



Llywodraeth Cymru  
Welsh Government

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Welsh Government  
Consultation – summary of response

## **Introduction of improvement notice for nutrition and health claims**

### **Analysis of responses to the Introduction of improvement notice for nutrition and health claims consultation**

January 2024

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh  
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

## **Overview**

This document provides a summary of responses to the Introduction of improvement notice for nutrition and health claims consultation.

## **Action Required**

This document is for information only.

## **Further information and related documents**

Large print, Braille and alternative language versions of this document are available on request.

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## **Additional copies**

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

[Introduction of improvement notice for nutrition and health claims \[HTML\] | GOV.WALES](#)

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## **Executive Summary**

This consultation sought the views of food businesses, enforcement authorities, consumers and other stakeholders on the proposed introduction of a new system of improvement notices. The main points are to identify if the notices will benefit officers who enforce food regulations and to gain an understanding of how they might impact food businesses.

In total, 9 formal submissions were received. Responses were either submitted through the online consultation form or via email.

There was 100% support for the proposal to use Improvement Notices to address the gap identified in formal enforcement options available in dealing with nutrition and health claims under this question. There were no strong objections to the proposal emerging from any of the open responses to the questions.

## **Background**

The UK Government is determined to realise the benefits of EU-exit by ensuring that smarter regulation supports the UK's ambitions of creating the best regulated economy in the world, stimulating economic growth, innovation, and job creation. For Nutrition related Labelling, Composition and Standards (NLCS), this means protecting consumer safety by ensuring accurate nutritional information for consumers and effective enforcement whilst reducing the burden on businesses, as well as avoiding any unplanned intra-UK and wider international divergence to minimise barriers to trade.

The Welsh Government launched a consultation on proposed legislative reforms to nutrition and health claims on food and drink. The consultation proposed reforming nutrition and health claims enforcement in Wales. The consultation document was circulated widely and published on the Welsh Government website to seek views on the proposed changes. This document summarises the key comments made by respondents. (delete)

## **Why did we consult?**

Section 48(4) of the Food Safety Act 1990 places an obligation on the Welsh Ministers, when making regulations under the act other than under section 17(2) or 18(1)(c), to consult with such organisations as appear to them to be representative of interests likely to be substantially affected by the regulations. There is also a statutory obligation to consult with interested persons:

There shall be open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it.

Regard is also required to any relevant advice given by the Food Standards Agency, as noted in section 48(4A).

## Consultation Description

The purpose of the consultation was to seek view on the introduction of a system of improvement notices that would aim to align the enforcement regime in Wales for the nutrition and health claims regulations with other NLCS enforcement options.

The consultation ran from 20 September 2023 to 15 November 2023 and sought views from:

- Local Authority (LA) authorised officers (AO) and those who inspect food businesses and enforce food legislation.
- Food businesses across all sectors including manufacturing, packaging and labelling food products, catering, retail and primary production.
- Consumers, particularly those with specific dietary needs, a food allergy or intolerance or those buying food on behalf of someone with a food allergy or intolerance, health professionals and others with an interest in food legislation.

The reform proposals which were contained within the consultation in summary would:

- Reform the enforcement procedure for the regulation of nutrition and health claims in Wales by introducing an Improvement Notices regime (by means of making amendments to the 2007 Regulations).

The proposal to introduce an Improvement Notices regime as an alternative to criminal prosecution (and make related provision), is aimed at providing enforcement authorities with a more proportionate way of responding to breaches of the law governing the use of nutrition and health claims and to reduce the burden on business. This provides the right incentive for food business operators to comply with the regulations and the right tools for enforcement authorities to respond to breaches.

## Methodology – breakdown of responses

We are grateful to all those who responded to the consultation. We received a total of 9 responses to the consultation as set out in Table 1:

Table 1: Breakdown of consultation responses

	Organisations	Individuals with personal or professional views
Number of responses	7	2

### Feedback given by respondents

Question 1: Do you agree that there is a gap in the formal enforcement options available to authorised officers for Food Standards contraventions and that we should make use of the powers in the Food Safety Act 1990 to introduce an Improvement Notice? Please explain.

All nine of the respondents to the consultation answered yes in response to this question. There was 100% support FOR the proposal to use Improvement Notices to address the gap identified in formal enforcement options available in dealing with nutrition and health claims.

Respondents highlighted the following benefits for an Improvement Notice regime for nutrition and health claims:

- The ability to regulate companies making unauthorised health claims on online platforms and through social influencers
- The ability to update old standards given that the public are now eating more diverse food types

Question 2: Do you believe that the introduction of an Improvement Notice is an appropriate and proportionate measure for ensuring compliance with the relevant food information and standards requirements?

