



Llywodraeth Cymru
Welsh Government

OPEN CONSULTATION

Introduction of improvement notice for nutrition and health claims

We want your views on proposals to introduce a new formal enforcement notice for nutrition and health claims.

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Overview

Consultation process

This consultation will last for 8 weeks launching on 20/9/23 until 15/11/23 to provide interested parties with the opportunity to comment on the proposed approach. Any responses received as part of this consultation will be given careful consideration and a summary of the responses received will be published on the Welsh Government website within three months following the end of the consultation period.

Who will this consultation be of most interest to?

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. This consultation will also be of interest to 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.

What is the subject of this consultation?

The UK Government are currently consulting on proposed legislative reforms to legislation relating to Nutrition and Health Claims on food (Nutrition and health claims on food: proposed legislative reforms - GOV.UK (www.gov.uk)). There are 2 proposals being consulted on: 1 revoking redundant tertiary legislation regarding decisions to authorise or reject a nutrition or health claim; and 2 reforming the enforcement of health and nutrition claims regime in England by

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introducing an Improvement Notice regime as a potential first enforcement step. Proposal 1 on revocation would, if taken forward, be implemented via a Great Britain-wide statutory instrument (SI) made by the Secretary of State which would be subject to the consent of ministers in Scotland and Wales.

Proposal 2 in relation to enforcement reform only relates to England. There is an equivalent enforcement regime in relation to nutrition and health claims in place in Wales. The regime is set out in regulations made by the Welsh Minister in pursuance of their powers under [the Food Safety Act 1990](#). Therefore, any change to those regulations would need to be made by the Welsh Ministers. As such a separate consultation for Wales on any reform to improvement notices would need to be undertaken.

The Welsh Government is therefore launching a separate consultation to seek views on proposals to introduce a new formal enforcement notice: an improvement notice (IN) for nutrition and health claims in Wales. The introduction of the IN will provide LAs with a formal enforcement notice that can be used to deal with breaches in Food Standards (food information, composition standards, novel foods and food for specific groups). The new IN regime will be implemented through a Statutory Instrument (SI) amending the Nutrition and Health Claims (Wales) Regulations 2007.

What is the purpose of this consultation?

To seek the views of food businesses, enforcement authorities, consumers and other stakeholders on the proposed introduction of a new improvement notice. 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.

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Background

Reforming nutrition and health claims legislation

Retained **Regulation (EC) No 1924/2006** (as amended by the Nutrition (Amendment etc) (EU Exit) Regulations 2019) on nutrition and health claims made on foods sets out the legal framework for making claims about the nutrition and health benefits of a food on food labelling, presentation and product specific advertising in a commercial context. Businesses may want to highlight the properties of their products and consumers can benefit from nutritional information, but it is important that nutrition and health claims used are accurate, and consumers are not misled.

A 'nutrition claim' means any claim which states, suggests or implies that a food has particular beneficial nutritional properties due to the presence, absence, increased or reduced levels of energy or of a particular nutrient or other substance, and includes claims such as 'source of calcium', 'low fat', 'high fibre' and 'reduced salt'.

“ A 'health claim' means any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health - for example, “calcium helps maintain normal bones” and “vitamin C contributes to the normal function of the immune system.” ”

Retained Regulation (EC) No 1924/2006 also provides for the use of certain 'generic descriptors' to be exempt from its requirements. These are statements or descriptions which have traditionally been used to indicate a particular class of foods or beverages, but which could imply an effect on human health. For example, 'tonic' water is a non-alcoholic carbonated beverage flavoured with the bittering agent quinine, and not a 'tonic' for your health. If these terms were not

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authorised as 'generic descriptors' they would have to comply with the general requirements of the regulation.

Nutrition and health claims are required to be based on scientific evidence and may only be used if they have first been approved by a UK appropriate authority following relevant risk assessment and risk management. This is necessary to safeguard the public health needs of consumers and ensuring that they are not misled by marketing statements that make foods appear healthier or more nutritionally beneficial than they are.

At the end of the EU exit transition period all authorised nutrition and health claims listed either in the annex of Regulation 432/2012 (which provides the list for health claims (other than those referring to the reduction of disease risk and to children's development and health)) or the annex of Regulation 1924/2006 (which provides the list of nutrition claims (summarised in the EU Community Register)) were adopted in England, Scotland and Wales and retained and, to assist stakeholders, were included in the [Great Britain nutrition and health claims \(NHC\) register](#).

The European Commission (EC) made Commission Regulations to approve or reject individual health claims and amended the annex to Regulation 432/2012 as appropriate. This tertiary legislation was retained on EU exit.

'On hold' claims are those which may be used while they are still under consideration, subject to the transition measures in Article (28)(5) of the nutrition and health claims Regulation (EC) 1924/2006. [See the full list of 'on hold claims' referenced by the 2014 Bulletin](#).

It remains the intention of the Welsh government together with the UK and the devolved administration in Scotland to minimise disruption to business. Therefore as 'on hold' claims are still under consideration in Wales, England and Scotland, they may continue to be used in accordance with the 2014 Bulletin until a decision is made.

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It is a criminal offence to use an unauthorised nutrition or health claim i.e., one that is not included in the legislation.

