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Huw Irranca-Davies MS,
Chair, Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
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20 December 2022

Dear Huw

Thank you for your letter dated 7 December.

If I take each of your points in turn:

Please can you explain why you believe separate Wales only, bilingual regulations, made in parallel with the UK Government, would lead to "unnecessary complication of the statute book"?

I considered options for taking forward the proposed amending regulations which includes the option for Welsh Government to draft its own Statutory Instrument (SI) which addresses all amendments. However, to ensure alignment and enforcement with the rest of GB and EU, on this occasion it was felt necessary to progress on this basis. This proposed SI makes minor amendments to existing regulations rather than creating any new policy.

Consent to the GBSI has not precluded the Welsh Ministers from taking a different approach upon receipt of any such future request, should it be considered that an alternative approach is warranted and/or preferable.

Please can you confirm that the Regulations are a Great Britain-wide (GB-wide) statutory instrument and that they are intended, from your perspective, to form part of a single GB legislative framework rather than a Welsh or, as your letter suggests, a UK framework?

This GBSI makes minor amendments and forms part of a single GB legislative framework. This is consistent with the approach taken in respect of previous legislative amendments in this area. However, amendments are also required through the Baby Food Regulations in Wales by Welsh Ministers, via Welsh legislation.

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Is all legislation in this policy area GB-wide or do divergences exist?

Not all legislation in this area is done on a GB basis as some regulatory making powers have been transferred to Welsh Ministers. In those cases, Welsh Ministers would make Wales specific amendment regulations.

Your letter refers to amendments being made. Please can you provide more specific detail about each of these amendments (as the terms "update" and "standardise" are relatively vague)?

These amendments will correct errors: updating the units of measure for the labelling of zinc in food supplements, and a previously missed amendment to add zinc chloride and ferrous bisglycinate as permitted sources of vitamins and minerals for use in processed based baby foods (baby foods) (the latter being applicable only to England in these Regulations as separate Welsh only Regulations will make the equivalent changes for Wales); to use different sources for certain vitamins and minerals to be added to food supplements, baby foods and infant formula and follow-on formula (IFFOF) and for consistency in labelling between food supplements and other types of food containing copper. The definition of pesticide residue will be updated from the terminology used in Regulation (EC) No 1107/2009 (concerning the placing of plant protection products on the market) to a more precise definition of residues taken from Regulation (EC) No 396/2005 (on maximum residue levels of pesticides in or on food and feed of plant and animal origin), providing more clarity and consistency with the definition which is used in the legislation for general food.

What is the rationale for making the amendments set out in the Regulations? For example, are they for the purpose of keeping pace with changes to EU legislation, or do they reflect developments in the scientific evidence?

The purpose of these amendments is to ensure continued alignment with GB and EU on these matters.

What is your view on whether these Regulations will lead to divergence with EU standards for similar products?

The EU has made legislation to make the same amendments which are already applicable in corresponding nutrition regulations across the EU.

What is your view on whether the Regulations improve pre-Brexit food standards?

These amendments are technical in nature and correct errors only, which aims to protect specific vulnerable groups of consumers by regulating the content and marketing of food products specifically created for and marketed to them, which align with the EU on these matters.

Can you confirm if these regulations were considered through the relevant Common Framework or Frameworks and, if so, which ones?

Yes, the joint approach was discussed as part of the Nutrition Related Labelling, Composition and Standards Working Group (NLCS). On the 9th March 2021 the European Commission amended Annex II of Directive 2002/46/EC to allow magnesium citrate malate to be a form of magnesium chloride and nicotinamide riboside chloride as a form of niacin used in the manufacture of food supplements. Following this legislative change in the EU and NLCS policy group considered the amends and following a risk assessment and risk

management processes set out in the NLCS framework (including scientific assessment), received GB ministerial consent to authorise nicotinamide riboside chloride as a form of niacin and magnesium citrate malate as a form of magnesium which can be used in food supplements.

What action are you taking to promote accessibility of this legislation to those affected by it, including Welsh-speaking citizens given that the Regulations are in English only?

Regulations are aimed at business and manufacturing of products and are technical in nature, however specific engagement will be undertaken with relevant stakeholders and bilingual information provided on the Welsh Government website.

Can you confirm what consultation has been undertaken with Welsh stakeholders on these Regulations?

The UK Government's Department of Health and Social Care in conjunction with Devolved Administrations launched a three-week UK wide consultation, inviting comments from the food and nutrition industry, representative groups, the public and other interested parties across the UK on the proposed approach.

How will this legislation be affected in the future should the UK Government's Retained EU Law (Revocation and Reform) Bill become law, particularly if there is any policy divergence between the Welsh and UK Governments?

We are in early discussion with UKG, Scotland and Northern Ireland about the implications of this Bill but we are not aware of any plans for policy divergence.

When agreeing to GB-wide regulations, what discussions did you have about the impact of the Retained EU Law (Revocation and Reform) Bill (the REUL Bill) and what was the outcome?

This was not considered as part of this amending SI. However, The NLCS policy group are currently considering how best to discuss the future of the REUL and NIP bill work and whether this should be through the existing group or a separate sub-group with the appropriate colleagues.

Given that retained direct EU legislation is subject to the sunset in the Retained EU Law (Revocation and Reform) Bill, did you consider making separate Welsh legislation outside the framework of REUL?

Making separate Welsh legislation outside the framework was not considered. However, we will be working with the UK Government to ensure that the retained direct EU legislation in this area is not allowed to sunset but is preserved or "assimilated" under the Bill.

Does the Welsh Government intend to revisit these Regulations if the REUL Bill becomes law?

No. We have no plans to revisit these regulations.

Yours sincerely,

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