

**Title: The Jam and Similar Products (England) Regulations 2013 (replacing with amendments the Jam and Similar Products (England) Regulations 2003**

**IA No:** Defra 1491

**Lead department or agency:**

Defra

**Other departments or agencies:**

FSA

## Impact Assessment (IA)

**Date:** 14/02/2013

**Stage:** Consultation

**Source of intervention:** Domestic

**Type of measure:** Secondary legislation

**Contact for enquiries:** Paul Riches/Michelle McQuillan

### Summary: Intervention and Options

**RPC Opinion:** RPC Opinion Status

#### Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as One-Out?
-£0.25m	-£0.24m	£0.03m	Yes	OUT

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

The proposed regulations aim to simplify an overly burdensome regulatory regime for jam and similar products in England, bringing it in line with EU and other legislation, removing unnecessary provisions and simplifying the enforcement regime. Firstly, domestic legislation in England is more restrictive than that of some other major jam producing Member States that have taken advantage of a derogation in the EU Jam Directive to lower their permitted sugar level for jams. Secondly, there now exists a conflict over the rules relating to what constitutes a 'reduced sugar jam' as subsequent general health claim rules have come into force since the 2003 regulations were made. There are also national provisions for curds and mincemeats that may be unnecessarily burdening businesses. Defra committed to address these issues as part of the Red Tape Challenge Hospitality, Food and Drink announcement.

#### What are the policy objectives and the intended effects?

To provide English jam manufacturers with greater flexibility and a level playing field with other Member States by making use of a derogation to set a lower permitted sugar level for jams. Also, to clarify existing requirements for businesses by removing the soluble solids requirements for reduced sugar jams, relying instead on the 'reduced sugar' definition in the Nutrition and Health Claims Regulations. Additionally, to further reduce business burdens by removing national rules on curds and mincemeat if consultation confirms them to be unnecessary and remove elements of gold plating. Introduction of improvement notice regime for enforcement of the Regulations as a move away from criminal to civil sanctions.

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

Baseline - Do nothing (this is the counterfactual against which other options are being assessed).

Option 1 - Preferred option - Reduce the permitted sugar level for jams from 60% to 50%. Remove the UK national limit for 'reduced sugar jam' and align this with broader 'reduced sugar' definition. Removing national provisions for curds and mincemeat. Address the elements of gold plating in the current regulations. Change the enforcement regime by introducing improvement notices.

Option 2 - Reduce the permitted sugar level for jams from 60% to 55% with an ingredient specific exemption for Bramley apples to a level of 50%. Other changes remain the same as in Option 1.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 10/2018

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.**

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Reduce the permitted sugar level for jams from 60% to 50% and introduce a package of additional deregulatory measures.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£0.29m	High: -£0.16m	Best Estimate: -£0.25m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.01m	£0.02m	£0.16m
High	£0.01m	£0.03m	£0.29m
Best Estimate	£0.01m	£0.03m	£0.25m

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

Option 1 - Preferred option - Reduce the permitted sugar level for jams from 60% to 50%

Jam manufacturers:

(i) Familiarisation costs (one-off): £2.5k (PV) or £0.3k (EAC)

(ii) Labelling costs: £236.5k (PV) or £27.4k (EAC)

(iii) Public sector: £7.8k (PV) or £0.9k (EAC)

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

(i) Consumer will have to assimilate the new compositional standards.

(ii) The removal of the category for reduced sugar jams to align with the existing health claims rules may mean a very small number of products would require some reformulation if they are to continue using a reduced sugar claim or relabeling costs to market it as perhaps a reduced-sugar spread. These are comprised of sweet spreads with around 47-49% sugar content.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.0m	£0.0m	£0.0m

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

No quantifiable benefits at this stage. Questions have been included in the consultation to establish the quantifiable benefits.

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

Jam manufacturers: (i) increased flexibility when developing new products and recipes for jams and hence increase business opportunities for UK manufactures and levelling the playing field with major EU jam producing MSs; (ii) clarity for businesses from removing the reduced sugar requirement. (iii) no longer constrained by rules on curds and mincemeats; and (iv) move from criminal sanctions only towards civil and criminal sanctions.

Public sector: none. Consumers: (i) benefit from increased choice (including less sugar content)

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Assumptions have been made using the information available for the number of product lines that may be affected by the proposed changes to the sugar content of jams. Further information sought to check these assumptions. The changes being proposed and assessed in this SI are for England only which may be a risk if it leads to a fragmented approach across the UK.		

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.03m	Benefits: £0.00m	Net: £0.03m	Yes	OUT

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Reduce the permitted sugar level for jams from 60% to 55% with an ingredient specific exemption for Bramley apples to a level of 50%. Introduce a package of additional deregulatory measures.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: -£0.16m	High: -£0.12m	Best Estimate: -£0.13	
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>	
Low	£0.01m		£0.01m		<b>£0.12m</b>	
High	£0.01m		£0.02m		<b>£0.16m</b>	
Best Estimate	£0.01m		£0.01m		<b>£0.13m</b>	
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
Jam manufacturers: Familiarisation costs (one-off): £2.5k (PV) or £0.3k (EAC) Labelling costs: £122.6k (PV) or £14.2k (EAC) Public sector: £7.8k (PV) or £0.9k (EAC)						
<b>Other key non-monetised costs by 'main affected groups'</b>						
(i) Consumer will have to assimilate the new compositional standards. (ii) The removal of the category for reduced sugar jams to align with the existing health claims rules may mean a very small number of products would require some reformulation if they are to continue using a reduced sugar claim or relabeling costs to market it as perhaps a reduced-sugar spread. These are comprised of sweet spreads with around 47-49% sugar content.						
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>	
Low	Optional		Optional		<b>Optional</b>	
High	Optional		Optional		<b>Optional</b>	
Best Estimate	£0.0m		£0.0m		<b>£0.0m</b>	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
No quantifiable benefits Question included to establish these.						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
Jam manufacturers: (i) increased flexibility when developing new products and recipes for jams and hence increase business opportunities for UK manufactures; (ii) no longer constrained by rules on curds and mincemeats; and (iii) move from criminal sanctions only towards civil and criminal sanctions. Public sector: none. Consumers: (i) removal of potentially confusing differences between UK and EU jam requirements; and (ii) benefit from increased choice (including less sugar content)						
Key assumptions/sensitivities/risks					<b>Discount rate (%)</b>	3.5
Assumptions made using the information available on the number of product lines that may be affected by the proposed changes to the sugar contents of jams. Assumptions have also been made on the number of exemptions that may be applied for as part of needing to create an approved list of fruits. Further information sought to check these assumptions. The changes being proposed and assessed in this SI are for England only which may be a risk if it leads to a fragmented approach across the UK.						

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> £0.01m	<b>Benefits:</b> £0.00m	<b>Net:</b> £0.01m	Yes	OUT

## **Introduction**

### **Policy Landscape**

1. One of the current Government's priorities is to reduce unnecessary burdens on business and remove burdensome or outdated regulations where they are no longer needed. As part of the Red Tape Challenge exercise covering the hospitality theme, a review of all existing rules covering food labelling and compositional standards was carried out. As a result one of the conclusions of this exercise was to review the Jam and Similar Products(England) Regulations 2003 and act upon requests from industry to lower the soluble solids content (sugar level) in order to bring our Regulations in line with recent changes made in some other European countries, particularly France and Germany. The other changes include the removal of the specific category for 'reduced sugar jams' and removing national provisions for curds and mincemeat. This consultation seeks the views of stakeholders on options for change that will be applied through a new Statutory Instrument for England.

### **Problem under consideration**

2. Annex I to Directive 2001/113/EC enables MSs to authorise the use of reserved names, like jam, for products defined in Part I that have a soluble dry matter content of less than 60% 'in order to take account of certain particular cases'. Over recent years certain Member States have amended their own domestic legislation to make use of this derogation to grant greater flexibility to their domestic producers. For example France and Germany (they account for 35% of Western Europe's sweet spread production) have already lowered their figures to 55%. Denmark has opted for much greater flexibility setting their minimum at 25% (2% of Western Europe sweet spread production). We are also aware that a few other Member States (MSs) have reduced the minimum sugar content for jams to much below the 55% level adopted by Germany and France.
3. The UK used this Annex I provision to set its own soluble solids level for reduced sugar jams. There have been calls from some UK jam manufacturers to apply similar provisions for standard jams to allow products that have a sugar level of below 60% to be permitted to use the defined term 'jam'. The main industry association representing jam manufacturers have asked for a level of 55% to allow them to compete on a level playing field with recent changes made in France and Germany. We have also had requests from other jam producers to go even lower to permit other products currently with a soluble solids level of around 52-53% to be legally allowed to be called jam. A change to the soluble solids level would provide for a more consistent basis and level playing field for UK jam manufacturers.

