EXECUTIVE NOTE

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

SSI 2011/153

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 16(1) (a) and (e), 17(1) and 48(1) of the Food Safety Act 1990 and all other powers enabling them to do so. This instrument is subject to the negative resolution procedure.

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 Scotland, England, Wales and Northern Ireland 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.

Policy Objectives

3. The purpose of the instrument is to implement, in Scotland, Commission Directive 2009/106/EC relating to fruit juices and certain similar products intended for human consumption.

4. Commission Directive 2009/106/EC, which took effect from 1 January 2011, makes two amendments to Council Directive 2001/112/EC. It makes 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.

Policy Background

5. 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. These Regulations amend the Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 (S.S.I. 2003/293) (as amended) by—

   a) providing that a fruit juice from concentrate must comply with the minimum Brix values 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'.

Consultation

7. Over 126 interested parties were consulted on these Regulations throughout Scotland, 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. Only one substantive response was received in relation to the assumptions made regarding familiarisation costs for Public Analysts.

Financial Implications

8. Prior to consultation, a total of 22 Scottish businesses considered likely to deal with fruit juices and thus possibly affected by the Amendment were contacted for further information. This identified two businesses which deal with fruit juice from concentrate and more detailed discussions were held with these companies on an individual basis. Working through an early draft of the Business and Regulatory Impact Assessment and a draft of the Scottish Statutory Instrument, these subsequent discussions established that in both cases the Brix values of their products already met the new requirements and the proposed labelling changes would have no effect on their products.

9. Costs to local authorities should be minor, relating only to familiarisation with the new legislation. No additional testing of products is expected.

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FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. TITLE OF THE PROPOSAL

It is proposed to revise The Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 to implement Commission Directive 2009/106/EC which introduces two amendments to EC Directive 2001/112/EC, which itself lays down rules on fruit juices and fruit nectars. Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2009/106/EC as set out in the **Fruit Juices and Fruit Nectars (Scotland) Amendment Regulations 2011**.

2. PURPOSE AND INTENDED EFFECTS

(i) Objectives

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

(b) The intended effects are:

- a linguistic 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 by “partially **from** concentrate”.

- to introduce minimum Brix values for fruit juice from concentrate which will help ensure better consistency in product quality by applying the same minimum values to the same products across the EU. (Brix values provide a measure of quality by setting minimum soluble solids (sugar content) for fruit juices.)

(ii) Background

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 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. 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 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 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 placed at a disadvantage.

(a) 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[1] 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 small proportion of the UK market (thought to be around 4 products).

(b) 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 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 only to 'juice from concentrate' 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

[1] 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 (Scotland) Regulations 2003 lay down reserved descriptions for fruit juice products.

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 the code of practice of the Association of the Industry of Juices and Nectars from Fruits and Vegetables of the European Union (AIJN). The AIJN represents the major European fruit juice manufacturers and its code represents a consensus on minimum Brix values which 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.

(iii) Rationale for Government Intervention

Intervention is required to implement EU Directive 2009/106/EC in order to ensure consistency for industry across the EU and ensure consumers are guaranteed a minimum quality product. The Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 require two amendments. These are:

(a) 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.

(b) 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 those the industry currently work to and represent levels which produce a juice of acceptable quality to the consumer. Government intervention is necessary in order to ensure consistent standards for industry across the UK and EU, and also to ensure consumers are guaranteed a juice with 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.

Although these proposed Regulations apply to Scotland only, separate but parallel Regulations will be implemented in England, Wales and Northern Ireland.

3. CONSULTATION

(i) Within Government

The consultation package was discussed with Scottish Government officials from the Food and Drink Industry Division of the Rural Affairs and Environment Directorate and the Health and Wellbeing Directorate before the public consultation stage.

(ii) Public Consultation

An informal consultation was carried out during August to October 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 Local Authorities Co-ordinators of Regulatory Services (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.

A six week public consultation was undertaken between 21 December 2010 and 31 January 2011 to seek additional views on the impact of the proposed amending Regulations. No substantive responses were received regarding the draft Scottish Statutory Instrument.

(iii) Business

Prior to consultation, a total of 22 Scottish businesses considered likely to deal with fruit juices and thus possibly affected by the Amendment were contacted for further information. This identified two businesses which deal with fruit juice from concentrate, A.G.Barr plc and Sangs (Banff) Ltd, and more detailed discussions were held with these companies on an individual basis.

