are all based in England. These Regulations will also apply to canned fruit preserved in fruit juice. Retailer own brands account for approximately 67% of the canned fruit market, with brand leader Del Monte accounting for approximately 13%; however other brands such as Princes and SPC Nature's Finest have seen the biggest growth recently[13].

Costs and Benefits of the options

Option 1 forgoes the benefit of having clear legislation consistent with other Member States, and the benefits of introducing Brix levels, namely: ensuring product quality, supporting competitive international trade in fruit juice, detecting adulteration and testing of juices.

Option 2 will result in benefits to both industry and consumers. To our knowledge, introducing Brix levels for fruit juice from concentrate juices will have negligible impact, as packers and suppliers of such juices already comply with minimum Brix levels through voluntary codes of practice. However, we are aware that canned fruit packers who pack fruit in a juice medium will be affected and may face some additional costs.

Option 2 is the preferred option, as this ensures industry and consumers benefit from legislated minimum standards at little cost to the fruit juice industry. An 18-month timescale since adoption of the Directive has allowed producers to prepare for label changes in the relatively small amount of products affected and to work towards exhausting current label stocks.

Option 1

Costs

There would be no change to the regulatory environment for England-based industry and therefore there are no immediate costs. However, the absence of consistency of product descriptors and quality standards across fruit juice products may cause lost business for England-based fruit juice and canned fruit manufacturers beyond 2011.

Benefits

There is no change to the regulatory environment, and therefore no incremental benefits.

Option 2

Costs

Costs to industry

[12] Based on market analysis we have identified the key manufacturers in canned/packaged fruit as: Del Monte, Princes, SPC Nature's Finest, John West and own-label manufacturers. This has been rounded up to 10. As we have no further information, and in order to be cautious, we assume that these are all in England.

[13] Mintel, (2007), Frozen and Canned Fruit and Vegetables UK

Familiarisation costs

Fruit juice and canned fruit manufacturers will need to read and become familiar with the new Regulations. However, as industry has been aware of the proposed changes for over 2 years and is already working to the Brix level through their own code of practice, it is likely that relatively little time will be required for this.

We estimate that it will take one manager approximately 15 minutes to read and become familiar with the Regulations (based on 4 pages of text. The average hourly pay rate for *production managers* is £19.38[14]. This is up-rated by 30% to account for overheads, in line with standard cost model methodology[15], to a wage rate of £25.19[16]. For a reading time of 15 minutes this represents an average cost per business of £6.30.

For the 35 fruit and vegetable juice producers in England, this represents a total familiarisation cost of approximately £220. Using the same per business cost of familiarisation as outlined above, this represents a total familiarisation cost to the identified 10 England-based canned fruit manufacturers of £63.

Therefore, the total one-off familiarisation cost to fruit juice and canned fruit manufacturers is £283.

One-off costs associated with the linguistic change

Re-labelling

The linguistic change will require minor re-labelling for mixtures of juices containing both fruit juice **and** fruit juice from concentrate; however these products account for only a very small proportion of the UK market. Information from the industry trade association representing the large fruit juice manufacturers, the British Soft Drinks Association (BSDA), indicates that there are very few stock keeping units (SKUs) which will require to be changed. BSDA has indicated that only one of their member manufacturers will be affected by the linguistic change resulting in four of their products requiring label changes. **We assume that this manufacturer is England-based.** All of the BSDA's other member companies (21 in total), manufacturing fruit juices, have indicated no changes will be needed.