### **Rationale for intervention**

4. The rationale for intervention is to remove redundant regulation, improve consistency between the Jam and Similar Products regulations and other legislation and ensure a level playing field between domestic producers and producers in other Member States. Specifically, Government intervention is necessary as the changes require amended legislation to be laid before Parliament. A new Statutory Instrument for England will be put in place to implement the amendments which also includes a new more proportionate approach to enforcement.

## Background

5. The main change that is being considered as part of this review of the Jam and Similar Products (England) Regulations concerns the minimum permitted soluble solids (sugar) level that must be reached in order for a sweet spread type product to be marketed as a jam. EU Directive 2001/113/EC on jams etc..., specifies that a “regulated product” must have a minimum sugar content of 60%. However there is an exemption that enables Member States to authorise the use of reserved names like jam, for products that have a soluble solids content of less than 60% in order to take account of certain particular cases. The UK used this clause to set its own levels for reduced sugar jams which are required to meet a lower soluble solids level of between 25-50%.
6. Over the last few years, Germany and France in particular have made use of this provision and have amended their domestic legislation to permit all their jams to have a minimum sugar content of 55%. Since that time, there have been requests from some UK jam manufacturers to follow suit and lower the minimum permitted sugar level in the UK. This Impact Assessment sets out the options we are proposing in order to change legislation in England to permit a lower minimum sugar content for jam, jellies and marmalades.
7. Current domestic rules in this area are provided by the Jams and Similar Products (England) Regulations 2003 which implement EU Directive 2001/113/EC. The Directive lays down compositional standards which products must meet in order to be labelled as “jam”, “jelly”, “marmalade” etc. (i.e. products must contain at least a minimum amount of characterising ingredients such as fruit and sugar). The Directive sets out:
  - (i) minimum fruit content for various fruit jams, jellies and marmalades which is also dependent of the fruit species;
  - (ii) a minimum soluble solids level of 60% which all jams, jellies and marmalades must attain. It also imposes additional labelling requirements to indicate the quantity of fruit and sugar on the label to enable the consumer to compare products.
  - (iii) restricts the ingredients that may be added to products in addition to the characterising ingredients of fruit, sugar etc., and the treatments to which these ingredients may be subjected (e.g., heating, chilling, freezing, freeze drying etc.)The Directive does not apply to jams used in the manufacture of biscuits, pastries and other bakery products commonly known as “bakery jams”.
8. Products which do not meet the requirements of the Regulations cannot avail themselves of the term “jam” and must use a different term which cannot be confused with the terms regulated by the Jam Directive and which does not ultimately mislead consumers. Terms which are commonly used include fruit spread or chutney or other similar terms. These terms are not regulated so products do not need to meet a set sugar content and do not need to meet the specific labelling requirements of the Jam Directive. The use of the terms ‘conserve and ‘preserve’ are common in English speaking countries such as the UK, Canada, USA, Australia and New Zealand as alternative names for a jam. Under International Codex rules they should therefore meet the requirements of a standard jam. The EU Regulations do not refer to these terms, however the UK industry set out in its own code of practice that if the term conserve or preserve are used the product should meet the requirements of a jam as set out in the EU Directive.

## Legislative framework

- **European Union** – Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption.
  - Regulation (EC) No 1924/2006 on nutrition and health claims made on foods
  - **UK** –The Jam and Similar Products (England) Regulations 2003 (Statutory Instrument – 2003 No. 3120)
9. **Any changes will apply to England only.** However Scotland, Wales and Northern Ireland are aware of the proposed changes in England and will be considering their approaches. However, given that the jam manufacturing industry is diverse and spread across all four countries consideration will need to be given to the effect of a change in England only. If contradictory rules were to exist across the UK this could cause trade issues and small businesses in particular might be more confused by the jam rules.

## Industry overview

10. According to the Grocer Directory of Manufacturers and Suppliers, there are approximately 71 companies (as at 18 January 2013), many of which are small and medium enterprises<sup>1</sup>, involved in the manufacture and processing of sweet and savoury spreads in the UK. Sales of jam in the UK were worth an estimated **£117m in 2011** with sales of marmalade worth an estimated **£57m**. UK exports are estimated to be worth **£34.2m for jams, fruit jellies and marmalades in 2011**. The overall growth rate for the jams and spreads category has been 3.3% boosted by stronger sales of chocolate spread and peanut butter. According to Taylor Nelson Sofres Superpanel<sup>2</sup>, sales of reduced sugar jams were around 11% of the jam market in 2005. Assuming the percentage remains unchanged the approximate size of the reduced sugar market is around £13 million.
11. The mainstream jam brands are owned by only a small number of companies. Hains Celestial recently acquired Premier Food's jam manufacturing business and now own mainstream brands such as Robertsons, Chivers Hartley, Roses and Frank Cooper. The other major UK branded players in the jams market includes Duerrs and Wilkin & Sons. The main retailers also have their own range of jam and marmalade products. There are also a number of SMEs in this industry such as Mackay's, Clippy's and much smaller local producers or small producers such as members of the Women's Institute (WI). Farmgate producers and traditional local businesses are also commonplace in this industry. Micro businesses may be affected as the rules apply to all those operating in the industry. However, for those selling direct to consumers although still required to meet the compositional standards, they are not bound so strictly by the labelling requirements as they can communicate directly to the consumer what is in the product.
12. The main European players in the UK market include Bonne Maman and in terms of sweet spreads St Dalfour who market their products as 100% fruit as the product is made from fruit and sweetened with fruit juices.

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<sup>1</sup> The number is likely to be an underestimate as it does not include micro businesses.

<sup>2</sup> Mintel Report – Sweet and Savoury Spreads March 2012

Table 1: UK retail value sales of sweet spreads, by type, 2009-11

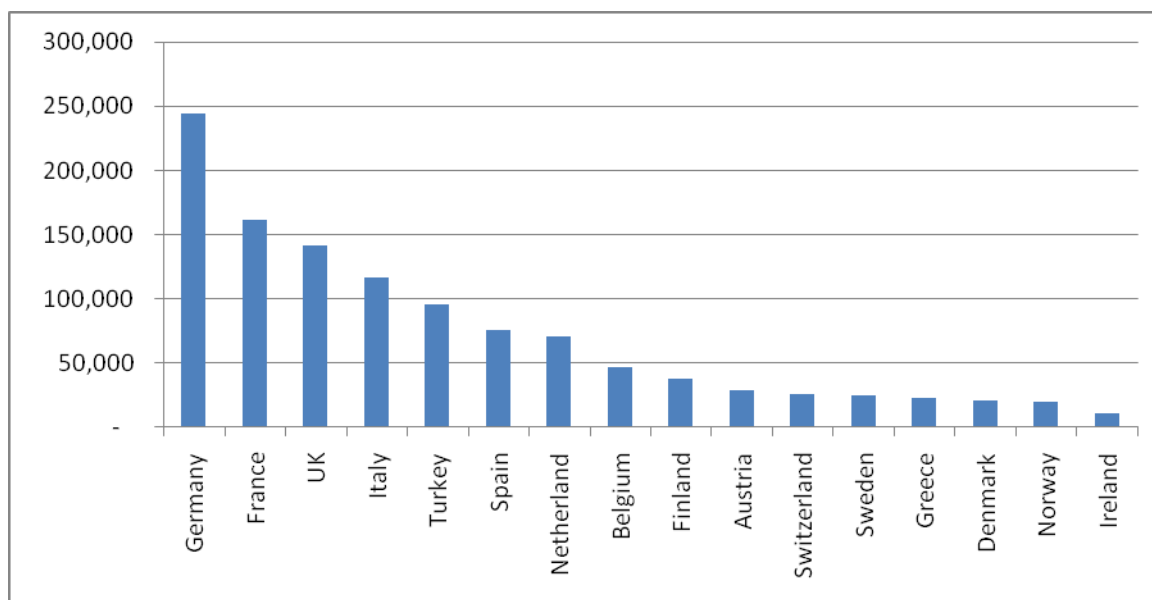
	2009(£m)	Percent	2010(£m)	Percent	2011(£m)	Market Share	%change 2009-11
Jam	117	33	118	32	117	31	-
Honey	96	27	99	27	103	27	7.3
Marmalade	61	17	60	16	57	15	-6.6
Peanut Butter	43	12	47	13	50	13	16.3
Chocolate/nut spreads	31	9	37	10	43	12	38.7
Fruit/cheese curds	5	1	6	2	6	2	20.0
<b>Total</b>	<b>354</b>	<b>100</b>	<b>367</b>	<b>100</b>	<b>376</b>	<b>100</b>	<b>+6.2</b>

Source: Mintel/based on SymphonyIRI Group InfoScan

Jam continues to dominate the sweet spread sector representing almost a third of sales.