All respondents answered yes to this question. Some respondents further noted:

- 'We would agree that the use of Improvement Notices for some breaches of the legislation would be appropriate to return a business to compliance, and, as they are used to remedy non-compliance in other food related legislation,

then businesses are readily aware of their existence. It is noted for more serious breaches that the existing remedy within the legislation of prosecution of businesses remains in the legislation which is welcomed.'

- 'Use of unauthorised claims can be the result of inadvertent error or limited technical or regulatory resources, rather than a deliberate attempt to mislead and businesses would therefore welcome an initial pragmatic approach.'

Question 3: Do you agree that the introduction of an Improvement Notice will help to encourage businesses towards compliance with regulations? If not, please explain

All respondents answered yes to this question. Supplementary comments made included:

- 'I believe this will help encourage businesses towards compliance with regulations but i feel that more work would have to be done alongside this'.
- 'The current system is complex and costly to enforce and does not encourage compliance.'
- 'The ability of businesses to discuss the use of unauthorised claims and compliance with the regulations provides an opportunity to learn and improves engagement with enforcement authorities.'
- 'Whilst it is acknowledged that it is an offence to not comply with an Improvement Notice, there is a risk as has occurred with other legislation where notices are utilised, that some businesses will comply by the specified date in the notice but then revert to non-compliance once the notice is removed.'

Question 4: Do you have any other concerns or queries about the introduction of the proposed Improvement Notice?

Of the nine respondents, three said that they have no concerns or queries about the introduction of the proposed Improvement Notice. The questions and concerns raised by other respondents were:

- 'I feel that unless this is audited/followed up with a strict plan of action things could remain the same. I think this as people tend to initially correct their wrongs, but these can eventually slide.'
- 'As is the case with other improvement notices available to food law enforcers, it is important that there is a right to appeal a notice for anyone served with one.'
- 'Care must be taken to ensure that companies do not view these as having no teeth - it should be made clear within these that if they do not undertake the improvement action then further action will be taken. It should also be made

public who have been issued improvement notices, so that there is a reputational driver for companies (& their influencers) to remain compliant.'

- 'Businesses may be tempted to adopt a less rigorous approach to compliance in the knowledge that the enforcement regime is less stringent than previously.'
- 'There is a risk that some businesses will comply with the notice within the time specified and then revert to non-compliance once removed [...] There are also concerns where a number of breaches are identified with nutrition and health claims in a single instance, as this would result in multiple notices having to be drafted to ensure all breaches are rectified within the timescale provided.'
- 'We would be concerned if it makes it easier for products to be on hold awaiting an outcome.'

Question 5: What are the foreseen impacts to businesses with the introduction of the proposed Improvement Notice?

Three respondents did not make any comments for question 5. One respondent noted that they did not see any impacts for businesses. The remaining respondents added the following impacts:

- 'Additional pressure to ensure they comply to standards, which I can only see as beneficial to consumers etc.'
- 'A leaner and more proportionate approach to compliance minimises heavier penalties and ensures compliance.'
- 'A need to be compliant, therefore it would be advisable that they consult with both nutrition & health claims specific legal advisors and nutrition experts (e.g. UKVRN Registered Nutritionists). Businesses will have to review their marketing and where non-compliant amend their packaging and marketing materials.'
- 'We believe that the changes will create a level playing field in Wales and across the UK, as businesses that are not currently complying will be more likely to receive an improvement notice than being prosecuted under the current system. We do not foresee any negative impacts.'
- 'The possibility of being served multiple notices for one product if there are several claims being made, which does occur with certain foods. If the data required to substantiate the claim being made is not readily available, then compliance within the timeframe of the notice may be difficult.'

Question 6: Do you consider that the introduction of the proposed Improvement Notice will have a resourcing impact for local authorities?



Six respondents answered 'yes' to this question. Two said they were unable to comment. One respondent said the following:

'Yes, despite their availability for other food related legislation they are not frequently utilised, therefore, it is likely that some form of training will be required for enforcement officers in the use and drafting of notices in this area of legislation. Some less scrupulous businesses may correct non-compliances to ensure the notice is lifted, then revert to non-compliance, this could result in an increase in officer resource in investigating the matter and bringing the business into ongoing compliance. Additionally, as has been considered in the response to questions 4 and 5, for some breaches it is likely that several notices will have to be served where a number of unauthorised claims have been made about a product.'