Based on the results of recently-commissioned Defra research[17], we estimate that re-labelling costs of £1800 per SKU. **For the four affected SKUs, this represents a re-labelling cost of approximately £7200.** Additionally, this commissioned work also highlights the importance of lead-in times. The longer the implementation time allowed for a given mandated label change, the higher the probability of its alignment with business-as-usual (for instance, marketing driven) label changes, and, therefore, the greater the consequential cost saving to the manufacturer. **Therefore, we suggest that actual re-labelling costs would be below £7200**, but do not attempt to quantify the saving which would accrue to any lead-in time for the amended regulations**.**

One-off costs associated with the setting of minimum Brix levels for juices from concentrate

For fruit juice manufacturers

These Regulations are unlikely to affect fruit juice products, as major fruit juice manufacturers and packers in England and the rest of the UK already adhere to an industry code of practice (COP) which recommends minimum Brix levels for fruit juice from concentrate. The values set out in the proposed amending Regulations are identical to those in the COP, and industry stakeholders have indicated that there is unlikely to be a reformulation or re-labelling cost associated with this part of the Regulations.

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[14] http://www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occ4.pdf

[15] http://www.berr.gov.uk/files/file44503.pdf

[16] Costs are estimated by multiplying wage rates uplifted by 30% to account for overheads in line with standard cost model methodology. This means that wage rates reported in the text are rounded to 2 decimal places and when grossed may result in rounding errors.

[17] *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 minor a linguistic change, is £1800.

For canned fruit manufacturers

Canned fruit may be packed in several types of liquid mediums such as syrup, water or fruit juice. The new Brix requirements would mean that packers would need to ensure that those fruits packed in fruit juice would meet the minimum Brix levels. We are aware that for certain canned fruits packed in juice made from concentrate a Brix level may sometimes be used that is lower than that laid down in the industry's code and that which will be required by the new Regulations. This is particularly an issue for apple and grape juices where the milder flavour of such juices are required so as not to impinge on the flavour of the fruit.

Businesses whose products do not meet the minimum Brix levels set out in the Regulations will either have to reformulate in order to meet the new minimum Brix levels, or re-label products using different descriptors.

Reformulation - The cost of reformulation varies widely on a product-by-product basis. Reformulation of fruit juice in order to meet minimum Brix levels is likely to impose a one-off cost to manufacturers associated with changes in production processes. There may also be an increase in on-going costs if a higher volume of concentrate is required for each unit of output produced. **However, based upon industry stakeholder feedback received during initial discussions of the proposed amendments, we suggest that both one-off and recurring reformulation costs would be negligible in this case.**

Re-labelling - it is estimated that approximately 80 canned fruit SKUs[18], produced by the 10 canned fruit manufacturers identified as being England-based, could be affected by these Regulations. Assuming average re-labelling costs (for a minor label change) of £1800 per SKU, and if all canned fruit manufacturers were to re-label affected products, they would incur a re-labelling cost of £144,000. Given both the importance of lead-in times highlighted above, and the significant lead-in time that the industry has had in this case - industry has been aware of these Regulations since August 2009, and so may have taken the proposed changes into account when planning routine label changes. We suggest that actual re-labelling costs would be below a maximum (if all canned fruit manufacturers re-labelled in response to the Regulations) of £144,000.

The decision to re-label or reformulate canned fruit SKUs, in response to the Regulations, would vary on a product-by-product basis across manufacturers. We currently have no information on the number of products that would be re-labelled in response to the Regulations being imposed. **Therefore, we assume that the true cost associated with the setting of minimum Brix levels for juices from concentrate for canned fruit manufacturers would be between zero (if all SKUs were reformulated in response) and £144,000 (if all SKUs were re-labelled in response, and with no alignment of mandated label changes with business-as-usual label changes).**

<u>Costs to English local authorities</u>

Familiarisation Costs

Local authorities will also need to become familiar with the new Regulations. It is estimated that it would take one Trading Standards officer, and one public analyst, 1/2 hour each to read and become familiar with the Regulations, and disseminate them to key staff.

The average hourly pay rate for *inspectors of factories utilities and trading standards* is £15.58, and for public analysts is £19.38 per hour. These are up-rated by 30% to account for overheads, in accordance with the standard cost model, to £20.25 and £25.97, respectively. This represents a familiarisation cost per local authority of £23.11.

To estimate the total familiarisation costs, this is multiplied out by the number of local authorities in the UK, as per below.