- There are a number of large established companies manufacturing sweet spreads in Europe with Western Europe having a sweet spreads market volume of approximately 1.2m tonnes<sup>5</sup>. This translates to a market value for Western Europe of approximately £5 billion. Germany (21%), France (14%) and the UK (12%) are the largest sweet spreads markets by volume.

Figure 1: Western European and Turkey sweet spreads volume, 2008



Source: Datamonitor

## Technical considerations

- Since the Regulations were introduced almost 10 years ago, there have been technical developments in the manufacturing process and further innovation within the Jam manufacturing industry and we now see a greater variety in the ingredients used to make

sweet spread products. One example in the UK of product development is a product made using Bramley apples which has the same consistency of jam and which meets the regulations in all other aspects but because of its higher pectin content it needs less sugar. This means the product falls below the required 60% sugar level. Industry also advise that technological improvements in the filling process means that lower sugar levels can be used without having a detrimental effect on the shelf life of jam.

15. However, as well as the progress stated above, an element of caution has been put forward by some jam manufacturers. Although it is perfectly possible to make and distribute jam with a soluble solids level down to 50% without adding preservative, there may be an increased chance of spoilage at this lower sugar level. The resistance to mould growth can be reduced in a jam that has a lower sugar level something that would need to be considered when setting date durability marks. Higher sugar content improves the natural preservation of colour, particularly with red fruit which can turn brown with a lower sugar level. An element of caution has been expressed by some jam manufacturers who see a potential risk to consumer confidence in the jam and marmalade sector if the issues above start to materialise.

## Options

The following options have been considered as part of this IA:

- **Baseline** - Do nothing. This maintains the current legislative position as set out in the 2003 Regulations. These Regulations meet the minimum EU requirements so there are no infraction risks from a 'do nothing' option in this case. This option will be used as a benchmark to measure the cost and benefits of the other options outlined below.
- **Option 1** - Preferred option - Reduce the permitted sugar level for jams from 60% to 50%. Remove the UK national limit for 'reduced sugar jam' and align this with broader 'reduced sugar' definition. Removing national provisions for curds and mincemeat. Address the elements of gold plating in the current regulations. Change the enforcement regime by introducing improvement notices.
- **Option 2** - Reduce the permitted sugar level for jams from 60% to 55% with an ingredient specific exemption for Bramley apples to a level of 50%. Other changes remain the same as in Option 1.

The following sections discuss in more detail the various components of options 1 and 2 and their expected impacts on business, consumer and public sector.

### Lowering the soluble solids content of jam

**Option 1** - Reduce the permitted sugar level for jams from 60% to 50%

**Option 2** - Reduce the permitted sugar level for jams from 60% to 55% with an ingredient specific exemption for Bramley apples to a level of 50%.

16. Option 1 provides the greatest flexibility by lowering the permitted sugar content for Jams from 60% to 50%. This option, being the preferred choice provides the jam manufacturing industry with the greatest level of flexibility in being able to use the term 'jam' on products



that have a sugar content as low as 50%. Lowering the permitted sugar level to 50% would remove the current gap for products which currently fall into the 50 to 59% band which currently do not qualify to use the term jam or reduced sugar jam. This option would also remove the need to make a future amendment if requested for products that are manufactured with a sugar content of between 50 and 55%.

17. Option 2 provides some flexibility by reducing the permitted sugar level for Jams to 55% which is in line with France and Germany and the original request by the Food Processors Association (FPA) incorporating the United Kingdom Sweet Spreads Association (UKSSA) representing the jam industry, with an exemption for Bramley apples to a lower level of 50%. For products falling between 50-54% exemptions would be granted on a case by case basis with the inclusion of Bramley apple in the first instance. Additional fruits would have to be considered on a case by case basis. This would require an amendment to the Regulations which would be lengthy and time consuming
18. The changes will provide greater flexibility when developing new products and certainty over when a product can be called a jam by removing the current gap that exists for products that meet all the characteristics of a jam but have a sugar content of between 50-59%.

## **Reduced sugar jams**

Options 1 and 2 both include the removal of soluble solids requirement for reduced sugar jams.

19. Part II of Annex I to Directive 2001/113/EC allows MSs to set a soluble solids level lower than 60% in certain particular cases'. The UK took advantage of this to set its own level for "reduced sugar jams" within the range 25-50%. At the time there were no general rules defining the term "reduced sugar", however subsequent horizontal EU rules were adopted in 2006 which require products labelled as reduced sugar to have a 30% energy reduction from standard products. The following excerpt is taken from the Health Claims Regulations:

### *REDUCED (NAME OF THE NUTRIENT)*

*A claim stating that the content in one or more nutrients has been reduced, and any claim likely to have the same meaning for the consumer, may only be made where the reduction in content is at least 30 % compared to a similar product, except for micronutrients where a 10 % difference in the reference values as set in Council Directive 90/496/EEC shall be acceptable and for sodium, or the equivalent value for salt, where a 25 % difference shall be acceptable.*

20. The introduction of these new rules for 'reduced' claims means that there is now a discrepancy between the requirements for nationally produced reduced sugar jams and the requirements for reduced sugar products in general contained in Regulation 1924/2006. Industry now appear keen to work to one set of rules covering reduced sugar claims and have suggested the specific provisions in the jam regulations should be removed. Hence in amending the Jam Regulations we propose removing the specific provisions in note 2(b) of Schedule 1 for reduced sugar jams in relation to soluble solids.
21. The current Jam Regulations could be considered less stringent in this respect than the horizontal rules and it may mean that some products which are currently close to the 50% mark may no longer be able to be called reduced sugar. This is most likely to affect products around the 44-50% soluble solids level. Industry has advised that typical standard jams have a soluble solids content of 63-65% which is the value they will use to calculate the energy reduction if there is no standard match for their product. So a 30%

reduction from between 63% and 65% takes us to between 44.1% and 45.5%. It is assumed that a lower soluble solids content of standard jams will have no impact the sugar content of a typical jam over the short and medium term (up to three years)<sup>3</sup>.

22. In order to facilitate the changes some businesses may have to make as a result of removing this provision in the Regulations, the SI contains a transitional period of 3 years in which businesses must ensure they are compliant with the general Health Claims rules in 1924/2006. This provides flexibility for businesses to make these changes as part of their regular product refreshes rather than having to carry them out specifically for these Regulations which should help to minimise any costs.

**Consultation Question 1:** Are the industry content with this simplified approach to work to one set of rules regarding 'reduced' health claims?

## Removing national provisions

Options 1 and 2 both include the removal of national provisions for specific products.

23. In order to reduce regulatory burdens where possible and simplify the new Regulations, we are proposing the removal of certain national provisions for specific products that feature in the 2003 Regulations.
24. The national provisions are for products that are particular to the UK market and include the following:
- curd;
  - lemon cheese;
  - flavoured curd; and
  - mincemeat
25. The Regulations set out reserved descriptions for these products giving detail on the standards and composition that are required which include a minimum sugar content of 65%. When we introduced rules on jams in 2003 we asked industry if they wanted to retain national rules for the above products and the overwhelming response was positive. At the time industry felt there was a need to set minimum rules to ensure the quality of these products and prevent poor quality of inferior substitutes. The rules on curds and mincemeat have been notified to the Commission as required and there were no objections to the UK setting rules in this area. However it is prudent as part of this review of the Jam Regulations to seek views on whether there is still a need for such prescriptive requirements for curds and mincemeat. We feel that deregulation would cut red tape and industry would be free to innovate and/or reformulate providing they are not misleading the consumer. Subject to a case being put forward to retain these rules we propose to deregulate in this area.

**Consultation Question 2:** Are there any reasons why removing these national provisions should not take place?

## Gold plating in domestic legislation

<sup>3</sup> Over the long term, one might expect to see the typical sugar content of standard jam to be lower than 65%.

Options 1 and 2 both address national provisions for specific products

26. It is prudent to check for and deal with any possible issues of 'gold plating' during this revision and update sections of the domestic Statutory Instrument. A previous gold plating assessment identified some minor areas that should be considered for amending for this purpose. The items identified for amendment in respect of gold plating issues and under implementation can be found in Annex A. An example of the impact that these changes will bring include the identification of residual sulphur dioxide in the list of ingredients. Our domestic Regulations include additional wording that the residual sulphur dioxide shall be identified in the ingredients list 'according to the percentage by weight of the residue of the product'. This additional wording does not appear in the Directive provision. The Directive is more flexible on this matter as it states that ingredients constituting less than 2% of the finished product may be listed in a different order (i.e. not in descending order of weight). The removal of issues of gold plating is beneficial as it will ensure that jam manufacturers in England are not disadvantaged through having to conform to rules that are stricter than the EU Directive requires. We do not envisage there to be any costs associated with making these amendments.

