



Department
for Environment
Food & Rural Affairs

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Consultation on amending the Jam and Similar Products (England) Regulations 2003

March 2013

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This document/publication is also available on our website at:

www.defra.gov.uk/consult

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Part I - Introduction

1. Purpose of this Consultation

The purpose of this consultation is to seek the views of those involved in the manufacture of jam and other sweet spread products on the draft Jam and Similar Products (England) Regulations 2013.

This consultation focuses on four main changes:

- **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%

Additional deregulatory measures under both options

- Remove the UK national limit for 'reduced sugar jam'
- Removing national provisions for curds and mincemeat

The consultation aim is to check that the preferred option for implementing the new requirements makes sense and is the preferred choice by the majority operating in the jam manufacturing industry. The consultation seeks to gather more information to help quantify the deregulatory benefits from removing duplicate rules on reduced sugar and removing national provisions for mincemeat and curds.

2. Geographical extent

This consultation covers the amended Jam and Similar Products Regulations Statutory Instrument for England. Governments in other parts of the UK will be making any necessary changes within their own jurisdictions.

3. Impact Assessment

A consultation stage Impact Assessment has been prepared and can be found at www.defra.gov.uk/consult/open

4. Audience

The Consultation is primarily aimed at those who are involved in the manufacture of jam and sweet spread products but is open to all for comment.

Those likely to have the greatest interest are:

- Jam and sweet spread manufacturers
- Trade representation organisations in the food industry
- Enforcement officers

5. Responding to this Consultation

Enquiries and responses may be directed to:

Jam Regulations Consultation

Food Policy Unit

3rd Floor Nobel House

17 Smith Square

London SW1P 3JR

Email: foodpolicyunit@defra.gsi.gov.uk

6. Duration

Consultation **opens** on 27th March 2013

Consultation **closes** 22nd May 2013

7. After the consultation

When this consultation ends we intend to put a copy of the responses in the Defra library at Ergon House, London. This is in line with Defra's policy of openness, so that the public may see them. Members of the public can ask for a copy of responses under freedom of information legislation. Copies of the consultation responses to personal callers or in response to telephone or email requests will be supplied by the Defra Information Resource Centre (020 7238 6575), defra/library@defra.gsi.gov.uk. Wherever possible, personal callers should give the centre 24 hours notice of their requirements. An administrative charge will be made to cover any photocopying and postage costs.

A summary of the responses to this consultation will also be published and placed on our website at www.defra.gov.uk/consult. This summary will include a list of names and organisations that responded but not peoples personal names, addresses or other contact details.

If you do not want your response - including your name, contact details and any other personal information - to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request.

Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, **we cannot promise that we will always be able to keep those details confidential.**

8. Compliance with the Code of Practice on Consultation

This consultation is being conducted in line with the “Consultation Principles” as set out in the Better Regulation Executive guidance which can be found at <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>.

If you have any comments or complaints about the consultation process please addresses them to:

Defra Consultation Co-ordinator
Area 2D Ergon House
Horseferry Road, c/o 17 Smith Square
London SW1P 3JR
Email: consultation.coordinator@defra.gsi.gov.uk

Part II

9. Background

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.

The accompanying Impact Assessment provides a full and detailed explanation of the changes being proposed as part of this consultation including an assessment of the potential costs and benefits.

10. Current Regulations

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 minimum fruit content for various fruit jams, jellies and marmalades which is also dependent of the fruit species;
- sets 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; and
- 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”.

11. 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%.

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.

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.

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%.

12. Reduced sugar jams

Part II of Annex I to Directive 2001/113/EC allows Member States 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 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 Nutrition and Health Claims made on Food.

Sections of the industry have previously indicated that they would be keen to work to one set of rules for ‘reduced’ claims. This seems sensible as it will simplify the rules in this area and ensure there are no longer any doubts over which rules on reduced sugar claims are to be adhered to.

13. Removing national provisions

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.

The national provisions are for products that are particular to the UK market and include the following:

- curd;
- lemon cheese;
- flavoured curd; and
- mincemeat

As these rules are specific to the UK, it seems sensible to ask the question again as to whether UK sweet spread manufacturers would prefer to deregulate further and remove these provisions.

14. Consultation Questions

The following list of consultation questions are set out in the **Impact Assessment** next to the subject matter they refer to.

Subject Matter	IA Page No.	Question
Reduced sugar	10	Consultation Question 1 Are the industry content with this simplified approach to work to one set of rules regarding 'reduced' health claims?
National provisions	10	Consultation Question 2 Are there any reasons why removing these national provisions should not take place?
Re-labelling	14	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?
Familiarisation costs	14	Consultation Question 4 Is the above a realistic estimate for typical industry familiarisation costs?
Labelling costs	15	Consultation Question 5 We are keen to seek statistics on the number of affected product lines in the following (i) 50 to 60% sugar content and (ii) 55 to 60% sugar content.
Micro businesses	16	Consultation question 6 We are keen to seek views from micro businesses on the degree of impact from labelling changes outlined in this IA.
Quantifying benefits	17	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?
List of exempted fruits	19	Consultation question 8 Are there any other fruits which may require to be added to

		the list of exemptions from the general 55% rule?
Reduced sugar jams	20	<p>Consultation question 9</p> <p>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 <i>reduced</i> claim. Is this assumption accurate?</p>
Enforcement regime - Government	22	<p>Consultation question 10</p> <p>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?</p>

We are also proposing a transitional period of 3 years from the coming into force date for any labelling changes to allow manufacturers the flexibility of incorporating these within their usual product refresh cycle. We would welcome views on whether this would be welcomed?

15. Enforcement Regime

In line with the Government's objective to ensure that sanctions are proportionate to the offence committed, the Jam and Similar Products 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 mechanism - First-tier Tribunal

How would someone go about making an appeal?

In the first instance representations can be made against the improvement notice which must be served by the relevant authority. There will be information contained in the notice that will direct the recipient to the relevant information on the First-tier Tribunal website. Appeals can also be made against a decision to cancel a designation, a refusal of consent or conditions related to designated structures or features and against improvement notices. The mechanism for appeals will also be clearly set out in guidance.

Appeals to the First-tier Tribunal

Appeals will be made to the General Regulatory Chamber of the First-tier Tribunal. 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 judge wide case management powers in order to achieve these objectives.

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.

Consultation Question

Are you satisfied with the proposed procedures for appeals? If not, why not?

Consultation Question

(Asked on behalf of the Tribunal Procedure Committee) Do you consider that the General Regulatory Chamber Rules will suit the handling of appeals against designations 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>