Number of English local authorities	389

[18] Based on products available from the three leading supermarkets according to mysupermarket.com on 02/07/10. Included are all canned fruit, fruit pots and fruit jars which contain fruit in fruit juice – excluding pineapple in its own juice and grapefruit in its own juice.

Familiarisation cost per local authority	approximately £23
Total local authority familiarisation cost for England	**£8991**

Enforcement Costs

The Regulations will be enforced by Trading Standards officers in local authorities. Brix levels will require testing in order to demonstrate compliance. The test required uses standard techniques measuring soluble solids by refractometer already in everyday use by Public Analysts and so we anticipate that these Regulations will result in no additional enforcement costs.

Summary of one off costs incurred

Familiarisation costs	
Industry	
England	£283
Local authorities	
England	£8,991
Costs associated with the linguistic change	
Relabelling costs for fruit juice manufacturers	£7,200
Costs associated with the setting of minimum Brix levels	
Reformulation costs for canned fruit manufacturers	£negligible
Relabelling costs for canned fruit manufacturers	£144,000
England-based canned fruit manufacturers	£nil to £144,000

Equivalent Annual Costs (EACs)

In order for 'one-off' transition costs to be compared on an equivalent basis across policies spanning different time periods, it is necessary to 'equivalently annualise' costs using a standard formula[19]. Under standard HMT Green book guidance[20], a discount rate of 3.5% is used.

Total EACs for industry and local government

Where all canned fruit manufacturers relabel in response to the setting of minimum Brix levels	
Total costs for England	£160,474
Equivalent annual cost (over a 10-year appraisal period)	£19,296
Where all canned fruit manufacturers reformulate in response to the setting of minimum Brix levels	
Total costs for England	£16,474
Equivalent annual cost (over a 10-year appraisal period)	£1,981

The total EACs of the policy are therefore presented as a range, where the range spans £1,981 (where all canned fruit manufacturers reformulate in response to the setting of minimum Brix levels) and £19,296 (where all canned fruit manufacturers re-label in response). The true EAC of the policy will lie in the range identified.

[19] The equivalent annual cost formula is as follows: EAC=PVC/A, where A =[1-1/(1+r)^t]/r, where PVC is the present value of costs, r is the social discount rate and t is the time period over which the policy is being appraised.

[20] http://www.hm-treasury.gov.uk/data_greenbook_index.htm

Benefits

Consumer

The inclusion in law of defined Brix levels will ensure consistency in product quality by providing a clearly-defined, pan-European minimum quality standard for UK manufacturers to adhere to. The proposal will assist with detecting adulteration and testing of juices, as minimum Brix figures are now laid down in law, with consequent benefits for the consumer in terms of consistency and quality of product. Consumers can now be assured that the reconstitution of concentrated fruit juice with water to make fruit juice from concentrate will be carried out to meet minimum Brix levels when previously no such values were laid down in law.

Industry

The proposal to include Brix values will provide regulatory certainty for manufacturers. There are currently no specified Brix levels set in UK law, and it is therefore important to ensure that UK manufacturers are not disadvantaged in the international trade of affected fruit juice and canned fruit products. Brix levels are also laid down in a Codex standard covering fruit juices meaning that in the absense of European or UK rules industry could be forced to accept these levels. The Regulations, in certain instances, set levels which are slightly different to the Codex standard in order to take account of European fruit processing practices. This provides a more secure basis for UK manufacturers in any trade disputes.

Local authorities

Local authorities now have a further analytical bench mark to judge the authenticity and quality of a juice product, by ensuring a juice from concentrate meets a legal minimum Brix level.

Risks and assumptions

Risks

- There is a strong risk of infraction proceedings being taken out by the Commission. Failure to transpose this amending Commission Directive into national legislation could result in this course of action.