### **Changes to enforcement**

27. In line with Government objectives to ensure there is effective and proportionate means of enforcement of EU obligations, a change to the enforcement regime is proposed which will make use of improvement notices as the first formal enforcement tool available to enforcers, with a failure to comply with an improvement notice being a criminal offence. The new process will allow enforcement officers under the Jam and Similar Products Regulations (Local Authorities and Trading Standards officers) to act on issues such as labelling breaches in a more proportionate way as opposed to the current system where cases of a less serious nature do end up being heard in a Magistrates Court. Food Authorities will still be ensuring that enforcement action taken by their authorised officers is reasonable, proportionate, risk-based and consistent with good practice. Enforcement officers will be able to take account of the full range of enforcement options. These include educating food business operators, giving advice, informal action and then if necessary serving an Improvement Notice. If these stages of enforcement do not remedy the problem, action can still be taken against the food operator for not complying with an improvement notice which is a criminal offence. The enforcement process is shown in more detail in **Annex B**.
28. This standardised approach to enforcement is being included in other food compositional legislation including the recent Food Information Regulations and Fish Labelling Regulations. This will involve serving an improvement notice on a food business operator where an authorised officer has reasonable grounds for believing that the operator has not complied with, or is unlikely to comply with an obligation in EU law. Indeed enforcement bodies already use the compliance/improvement notice approach for a number of other Regulations so introducing this approach should not be overly burdensome and can be seen in the broad sense as a business as usual change.
29. The introduction of improvement notices will require an appeals mechanism to be put in place and this will be provided through use of a First-tier tribunal. Further details of this approach can be found in **Annex C**. As with any new or amended regime there may be

some additional checks to begin with to test the level of compliance but it is anticipated that there will be no significant additional costs on an ongoing basis.

## **Affected groups**

### **Industry/Businesses**

30. Businesses will need to familiarise themselves with the new rules and make the necessary changes to ensure they remain compliant with the law.

### **UK Consumers**

31. There will be minimal impact for the consumer in respect of purchasing jams when the Regulations first come into force. Over time, benefits will be seen in terms of the standardising of permitted product names as a greater number of fruit spread products can use the term jam. Consumers will find it easier to compare jams as using the reserved description means certain labelling formats and requirements must be adhered to.

### **Public sector**

32. Local Authority Trading Standards Officers will need to familiarise themselves with the new Regulations. The change to the enforcement regime although similar to other areas of food law they currently enforce will need to be understood in terms of its application to these Regulations.

## **Cost and benefit assessment of provisions relating to lowering the soluble content of jams**

33. Given that the provisions relating to lowering the soluble content of jams are expected to be the main changes being introduced as part of the new regulations and that they are also the aspects of the proposed new regulations where Options 1 and 2 differ, the rest of this IA focuses on a more detailed assessment of these provisions.

## **Overview**

34. Table 2 highlights the consequences of the various changes when lowering the sugar content of jam. If a product meets the requirements of the reserved description then it is required to use that term as its legal product name. It should be recognised that lowering the soluble solids will benefit those manufacturers currently in the grey area of 50-60% which can currently not use any of the reserved descriptions covered in the Regulations. However it will mean that products currently in this grey area will need to relabel their products to use the term jam, jelly or marmalade if the rules are amended as proposed in Option 1 and 2. As part of this consultation we are seeking views from manufacturers of such products as to whether they are in favour of this approach in the knowledge that they will need to relabel or whether they wish to continue using existing product descriptions such as fruit spread.

**Table 2: Summary of proposals to lower the soluble solids content of jam**

Sugar level	Reserved description or specified product name	Consequence of change
Current position		
60% +	Jam, Extra Jam, Jelly, Extra Jelly, Jelly marmalade, Marmalade, Sweetened chestnut purée	
>25% - <50%	'Reduced sugar'	
65% +	X Curd (e.g. lemon curd), Lemon cheese, Y flavour curd (e.g. Orange flavour curd), Mincemeat	
<60%	Fruit spread, sweet spread or suitable equivalent name. <b>Not</b> permitted to use reserved descriptions for 60%+ products	
Option 1		
>50% +	Jam, Extra Jam, Jelly, Extra Jelly, Jelly marmalade, Marmalade, Sweetened chestnut purée	All fruit spread products with a sugar % of 50+ will be required to use one of the reserved descriptions in their product name. Labels will need to be updated for products that fall within the 50-59% band which were previously not permitted to use the reserved description.
30% reduction on standard product (Health claims Regulations 1924/2006)	'Reduced sugar' followed by any; Jam, Extra Jam, Jelly, Extra Jelly, Jelly marmalade, Marmalade, Sweetened chestnut purée, X Curd (e.g. lemon curd), Lemon cheese, Y flavour curd (e.g. Orange flavour curd), Mincemeat	Majority of 'reduced sugar' jams will still meet the 30% reduction and can continue using the 'reduced' term. For any reduced sugar jams that are just below the current 50% threshold (circa 46-49%) reformulation may be required to meet the 30% reduction measured against a standard 65% jam.
Option 2		
>55% +	Jam, Extra Jam, Jelly, Extra Jelly, Jelly marmalade, Marmalade, Sweetened chestnut purée	All fruit spread products with a sugar % of 55+ will be required to use one of the reserved descriptions in their product name.
50% -55%	Jam, Extra Jam, Jelly, Extra Jelly, Jelly marmalade, but only where a case for a specific exemption for a fruit variety from the general >55% requirement has been made. The case to include Bramley apple has been	Fruit spread products with a sugar level between 50% and 55% will only be able to use the reserved descriptions such as the term 'jam' on an approved

	made.	ingredient basis. A case has been made for 'Bramley apple' but other products would have to continue to use alternative names such as 'fruit spread'.
30% reduction on standard product (Health claims Regulations 1924/2006)	'Reduced sugar' followed by any; Jam, Extra Jam, Jelly, Extra Jelly, Jelly marmalade, Marmalade, Sweetened chestnut purée, X Curd (e.g. lemon curd), Lemon cheese, Y flavour curd (e.g. Orange flavour curd), Mincemeat	Majority of 'reduced sugar' jams will still meet the 30% reduction and can continue using the 'reduced' term. For any reduced sugar jams that are just below the current 50% threshold (circa 46-49%) reformulation may be required to meet the 30% reduction measured against a standard 65% jam.

**Consultation Question 3:** If the rules are changed to allow a minimum soluble solids level of 50% or 55% are manufacturers whose products would then fall within the new limits for jams be content to relabel if they would otherwise meet the requirements of the Jam and Similar Products Regulations?

### Detailed option assessment

#### **Option 1 - Reduce the permitted sugar level for jams from 60% to 50%**

##### Costs

##### **Industry**

##### Familiarisation costs

35. Jam manufacturers will need to read and become familiar with the replacement Regulations. We estimate that it will take one production manager approximately 1 hour to read and become familiar with replacement Regulations including annexes. The average hourly rate (around £25)<sup>4</sup> is up rated by 30% to take account of overheads in line with standard cost model methodology. Assuming there are 100<sup>5</sup> jam manufacturers in the UK, the total familiarisation costs to the affected manufacturers will be around £2.5k.

**Consultation Question 4:** Is the above a realistic estimate for typical industry familiarisation costs?

<sup>4</sup> Regulatory affairs/production manager (proxy for medium and large FBOs)

<sup>5</sup> We have assumed an additional 29 manufactures to reach 100, all of which are likely to be micro businesses. Hence the costs are likely to be worse case scenarios.

## Labelling Costs

36. To provide an estimate of the labelling costs, we use the Kantar dataset<sup>6</sup>, which provides us with an estimate of the number of jam/fruit spread products that are being purchased in the UK. There were 495 stock keeping units<sup>7</sup> (SKU) of jam in 2012. If all products were relabelled the maximum cost should be £891k (assuming a minor label change per SKU ~ £1,800 (see table 3)). If we assume that 20%<sup>8</sup> of the SKU's fall in the 50% to 60% sugar range and that costs accrue over two years, the cost of labelling is estimated to be around £178k (£175k in present value terms). The Equivalent Annual Cost to industry is around £21k. The 20% figure is a guesstimate and takes into account optimism bias. The actual figure could be lower or higher but is more likely to be lower. The final figure will be updated upon receipt of consultation responses. For completeness, we report asymmetric sensitivities around the central projection in Table 4 below. This sensitivity analysis has been taken into account in the Summary: Analysis & Evidence sheet.