4. OPTIONS

Option 1 - Do nothing. Failure to update the Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 to keep them in line with Council Directive 2001/112/EC would lead to infraction procedures. This would also leave industry in Scotland and across the UK 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 will allow for consistency in labelling across the EU for mixed fruit juices and fruit 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.

(i) Sectors and Groups affected

While we note that these proposed Regulations apply to Scotland only, separate but parallel regulations will be introduced in England, Wales and Northern Ireland; as such the impact on the UK as a whole has been assessed.

Consumers

The amending Regulations will ensure that consumers can have confidence in the quality of products on sale.

The markets affected by the amended regulations

Fruit juice manufacturing

According to the Inter-Departmental Business Register (IDBR) from the Office for National Statistics (ONS) there are 40 fruit and vegetable juice manufacturers in the UK; 35 of these are located in England and 5 in Wales with none in Scotland. Based on the number of employees[2] 30 of these 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.

Own label brands account for approximately 60% of sales, with a further 32% accruing to just 6 brands[3].

The 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[4]. The sector breakdown between chilled and ambient juices[5], based on litres consumed, is given in the following table.

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, British Soft Drinks Association.

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

[2] 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.
[3] Mintel, *Fruit Juices and Fruit Juice Drinks,* November 2008.
[4] The 2010 UK Soft Drinks Report, BSDA:
http://www.britishsoftdrinks.com/PDF/2010%20soft%20drinks%20report.pdf
[5] Ambient juice does not need to be refrigerated before opening but can be stored at room temperature. Ambient juice tends to be from concentrate.

Canned fruit manufacturing
These Regulations will also apply to canned fruit preserved in fruit juice. Current estimates suggest that there are approximately 10 manufacturers of canned fruit in the UK[6] and these are all thought to be based in England. 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[7].

(ii) Benefits

Option 1 – Do nothing

Government would not be required to produce a Scottish Statutory Instrument with all related costs. Industry would not incur costs relating to possible relabelling, reformulation or familiarisation. Local Authorities would not incur familiarisation costs.

Option 2 – Introduce amending regulations

This 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.

Consumers
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 absence 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

[6] 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.
[7] Mintel, (2007), Frozen and Canned Fruit and Vegetables UK

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 by ensuring a juice from concentrate meets a legal minimum Brix level.

(iii) Costs

Option 1 – Do nothing

This 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.

The possibility of infraction fines being imposed by the EU on the UK for which Scottish Ministers would be liable.

There would be no change to the regulatory environment for UK 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 UK-based fruit juice and canned fruit manufacturers beyond 2011.

Option 2 – Introduce amending regulations

Industry

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.

The Agency estimates that it will take one manager approximately 15 minutes to read and become familiar with the amendment Regulations. The average hourly pay rate for *production managers* is £19.38[8]. This is up-rated by 30% to account for overheads, in line with standard cost model methodology[9] to a wage rate of £25.19[10]. For a reading time of 15 minutes this represents an average cost per business of £6.30. For the 40 fruit and vegetable juice producers in the UK this represents a total familiarisation cost of approximately £252.

[8] http://www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occ4.pdf
[9] http://www.berr.gov.uk/files/file44503.pdf
[10] Costs are estimated by multiplying wage rates uplifted by 30% to account for overheads in line with SCM methodology. This means that wage rates reported in the text are rounded to 2 decimal places and when grossed may result in rounding errors.

Current estimates suggest that there are approximately 10 manufacturers of canned fruit in the UK[11]. Using the same per business cost of familiarisation as outlined above, this represents a total familiarisation cost to canned fruit manufacturers of £63.

Therefore, the total one-off familiarisation cost to fruit juice and canned fruit manufacturers across the UK is approximately £315.

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 product labels which will require to be changed. BSDA has advised that only one of their member manufacturers has identified that they may be affected by the linguistic change resulting in four of their products requiring label changes. This manufacturer is assumed to be in England. 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[12], we estimate that re-labelling costs of £1800 per Stock Keeping Unit (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

- *Fruit Juice Manufacturers*

These Regulations are unlikely to affect fruit juice products, as 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 set out in the proposed amending Regulations are identical to those in the

[11] 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.

[12] *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.

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.

- *Canned Fruit Manufacturers*

Canned fruit may be packed in several types of liquid media 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 that is lower than that laid down in the new Regulations is sometimes used. This is particularly an issue for apple and grape juices where the milder flavour of such juices is used 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 their 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 increased recurring reformulation costs would be negligible in this case**.**

Re-labelling

It is estimated that approximately 80 canned fruit products[13] or SKUs, produced by the ten 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, if all canned fruit manufacturers were to re-label the 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 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 no SKUs were reformulated

[13] 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.