In the UK, compliance with food standards is enforced by local authorities, which will usually be the Trading Standards or environmental health department of the Local Authority.

Enforcement authorities carry out inspections of products to check that they meet all relevant labelling and marketing standards set out in legislation.

Members of the public can contact an enforcement authority to report if they believe that the way a product is labelled or marketed does not meet regulatory standards.

In most cases, the enforcement authority that is local to the product manufacturer's head office or importer will follow-up individual cases.

Currently in Wales, the regulations enable the requirements of retained Regulation 1924/2006 to be enforced only by means of a criminal prosecution (fine or imprisonment). However, the current enforcement procedure does not align with other food labelling enforcement, which is less bureaucratic, more proportionate, and largely welcomed by businesses and enforcement agencies alike.

For example, the **Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016** and the Food Safety Act 1990 regulations which make provision for enforcement officers to serve improvement notices as an earlier step to build compliance in respect of food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control.

In those instances, where there is failure to comply with an improvement notice, enforcement authorities may move to prosecution for that failure.

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Proposed way forward for Wales

We propose using powers contained within sections 16(1)(e) and (f), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990 to amend the **Nutrition and Health Claims (Wales) Regulations 2007** to introduce an improvement notice regime where there is a breach of the various requirements with which nutrition and health claims must comply under these Regulations and Regulation 1924/2006. The introduction of improvement notices in Wales would provide an additional early step for enforcement authorities in Wales to specify measures to be taken by a business to secure compliance with those requirements.

The ability for a prosecution to be brought where that was considered to be the correct course of action would remain. By means of the introduction of Improvement Notices, enforcement authorities would be able to act more quickly to deal with non-compliance and businesses would be able to respond faster to ensure compliance, whilst potentially avoiding costly and burdensome court proceedings for both parties.

Existing guidance will be updated for industry to understand how the reformed enforcement process will work with expected timescales for implementation. It is proposed that no new burdens for businesses would be created. We propose that the changes would come into force three months from when the SI is made to enable industry and trading standards to prepare.

Benefits

NLCS REUL protects some of the most vulnerable people in society, including babies, infants and people who have specific nutritional needs for health reasons. As well as ensuring that accurate nutritional information is provided to consumers, NLCS legislation ensures robust compositional standards to help

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maintain high standards of quality and safety. This helps consumers to make informed choices about their diet and have trust in the food they consume.

In assimilating the majority of the NLCS REUL, while reforming nutrition and health claims enforcement, we believe that we will achieve the right balance between safeguarding the public health needs of consumers and the burden on industry through robust and proportionate regulation.

Business and Regulatory Impact Assessment

These changes will affect manufacturers, importers and retailers of food products which make nutrition or health claims. Businesses such as manufacturers and importers of food products which make nutrition or health claims will be particularly interested in our plans on nutrition and health claims legislation. We assume that these businesses will have an acute interest in our approach to amending the regulatory frameworks that govern enforcement of their practices.

These legislative reforms will also affect enforcement authorities which are responsible for enforcing the legislation in this area but may also be of interest to relevant third sector organisations and individuals.

Our assessment of the impact for businesses and Trading Standards to deliver the reforms at this stage is that a familiarisation cost is the only cost impact of these policy reforms on business and enforcement authorities, as well as a cost to Welsh Government to communicate the changes.

We estimate due to the limited extent of the proposed reforms that businesses and enforcement authorities will only have to spend a short amount of time familiarising themselves with the new procedures which strengthen current existing legislation, particularly as improvement notices are already in use to

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enforce wider food labelling regulations.

We estimate that familiarisation this is the only cost impact of these policy reforms on business and enforcement authorities. That is, the total wage costs on a per-business/ per local authority basis of an employee and a manager or director within the company taking the necessary time to understand the changes and how they will affect business and the enforcement regime. These costs are direct costs and are assumed to be a one-off and the full amount is incurred immediately.

As these proposals either maintain existing standards or streamline enforcement processes, it is proposed that no new burdens for businesses would be created and that Nutrition and Health Claims Improvement Notices will come into force in Wales at the same time as in England, which is planned to be three months after the legislation has been made. This is expected to be in Spring 2024.

We will summarise all comments received and the official response to each will be published on the Welsh Government website within three months following the end of the consultation period.

How to respond

Submit your comments by 20 September 2023, in any of the following ways:

- email
- post
- online form

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Further information and related documents

WG 48538

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

Contact details

For further information:

Healthy and Active Branch
Welsh Government
Cardiff
CF10 3NQ

Email: HealthyWeightHealthyWales@gov.wales

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for Welsh Government consultations and for any personal data you provide as part of your response to the consultation.

Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. The lawful basis for processing information in this

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data collection exercise is our public task; that is, exercising our official authority to undertake the core role and functions of the Welsh Government. (Art 6(1)(e))

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. In the case of joint consultations this may also include other public authorities. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation and that the Welsh Government may be under a legal obligation to disclose some information.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

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- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
e-mail: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel: 01625 545 745 or 0303 123 1113

Questions

To respond to this consultation [go to the online form or use the Word version](#).

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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.

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?

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.

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

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

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

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?

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.

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.

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