**Table 3: Label change cost**

Extent of change	Average cost (£/SKU)	Trimmed mean (£/SKU)
Minor change	£1,810	£1,800
Major change	£3,800	£3,300

“minor” change: only text on a single face of the label and no packaging size modification is required to accommodate this.  
“major” change: text as well as layout and/or colours and/or format and/or multiple faces are affected, or packaging size modification is required.  
Trimmed mean: A trimmed mean is calculated by discarding a 5% of the lowest and the highest scores and then computing the mean of the remaining scores.

Source: Developing a framework for assessing the costs of labelling changes in the UK, Defra and Campden BRI

**Table 4: Labelling costs of reducing the permitted sugar level for jams from 60% to 50%**

% of SKU's with 50%-60% sugar content	Cost	Cost (present value)	Equivalent Annual Cost
10%	£89k	£88k	£10k
<b>20%</b>	<b>£178k</b>	<b>£175k</b>	<b>£21k</b>
25%	£223k	£219k	£26k

37. The study states that a change was considered as minor when only the text was changed on a single face of the label and no packaging size modification was required to accommodate this.

**Consultation Question 5: We are keen to seek statistics on the number of affected**

<sup>6</sup> Source: The Kantar world panel (25,000 UK household panel) are asked to record every item purchased and brought into the household over a 52 week period. So this number reflects the number of different products purchased in the 52 weeks up to April 2011

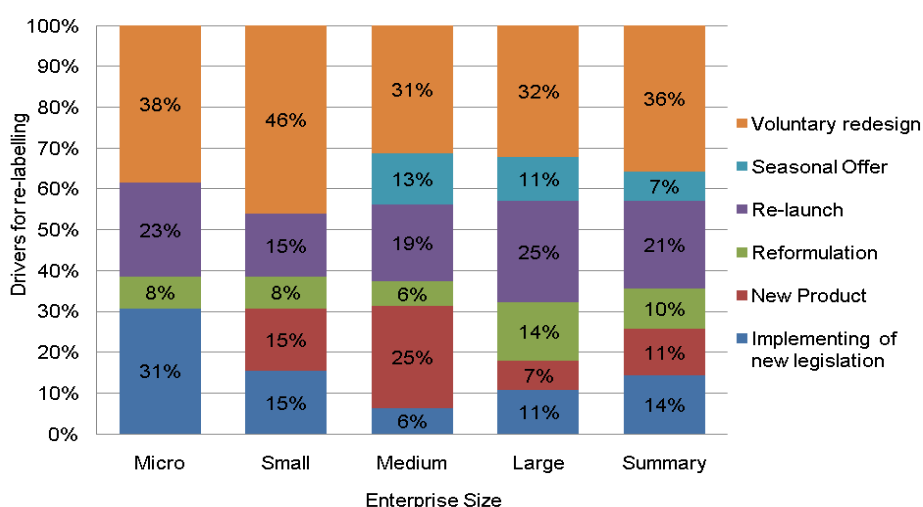
<sup>7</sup> An SKU is a number or code used to identify each unique product or item for sale in a store or business.

<sup>8</sup> This is likely to be an over-estimate.

product lines in the following (i) 50 to 60% sugar content and (ii) 55 to 60% sugar content.

38. The costs of making changes to product labels are estimated in this impact assessment using the methodology in the Defra and Campden BRI study 2010; Developing a Framework for Assessing the costs of Labelling Changes in the UK.
39. There are a number of drivers that can result in the need for labelling changes; legislative requirements are one of four main sources:
- change in legislation;
  - marketing driven;
  - product reformulation; and
  - voluntary inclusion of information.
40. The following graph taken from the Campden research shows that as a percentage of all the drivers contributing to re-labelling, on average 14% will stem solely from implementing new legislation. This indicates that changing labels in response to new Regulations will often be incorporated at the same time other changes are made such as product refreshes and redesigns. Therefore in the majority of cases, labelling changes as a result of legislation do not create any substantial costs on their own, as they are implemented as part of labelling changes initiated through commercial decisions.

**Figure 2: drivers contributing to re-labelling**



Source: Campden BRI study 2010; Developing a Framework for Assessing the costs of Labelling Changes in the UK.

**Consultation Question 6:** We are keen to seek views from micro businesses on the degree of impact from labelling changes outlined in this IA.

## Public Sector

### One-Off Familiarisation Costs

41. Local authorities will also need to become familiar with the replacement Regulations. It is estimated that it would take one Trading Standards officer, 1 hour to read and become familiar with the Regulations and disseminate them to key staff. The average hourly pay



rate for Inspectors of standards and regulations<sup>9</sup> is £18 (including a 30% overhead uplift in accordance with the standard cost model)<sup>10</sup>. Assuming 433 Local Authorities (one Trading Standard officer per Local Authority) in England, the total estimated cost is £7.8k which translates to an equivalent annual cost of £900 over a ten year period.

### Consumers

42. Consumers will have to assimilate the new compositional standards, in particular in relation to reduced sugar jam. There is no perceived financial cost to the consumer as the labelling changes are likely to be absorbed by the manufacturer, given their relative size.

### **Benefits**

#### Industry

43. Updating the 2003 Regulations will provide the jam manufacturing industry in England with increased flexibility when developing new products and recipes for jams. Lowering the permitted sugar level for jams will in the case of option 1 remove the current gap for products that have a sugar level lower than 60% and currently cannot be marketed as jams but meet consumer expectations of what constitutes a jam. This will ensure the rules in England do not put English manufacturers at a disadvantage through being more restrictive than those in other EU Countries.

**Consultation Question 7:** Can you quantify the monetary benefit to your business as a result of the increased flexibility in using the reserved description jam and/or levelling the playing field with other Member States?

### Public Sector

This option does not directly benefit the regulator.

#### Consumer

44. The removal of potentially confusing differences (whether real or artificial) between domestic and European jams and similar products should lessen. Consumers may benefit from the increased choices due to more product lines under the label of jams and a range of jams that offer less sugar content and more fruit in its composition. However, we don't anticipate there to be any impact on consumer's health as the affected products form a relatively small component of consumers' diet. UK consumers will be better informed about what constitutes a jam, as some products which are currently outside the regulations will subsequently be brought 'in scope' by the proposed changes. As a result, they will then need to comply with the specific labelling requirements such as x grams of fruit per 100 gram and total sugar content x gram per 100 gram. This will make it easier for consumers to compare different products.
45. The new labelling should lead to more manufactures using the term jam instead of 'preserve', 'conserve' and 'fruit spreads' and therefore make it easier for consumer to be able to differentiate between products and make informed choices. Overall it will provide

<sup>9</sup> 2011 Annual survey of Hours and Earnings

<sup>10</sup> <http://www.berr.gov.uk/files/file44503.pdf> [http://www.statistics.gov.uk/downloads/theme\\_labour/ASHE-2009/2009\\_occ4.pdf](http://www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occ4.pdf)

increased consumer choice and jams with a lower sugar content will be more readily available. This is in line with the Government's overall health agenda and policy on reducing fat, sugar and salt content of food.

**Option 2 - Reduce the permitted sugar level for jams from 60% to 55% with an ingredient specific exemption for Bramley apples to a level of 50%.**

**Costs**

Industry

Familiarisation costs

46. The Familiarization costs are same for option 1 and option 2. Assuming about 100 jam manufacturers in the UK, the cost of familiarisation should be around £2.5k.

Relabeling cost

47. The range of products falling under the category of 55-60% soluble solids is smaller than the 50-60% so this option will clearly impose lesser relabeling costs than in the case of option 1. An exception to this rule will be the jams with soluble solid content between 50% - 54% but which are made from Bramley apples. The exception has been allowed to accommodate an industry innovation according to which the products made from Bramley apples meet all the same criteria as most other jams in terms of shelf life and other quality standards. Using the Kantar dataset<sup>11</sup> of 495 SKUs and the assumption that 7%<sup>12</sup> ) of the SKU are jams with soluble solid content between 50% and 54% will need relabeling , we estimate the maximum cost of labelling to be £62k (£61k in present value terms), if that costs accrue over two years. The Equivalent Annual Cost to industry is around £7k. The 7% figure is a guesstimate and takes into account optimism bias. The actual figure could be lower or higher but is more likely to be lower. The final figure will be updated upon receipt of consultation responses. For completeness, we report asymmetric sensitivities around the central projection in Table 5 below. This sensitivity analysis has not been taken into account in the Summary: Analysis & Evidence sheet.