Assumptions

- There will be familiarisation costs for both industry and English local authorities.
- There will relabelling costs for mixtures of juices containing both fruit juice and fruit juice from concentrate. Relabelling costs are based on one identified affected manufacturer.
- There will be no relabelling costs associated with the setting of minimum Brix values for fruit juices from concentrate, as UK producers already adhere to a code of practice which recommends the same levels as now required by law.
- There will be costs for affected canned fruit manufacturers, associated with the setting of minimum Brix levels, and these will re-label or reformulate in response to the amended regulations. Affected manufacturers will choose the lowest cost option where reformulation has no material impact on consumers' perception of products.

Administrative Burden Costs

Food Labelling is an administrative burden, but any incremental changes to the administrative burden of this proposal should be minimal.

Wider Impacts

It is not foreseen that there are any wider impacts, other than those outlined in this Impact Assessment.

Consultation

An informal consultation was carried out in August 2007 when the Commission first indicated that it intended to move forward with revision of the Fruit Juice Directive. The responses received were used to develop the UK's negotiating position. Responses to that consultation indicated overwhelming support by industry and LACORs for the introduction of Brix values. The linguistic change was proposed later, in response to translation problems in other languages. Stakeholders have been regularly informed and updated on progress with the Commission's plans. Interested Party letters have also sought stakeholders' views on the issues as they arose, and there have also been stakeholder meetings to talk through the changes which the new amending regulations would bring about.

A non formal written six week consultation was carried out from 22 December 2010 to 1 February 2011 which sought additional views on the impact of the proposed amending regulations. There were three responses to the consultation. One commented on the Brix level being set for blackcurrant juice, one made minor editorial changes and the other had no comment. The British Soft Drinks Association a key stakeholder also indicated informally that they had no comments to make on the consultaion and agreed with the preferred option 2. As a result option 2 to amend the Fruit Juice Regulations is being taken forward.

Enforcement

The Regulations will be enforced by Trading Standards officers in local authorities. Brix levels will require testing in order to demonstrate compliance. The test required uses standard techniques measuring soluble solids by refractometer already in everyday use by Public Analysts.

Simplification

There are no simplification measures as part of these proposals.

Implementation

The changes will be implemented by an amendment to the current Fruit Juices and Fruit Nectars (England) 2003 Regulations. It is proposed to bring the Regulations into force as soon as is practical to allow products meeting the new labelling requirements to co-exist with the current requirements during a transitional period. The required implementation date is 1st January 2011. Review of the new requirements of the proposed Regulations is possible during the second phase of further amendments of fruit juices and nectars currently in the early stages of discussion at European level.

Summary and preferred option

Option 2 is considered to be the proposed option.

Option 2 provides consumers with improved measures for the minimum quality for juices. Option 2 provides regulatory certainty for manufacturers and ensures that UK industry has a level playing field and can compete on the same legal basis with its EU counterparts. It also will help avoid trade disputes, as levels are similar to that in the Codex standard. The costs of imposing option 2 are minimal for all stakeholders. Those most affected, the fruit juice manufacturers and processors, are in favour of the proposed amending Regulations.

Annexe 1: Post Implementation Review (PIR) Plan

Basis of the review: The Commission published a new proposal on 22 September 2010 which will introduce further amendments to the Fruit juice Directive in order to further align with the Codex and make necessary technical adaptations. It is envsaged that negotiations will take place over the next year with a view to adoption of the proposal by the end of 2011. This will be required to be implemented into UK law within 18 months and will provide a further opportunity for a review of the current amending Regulations and whether there are any issues arsing from the introduction of this legislation or indeed whether they are still necessary.
Review objective: 1. Check that the new minimum Brix levels are 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. 3. A further re-evaluation of the impact at the time of introduction of additional measures in approximately 3 years.
Baseline: Option 2 (preferred) 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 due to introduction of newly defined Brix levels 3 The industry also conduct their own surveillance of the quality of juices on the UK market and this information could inform on whether the measure is working
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 toidentify positive and negative impacts
Reasons for not planning a PIR: N/A

Annexe 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 is dominated by 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 either option 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.