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).

Local Authorities

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 ½ 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, which is then up-rated by 30% to account for overheads, in accordance with the standard cost model, to £20.25. The initial estimate for public analyst cost was based upon a rate of £19.38 which was up-rated to £25.19 as above. During the consultation period, this figure was questioned, so the Association of Public Analysts was contacted for advice. Their response clarified that no costs would be incurred for time spent solely in familiarisation with the new legislation. This would be included as part of the overheads in any subsequent testing which would be charged at approximately £75 per hour (actual cost per hour for analysis will vary between laboratories).

This represents a *maximum* familiarisation cost per local authority to be in the order of £47.63 (i.e. £10.13 + £37.50), the true cost is likely to be far less. To estimate the total costs throughout Scotland, this is multiplied by the number of local authorities (i.e. 32). Thus the *maximum* familiarisation cost to local authorities amounts to approximately £1524 in Scotland.

Enforcement costs
The Regulations in Scotland will be enforced by Environmental Health 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.

5. SCOTTISH FIRMS IMPACT TEST

An early draft of the BRIA and a draft of the Scottish Statutory Instrument were discussed with the two businesses identified previously. This established that in both cases the Brix values of their products already met the new requirements and the proposed labelling changes would have no effect on their products.

(i) Competition Assessment

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.

Using the Office of Fair Trading competition assessment framework[14], it has been established that the preferred policy option (option 2) is unlikely to have any material negative impact on competition. We assert that this policy will not limit the number or range of suppliers directly or indirectly nor will it limit the ability or reduce incentives of suppliers to compete vigorously.

(ii) Test Run of Business Forms

There are no new forms associated with this piece of legislation.

6. LEGAL AID IMPACT TEST

Given that no new offences or sanctions are created, there is not expected to be an impact on the legal aid fund.

7. ENFORCEMENT, SANCTIONS AND MONITORING

The regulations will be enforced by Environmental Health 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.

Sanctions for Non-Compliance

Regulation 7 of the Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 lays down that the penalty on summary conviction for an offence under the Regulations is, in respect of these requirements, a fine not exceeding level 5 on the standard scale.

These proposals do not introduce any new sanctions for non-compliance with the Regulations.

The effectiveness of these Regulations will be monitored via feedback from stakeholders.

8. IMPLEMENTATION AND DELIVERY PLAN

The changes will be implemented by an amendment to the current Fruit Juices and Fruit Nectars (Scotland) Regulations 2003. It is proposed to bring the Regulations into force as soon as possible. The required implementation date was 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.

[14] http://www.oft.gov.uk/shared_oft/reports/comp_policy/oft876.pdf

Post Implementation Review (PIR)

A PIR should be undertaken, usually three to five years after implementation of the policy, but, exceptionally, a longer period may be more appropriate. A PIR should examine the extent to which the implemented Regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences.

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 Codex and make necessary technical adaptations. It is envisaged 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 arising from the introduction of this legislation or indeed whether it is still necessary.
Review objective: To 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: 1. Option 1 do nothing is the current baseline. 2. Option 2 (preferred) will be the baseline for review if the new Regulations are 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 having been taken by local authorities due to introduction of newly defined Brix levels. 3. The industry also conducts its own surveillance of the quality of juices on the UK market and intelligence could inform 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 non government organisations. These exchanges with stakeholders will be documented and will help to assess whether the policy aims have been met and identify positive and negative impacts.

Reasons for not planning a PIR:
N/A

9. SUMMARY AND RECOMMENDATION

Option 2 provides consumers with improved measures for the minimum quality for juices. Option 2 provides regulatory certainty for manufacturers and ensures the UK industry has a level playing field and can compete on the same legal basis with its EU counterparts. It will also 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.

Option 2 is considered to be the preferred option.

Summary Costs and Benefits Table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No cost to Government of introducing new Scottish Statutory Instrument.	Possible infraction fines. Possible loss of international trade if products do not comply with standard.
2	Guaranteed product quality for consumers. Industry working to consistent legal standard throughout EU. Introduction of analytical benchmark for local authorities to assess product quality.	Familiarisation costs for industry and local authorities. Possible relabelling and/or reformulation costs for industry.

10. DECLARATION AND PUBLICATION

I have read the Business and Regulatory 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) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Minister's Name, Title & Department:

Shona Robison, Minister for Public Health and Sport

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