**Table 5: Labelling costs of reducing the permitted sugar level for jams from 60% to 55% with an ingredient specific exemption for Bramley apples to a level of 50%**

% of SKU's with 55%-60% sugar content	Cost	Cost (present value)	Equivalent Annual Cost
5%	£45	£44k	£5k
<b>7%</b>	<b>£62k</b>	<b>£61k</b>	<b>£7k</b>
10%	£89k	£88k	£10k

48. There would be potential for further changes to be made for products that fall between 50-54 ranges even if they are not from Bramley apples. If the case was made while the replacement Regulations were going through then this would be fairly simple. After that, the replacement Regulations would need to be changed. Either way, businesses seeking

<sup>11</sup> Source: The Kantar world panel (25,000 UK household panel) are asked to record every item purchased and brought into the household over a 52 week period. So this number reflects the number of different products purchased in the 52 weeks up to April 2011

<sup>12</sup> This is likely to be an overestimate

change for their 50-54% range jams will have to make a case for allowing them to call their products 'jam'. The cost of case-by-case exemption applications to industry and government have not been taken into account in the cost and benefit calculation. Instead it has been marked-up as a risk.

## **Public Sector**

### One-Off Familiarisation Costs

49. There will be one-off familiarisation cost for local authorities. The costs are as set in for option 1. The total estimated cost is £7.8k which translates to an equivalent annual cost of £900 over a ten year period.

## **Consumers**

50. Consumers will have to assimilate the new compositional standards. There is no perceived financial cost to the consumer as the labelling changes are likely to be absorbed by the manufacturer, given their relative size.

**Consultation Question 8:** Are there any other fruits which may require to be added to the list of exemptions from the general 55% rule?

## **Benefits**

### Industry

51. The non quantified benefits to the industry under this option are same as Option 1. However, the scale of the benefits is likely to be lower because fewer manufacturers are in this portion of the market.

### Public Sector

52. This option does not directly benefit the regulator.

### Consumer

53. The non quantified benefits to the consumer under this option are same as Option 1. However, the scale of the benefits is likely to be lower because fewer manufacturers are in this portion of the market.

## **Remove the UK national limit for 'reduced sugar jam' currently set at 25-50%**

### **Costs**

#### Industry

##### Familiarisation costs

54. If introduced alongside either Option 1 or 2, exercising this option will not incur any additional cost to the industry. If however, it is introduced as a stand-alone revision to the regulations the familiarisation cost would be £2.5k i.e. same as other two options.

## Reformulation/ Relabeling costs

55. The removal of the category for reduced sugar jams to align with the existing health claims rules may mean a small number of products would require some reformulation if they are to continue using a reduced sugar claim or relabeling costs to market it as perhaps a reduced-sugar spread. The general requirement for the use of a reduced sugar claim on foods is that the product should have a 30% energy reduction compared with standard products. Any anomalies are only likely to arise for those products that currently sit towards the top end of the 25-50% band that have a reduced sugar level of approximately 44% or higher. Anecdotal evidence from our investigations indicate that the majority of reduced sugar jams would be below the approximate 44% threshold for reduced sugar jams and would automatically meet the health claims regulations.
56. Although expected to be very few, if there are manufacturers making reduced sugar jam at the top end of the 25-50% band they will have to either reformulate or re-label the product to be marketed as a sweet/fruit spread, which will incur costs to manufactures. Some of these costs may be integrated into ongoing costs of product development and testing and some may not. Reformulation includes the costs of any new ingredients, changes to food processing machinery, staff time and training as well as the cost of changing labels. Many of these costs are likely to be absorbed within existing product development budgets. Depending on the schedule of reformation costs (typically a three year cycle), which will vary from manufacture to manufacture and may form part of the normal business cycle and therefore some of the cost of reformulation is not a new cost for businesses to bear but part of the product development cycle.

**Consultation Question 9:** Our assumption is that there are currently very few 'reduced sugar jams' in existence at the top end of the 25-50% band that would require reformulation to lower their sugar level to continue using the *reduced* claim, is this assumption accurate?

57. However, in order to remain on the side of caution, we have estimated the relabeling cost. Using the Kantar dataset of 495 SKUs and the assumption that 7% (footnote: this is likely to be an overestimate) of the SKU are jams with soluble solid content between 44% and 49% will need relabeling, we estimate the maximum cost of labelling to be £62k (£61k in present value terms), if that costs accrue over two years. The Equivalent Annual Cost to industry is around £7k. Asymmetric sensitivity analysis is reported around the central projection in Table 6 below. This sensitivity analysis has not been taken into account in the Summary: Analysis & Evidence sheet.

**Table 6: Labelling costs of the removal of national limit for 'reduced sugar jam' currently set at 25-50%**

% of SKU's with 44%-50% sugar	Cost	Cost (present value)	Equivalent Annual Cost
5%	£45	£44k	£5k
<b>7%</b>	<b>£62k</b>	<b>£61k</b>	<b>£7k</b>
10%	£89k	£88k	£10k

### Consumers

58. Consumers will have to assimilate the new compositional standards. There is no perceived financial cost to the consumer as the labelling changes are likely to be absorbed by the manufacturer, given their relative size.

### **Public sector**

#### Familiarisation costs

59. Removing the specific 'reduced sugar jam' category from these Regulations should not introduce costs to enforcement authorities as they are already enforcing the general health claims rules for other products. It will be clear that the general 'reduced' health claims rules will apply to jams if there are no sector specific rules taking precedence.

### **Benefits**

#### Industry

60. The industry will be able to fall in line with the EU regulation on the issue of reduced-sugar products, enabling it to engage in trade with Member States under business as usual conditions.

#### Public Sector

61. This option does not provide a direct benefit for the regulator.

#### Consumer

62. Consumers will have a better understanding of a 'reduced sugar jam' in relation to other foods that make a 'reduced' claim, as the same health claims Regulations will apply requiring at least a 30% reduction on energy when compared with a standard product.

### **Removing national provisions for curds and mincemeat**

#### **Costs**

63. We do not anticipate any costs being generated from the removal of these national provisions.

#### **Benefits**

##### Industry

64. The industry will no longer be constrained by rules on curds and mincemeat that were purely national provisions and not linked to the EU Directive. Removing these provisions will simplify the domestic legislation.

##### Public Sector

65. This option reduces the number of requirements that trading standards officers are required to enforce.

### Consumer

66. There are no perceived impacts on consumers.

## **Changes to enforcement procedure**

### **Costs**

67. Enforcement of the rules in the Jam and Similar Products Regulations is the responsibility of food authorities (Local Authorities and Trading Standards officers) who will need to familiarise themselves with the changes being made with by the new requirements in order to make sure that the rules in the Regulations are adhered to.
68. This standardised approach to enforcement is being included in other food compositional legislation including the recent Food Information Regulations and Fish Labelling Regulations. Also, enforcement bodies already use the compliance/improvement notice approach for a number of other Regulations. Therefore introducing this approach should not be overly burdensome and can be seen in the broad sense as a business as usual change.

### **Benefits**

69. The main benefits which are expected from changes to enforcement procedures would stem from a more proportionate enforcement procedure for businesses - *This is currently a non-monetised benefit.*
70. There would be a benefit to industry in terms of moving from the current criminal sanctions regime to a new regime providing for enforcement by way of an improvement notice, followed up by a criminal offence in those cases where an improvement notice is not complied with. It is anticipated that the gains will originate from reduced costs and the time saved to businesses in resolving the issues more quickly. This will materialise in the fact that, the vast majority of contraventions will be resolved through the issuing of improvement notices. There may also be public sector savings due to reduced use of court resources.
71. Information provided in the food standards enforcement actions report for 2010/11 shows that there were 69 food standards prosecutions concluded in England. Although it is not possible to give precise figures, the likelihood is that prosecutions resulting from the contravention of The Jam and Similar Products (England) Regulations 2013 are extremely low or possibly none at all. We would expect the number of cases referred to criminal courts to be reduced. Therefore, this benefit is likely to be small given the number of cases associated with jam is anticipated to be small.

**Consultation question 10:** In what way would an Improvement Notice approach benefit your business and/or the sector in general? Can you quantify any savings that may be realised?