Question 7: We would like to know your views on the effects that the introduction of an improvement notice for nutrition and health claims would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Four respondents said that they were unable to comment or did not know the answer to this question. Three respondents said they could not see any impacts of this change on the Welsh language. The remaining respondents said:

- They wished to see Wales lead on this change
- 'It would help if the Food Standards Agency Wales and/or Welsh Government provided a bilingual template improvement notice for all local authorities in Wales to use.'
- 'The notices should be bilingual, so that all receiving one or viewing one online will be able to use Welsh and will also increase awareness and acceptance of bilingual documents. As not all members or their parent companies, marketing companies, consumers will read Welsh, providing it in a bilingual format will mitigate it only being in one language. The use of fairly standards templates, should keep translation costs to a minimum.'

Question 8: Please also explain how you believe the proposed policy on the introduction of an improvement notice for nutrition and health claims could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

One respondent skipped this question; six others said they did not know or had no comments to make. The two remaining respondents commented the following:

- They would like to see an 'online platform that covers all trading standards teams across UK to upload their improvement notices, so that a wider audience are exposed to the Welsh language when viewing bilingual documents'.
- 'If made in Wales there is an opportunity to promote its protected designation of origin and use Welsh and translation for this.'

Question 9: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Six respondents had no further comments here. Of those that did answer this question, the issues that were raised were:

- 'The improvement notices must cover marketing, social media and use of influencers, as this is often where businesses and the influencers they pay are making or inferring non-authorized claims. This should also reinforce Article 12(c), which prohibits, in commercial communications, individual doctors, nutrition or health professionals making health claims - as there are many media doctors, nutritionists, dietitians, nutritional therapists, nurses, dentists, pharmacists, immunologists etc. who are making health claims about products they are selling/promoting etc. Ideally this should also be expanded to cover all influencers, to reduce misleading and undue influence being put on the public.'
- "On-hold' claims are those which may be used while they are still under consideration. As stated, it is the intention of the UK government and devolved administrations in Scotland and Wales to minimise disruption to business and therefore 'on-hold' claims may continue to be used in accordance with the 2014 Bulletin until a decision is made. The government has also stated its intention to launch a call for evidence, seeking information from stakeholders so that the full scale of the 'on-hold' claims issue may be understood. Following this, it is also stated that a decision will be made on the approach to these claims for use in the GB market.[...] as it is approaching 10 years since some of the 'on-hold' claims have been pending approval that there should be a defined timeframe within which businesses can expect evaluations to progress and have clear visibility of any necessary adjustments to expected timing. [We] would urge the Welsh government to work to resolve the questions around 'on hold' claims along with the rest of the UK government and other administrations.'

### **Welsh Government response**

As all respondents were in favour of introducing an Improvement Notice regime for nutrition and health claims as a more proportionate and effective enforcement

regime, the Welsh Government intends to bring forward regulations to introduce Improvement Notices to the enforcement regime.

There were some minor concerns raised by respondents. For example, that businesses will see the introduction of Improvement Notices as a first step in enforcement measures as a relaxation of the regulation around nutrition and health claims. To combat this, Welsh Government intends to work alongside enforcement bodies to ensure that businesses receive clear messaging around the introduction of improvement notices and the consequences for businesses should they continually contravene Food Standards regulations. It was also noted that there is the possibility of businesses being served multiple notices for one product if there are several claims being made. Guidance on such circumstances will be produced by Welsh Government to accompany this change in legislation.

Some respondents noted further concerns that are out of scope for the proposal set out in this consultation so these have not been addressed in this consultation response. Overall, the responses to this consultation mean that we do not deem it necessary to make any significant changes to the policy proposals and we intend to proceed to make the legislation as set out in the preceding sections of this response.

## **Next Steps**

Following the publication of this consultation response, the Welsh Government will legislate to reform the enforcement procedure for the regulation of nutrition and health claims in Wales by introducing an improvement notices regime.

We will provide guidance relating to legislative changes to businesses via a Nutrition Legislation Information Sheet published.

## **Legislative Changes**

The power to make NLCS legislation is devolved to the Welsh Government. This is set out in the Government of Wales Acts 1998.

To introduce Improvement Notices in Wales, the Welsh Government intend to use powers in the Food Safety Act 1990 to make amending regulations to amend the Nutrition and Health Claims (Wales) Regulations 2007 to enable improvement notices to be issued for non compliance with nutrition and health claims legislation as an alternative to criminal prosecution (and make related provision). The Welsh Government will provide three months' notice between legislating and implementation. The Welsh government's intention is to lay a Statutory Instrument in 2024, to come into force in October 2024 in line with Common Commencement Dates.