## **Key risks and assumptions**

72. The original request from industry was to lower the permitted sugar level for jams (including extra jams, jellies and marmalades etc...) from 60% to 55% to be in line with the recent changes made in France and Germany. The additional request to consider a further drop from 60% to 50% may result in opposition from certain manufacturers who currently market their products using alternative names such as 'fruit spread' as they would be required to change their official product name to 'jam' to reflect the fact that their product was now within the scope of the Regulations. Although they would be permitted to use the term 'jam' which many may welcome, some manufacturers may have no desire to change the brand name of the product but they would be required to include the name 'jam' on the label as the official product name which would involve some re-labelling costs. It is possible we may see some resistance to the idea of lowering the permitted sugar to the 50% minimum. Concerns here would focus on the perceived risk to the overall reputation of jam as a product if this lower sugar level leads to an increase in the amount of microbiological spoilage experienced by customers or the need to introduce shorter use by dates to counteract that risk.
73. In option 1, reduced permitted sugar level for jam from 60% to 50%, we have assumed that 20% of store keeping units will require relabeling. Under option 2, reduced permitted sugar level for jam from 60% to 55% with an ingredient specific exemption for Bramley apples to a level of 50%, we have assumed that 7% of store keeping units will require relabeling. Removal of UK national limit for 'reduced sugar jam' currently set at 25-50%, we have assumed that 7% of store keeping units will require relabeling. There are no anticipated costs from the removal of national provisions for curds and mincemeat.

### **Summary of preferred options**

74. The preferred option is option 1 to lower the permitted sugar level from 60% to 50% for jams and related reserved descriptions such as jellies and marmalades etc. This will provide the greatest level of flexibility for industry to make use of the reserved descriptions and will eliminate the current gap that exists for products falling between 50-59% in contrast to option 2 where a grey area would still exist for products in the 50-54% band which cannot make use of the term 'jam'. Option 1 is preferred because it delivers:
- greater flexibility for jam manufacturers;
  - a reduced burden for businesses and government in comparison to option 2 as there is no requirement for an approved list of fruits ;
  - a relatively small difference in the EAC between the two options in comparison to the additional work that would be required on an ongoing basis; and
  - a more consistent approach for the consumer in terms of product names as a wider range of 'fruit spread' products will be able to use the commonly understood term 'jam'.
75. We will be simplifying the legislative position with respect to reduced sugar claims as there is currently an overlap between our domestic legislation and general health claims legislation that was introduced after the 2003 Regulations were introduced. In addition to this and the lowering of the permitted sugar level we are also proposing to remove certain national provisions that currently exist for mincemeat and curds. This removal will provide a deregulatory benefit.

**We are therefore proposing to implement option 1 in the new Jam and Similar Products (England) Regulations**



Table 7: Summary of total monetised costs and benefits of option 1 (including removal of 'reduced sugar jam' and national provisions for curds and mincemeat)

	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Total Cost or Benefit	Annual Cost or Benefits	Equivalent Annual Cost or Benefit	Present Value
<b>COSTS</b>														
<b>Industry</b>														
<i>Familiarisation (transition)</i>	£2,500	£0	£0	£0	£0	£0	£0	£0	£0	£0	£2,500	£290	£290	£2,500
<i>Labelling costs</i>	£120,285	£120,285	£0	£0	£0	£0	£0	£0	£0	£0	£240,570	£27,948	£27,476	£236,502
<b>Total Industry Costs</b>	<b>£122,785</b>	<b>£120,285</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£243,070</b>	<b>£28,239</b>	<b>£27,766</b>	<b>£239,002</b>
<b>Public sector</b>														
<i>Familiarisation (transition)</i>	£7,794	£0	£0	£0	£0	£0	£0	£0	£0	£0	£7,794	£905	£905	£7,794
<b>Total Costs to public sector</b>	<b>£7,794</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£7,794</b>	<b>£905</b>	<b>£905</b>	<b>£7,794</b>
<b>TOTAL COSTS</b>	<b>£130,579</b>	<b>£120,285</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£250,864</b>	<b>£29,144</b>	<b>£28,672</b>	<b>£246,796</b>
<b>BENEFITS</b>														
<b>TOTAL BENEFITS</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>
<b>NET BENEFIT</b>														
<b>Total Net (Benefit)</b>	<b>-£130,579</b>	<b>-£120,285</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>-£250,864</b>	<b>-£29,144</b>	<b>-£28,672</b>	<b>-£246,796</b>
Total Net Business (Benefit)	-£122,785	-£120,285	£0	£0	£0	£0	£0	£0	£0	£0	-£243,070	-£28,239	-£27,766	-£239,002

Table 8: Summary of total monetised costs and benefits of option 2 (including removal of 'reduced sugar jam' and national provisions for curds and mincemeat)

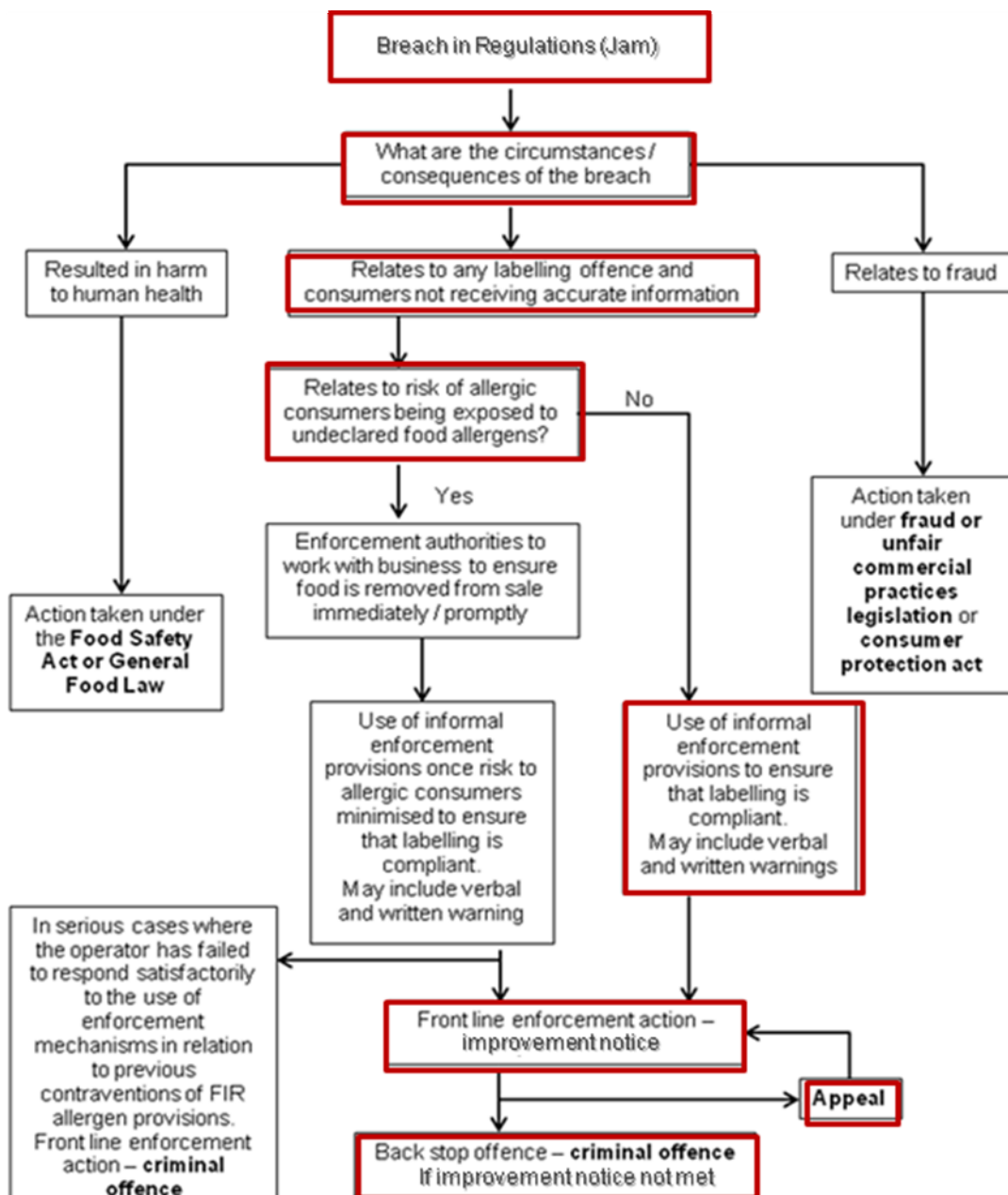
	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Total Cost or Benefit	Annual Cost or Benefits	Equivalent Annual Cost or Benefit	Present Value
<b>COSTS</b>														
<b><i>Industry</i></b>														
<i>Familiarisation (transition)</i>	£2,500	£0	£0	£0	£0	£0	£0	£0	£0	£0	£2,500	£290	£290	£2,500
<i>Labelling costs</i>	£62,370	£62,370	£0	£0	£0	£0	£0	£0	£0	£0	£124,740	£14,492	£14,247	£122,631
<b>Total Industry Costs</b>	<b>£64,870</b>	<b>£62,370</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£127,240</b>	<b>£14,782</b>	<b>£14,537</b>	<b>£125,131</b>
<b><i>Public sector</i></b>														
<i>Familiarisation (transition)</i>	£7,794	£0	£0	£0	£0	£0	£0	£0	£0	£0	£7,794	£905	£905	£7,794
<b>Total Costs to public sector</b>	<b>£7,794</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£7,794</b>	<b>£905</b>	<b>£905</b>	<b>£7,794</b>
<b>TOTAL COSTS</b>	<b>£72,664</b>	<b>£62,370</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£135,034</b>	<b>£15,688</b>	<b>£15,443</b>	<b>£132,925</b>
<b>BENEFITS</b>														
<b>TOTAL BENEFITS</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>
<b>NET BENEFIT</b>														
<b>Total Net (Benefit)</b>	<b>-£72,664</b>	<b>-£62,370</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>-£135,034</b>	<b>-£15,688</b>	<b>-£15,443</b>	<b>-£132,925</b>
Total Net Business (Benefit)	-£64,870	-£62,370	£0	£0	£0	£0	£0	£0	£0	£0	-£127,240	-£14,782	-£14,537	-£125,131

## Annex A: Gold plating/implementation summary

Where (2003 Regulations)	Gold Plating / Under Implementation	Issue	Solution
Regulation 2(1)	Gold Plating	The definitions of the terms 'fruit pulp' and 'fruit puree' in regulation 2(1) of the 2003 Regulations do not exactly correspond with the Directive definitions of these terms in Part A of Annex III. The words 'and the like' in the Directive definitions have been lost from our definitions. Instead of referring to 'the peel, skin, seeds, pips <i>and the like</i> ', we have only referenced 'the peel, skin, seeds or pips'.	<b>Follow copy out procedure and insert the definitions as they occur in the Directive into the new Regulations</b>
Regulation 3	Under Implementation	The first sub-paragraph of Article 1 of Directive 2001/113/EC says that it applies to the products defined in Annex I. This is subject to the exception in the second sub-paragraph for products intended for the manufacture of fine bakery wares, pastries and biscuits. However, regulation 3 of the 2003 Regulations is limited so that the Regulations only apply in relation to specified jam and similar products intended for human consumption and ' <i>ready for delivery to the ultimate consumer or to a catering establishment</i> '.	<b>Omit the words '<i>ready for delivery to the ultimate consumer or to a catering establishment</i>' from the new regulations.</b>
Regulation 4		Various aspects requiring redrafting.  Regulation 4 talks about the sale of food 'with a label' whereas Article 2(1) of Directive 2001/113/EC is more general and relates to the use of the product name 'in trade' to designate products.  Article 2(1) of Directive 2001/113/EC provides that the product names listed in Annex I shall only apply to the products referred to in Annex I and must be used in trade to designate them. However, regulation 4 of the 2003 Regulations (which implements Article 2(1)) goes further. It not only covers the protected product name (the 'reserved description' in the parlance of our Regulations) but also 'any derivative thereof' and 'any word or description substantially similar thereto'. Derivatives are not explicitly covered by the Directive 2001/113/EC so our Regulations go further.	<b>Apply the terminology from the Directive which is wider in scope</b>  <b>Follow the preference for copy out and remove the additional reference to derivatives in our domestic legislation.</b>
Regulation 4(b)		The exception relating to ingredients listing in regulation 4(b) is not provided for in Directive 2001/113/EC.	<b>Remove 4(b) equivalent from the new Regulations</b>
Regulation 5(1)(b)	Gold Plating	Regulation 5(1)(b) relates to the identification of residual sulphur dioxide in	<b>Apply the principals of copy</b>

		<p>the list of ingredients. It implements Article 2(6) of Directive 2001/113/EC. Regulation 5(1)(b) of our domestic Regulations additionally provides that the residual sulphur dioxide shall be identified in the ingredients list 'according to the percentage by weight of the residue of the product'. This additional wording does not appear in the Directive provision. So regulation 5(1)(b) of our 2003 Regulations elaborates the Directive provision. There looks to be a 'hint' of gold-plating about this, particularly bearing in mind that the sixth indented sub-paragraph of the second paragraph of Article 6(5) of Directive 2000/13/EC provides that ingredients constituting less than 2% of the finished product may be listed in a different order (i.e. not in descending order of weight) after the other ingredients. This 2000/13/EC provision on ingredients constituting less than 2% of the finished product will be carried forward in point 1(c) of Annex VIII to FIR as read with point 5 of Part A of Annex VII.</p>	<p><b>out and remove the wording 'according to the percentage by weight of the residue of the product' in the new domestic Regulations.</b></p>
<p><b>Regulation 5(2)(b)</b></p>	<p><b>Under Implementation</b></p>	<p>Regulation 5(2)(b) of the 2003 Regulations implements Article 2(3) of Directive 2001/113/EC and relates to the labelling of fruit content. In the case of products prepared using aqueous extracts, Article 2(3) of the Directive requires the calculation of the fruit content should be done 'after deduction of the weight of water, if appropriate'. However, this requirement to deduct the weight of water in relation to aqueous extracts has not made its way through into the wording of our domestic provision in regulation 5(2)(b).</p>	<p><b>Add in the reference as stated in the Directive 'after deduction of the weight of water' to the new Jam Regulations.</b></p>
<p><b>Regulation 6</b></p>	<p><b>Gold Plating</b></p>	<p>This is the regulation that applies the requirements of regulations 35, 36(1) and (5) and 38 of the Food Labelling Regulations 1996 to the mandatory indications required by regulation 5 of the 2003 Regulations. There does not appear to be a justification in Directive 2001/113/EC for applying those provisions (on top of the existing 2000/13/EC provisions), for the regulation 5 mandatory requirements. This is not required by the introductory wording in Article 2 of the Directive. The matters intended to be covered by regulation 6 of the 2003 Regulations will for the most part be covered by the provisions in Articles 12 and 13 of the FIR.</p>	<p><b>Deletion of Regulation 6 from the new Jam Regulations</b></p>

Annex B: Simple flow chart of the enforcement process (labelling chain of events highlighted)



## Annex C

### Enforcement Regime

In line with the Government's objective to ensure that sanctions are proportionate to the offence committed, the Jam and Similar Products (England) Regulations will be making use of civil as opposed to criminal sanctions for labelling offences. The enforcement regime will consist of an improvement notice approach for dealing with breaches of the Regulations. This change will require the introduction of an appeals mechanism to provide a means of recourse if someone believes they have been issued with an improvement notice in error.

### Appeals to the First-tier Tribunal

Appeals will be made to the General Regulatory Chamber (GRC) of the First-tier Tribunal (FtT). The tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure cases are dealt with in the interest of justice and minimising parties' costs. The composition of a tribunal is a matter for the Senior President of Tribunals to decide, and may include non legal members with suitable expertise or experience in the issues in an appeal in addition to Tribunal Judiciary.

The General Regulatory Chamber operates under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which provide flexibility for dealing with individual cases. Rule 2 of the General Regulatory Chamber Rules states its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The rules give the tribunal judges wide case management powers in order to achieve these objectives.

The Tribunal may also hear an appeal either orally in a court room or determined on the papers only. This latter written procedure is used if both parties agree that the Tribunal may determine the appeal on the papers without holding a full hearing and the Tribunal is satisfied that it can determine the issues without one. Under the Rules the Tribunal has the power to award costs against a party where it considers that a party has acted unreasonably in bringing, defending or conducting the proceedings.

The Lord Chancellor has the capacity to charge fees for appeals to the First-tier Tribunal, for example an application fee. Where he is proposing to introduce fees he is required to consult the Senior President of Tribunals. Following this, any such proposal would be subject to secondary legislation that would need to be debated and agreed by both Houses of Parliament before it would take effect.

### Onward appeal from the tribunal

Any party to a case has a right to appeal to the Upper Tribunal on points of law arising from a decision of the First-tier Tribunal. The right may only be exercised with the permission of the First-tier Tribunal or the Upper Tribunal. Where permission is given, the further appeal would be made to the Upper Tribunal.

<b>Consultation Question</b>	Are you satisfied with the proposed procedures for appeals? If not, why not?
<b>Consultation Question</b>	(Asked on behalf of the Tribunal Procedure Committee) Do you consider that the General Regulatory Chamber Rules will suit the handling of appeals against improvement notices and the associated circumstances? If not, why not?

1. The General Regulatory Chamber rules can be found at:  
<http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/tribunals-rules-2009-at010411.pdf>