

**Explanatory Memorandum to The Nutrition and Health Claims (Wales)
(Amendment) Regulations 2024**

This Explanatory Memorandum has been prepared by the Healthy and Active Team within the Health Improvement, Prevention, and Inequalities Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Nutrition and Health Claims (Wales) (Amendment) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Sarah Murphy MS
Minister for Mental Health and Wellbeing

18 October 2024

EXPLANATORY MEMORANDUM

1. Description

- 1.1 These Regulations amend the Nutrition and Health Claims (Wales) Regulations 2007 (“the 2007 Regulations”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3. Legislative background

- 3.1 Nutrition, Labelling, Composition and Standards Retained EU Law consists of a number of retained EU Regulations and their associated Commission Implementing Regulations. In addition, there are several domestic Statutory Instruments that implement EU Directives; and around 65 Commission Regulations related to health claim authorisations and domestic SI's in each nation that enforce the respective regulations.
- 3.2 Regulation 1924/2006 provides that it is a criminal offence in Wales to use an unauthorised nutrition or health claim i.e., one that is not included in the legislation. The 2007 Regulations enable the requirements of retained Regulation 1924/2006 to be enforced by means of criminal sanctions (fine or imprisonment).
- 3.3 These Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1 The purpose of these Regulations is to align the enforcement regime for health and nutrition claims with other Nutrition, Labelling and Composition regimes by introducing an Improvement Notice regime as a potential first enforcement step rather than limiting enforcement to a criminal sanction as is currently the case. The Welsh Ministers have powers under sections 16(1)(f), 17(2), 26(1)(a), 2(e) and (3) and 48(1) of the Food Safety Act 1990 to make the necessary amendments to the 2007 Regulations to reflect these changes. The powers are being used to amend the 2007 Regulations to introduce an improvement notice regime that aligns with that being proposed in England.

5. Consultation

- 5.1 Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, requires 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.
- 5.2 The Welsh Government launched an 8 week consulting running from 20 September to 15 November 2023 to provide interested parties with the opportunity to comment on the proposed approach. [Introduction of improvement notice for nutrition and health claims \[HTML\] | GOV.WALES](#)
- 5.3 In January 2024, the Welsh Government published its response to the consultation. [Introduction of improvement notice for nutrition and health claims | GOV.WALES](#)

6. Regulatory Impact Assessment

- 6.1 A Business and Regulatory Impact Assessment was published as part of the consultation and an updated RIA forms part of this explanatory memorandum.

REGULATORY IMPACT ASSESSMENT

Regulatory Impact Assessment (RIA) summary

Table A

The following table presents a summary of the costs and benefits for the preferred proposal as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).

<i>Nutrition and Health Claims (Wales) Regulation 2007 Proposed Amendment</i>		
Preferred option: Amendment of Regulations to introduce improvement notices		
Stage: Draft - Consultation	Appraisal period: 2024/25 - 2034/35	Price base year: 2024/25
Total Cost Total: £0.08m Present value: £0.078m	Total Benefits Total: £0m Present value: £0m	Net Present Value (NPV): -£0.078m

Administrative cost

<p>Costs: Local authority trading standards departments across Wales will need to become familiar with the change in regulation and to develop systems and processes associated with issuing improvement notices and checking compliance with them. We assume a transitional cost of £7k based 8 hours per local authority at £40 per hour but no change to recurrent costs across the 22 local authorities. We also assume food and drink businesses will spend time familiarising themselves with the legislation with one R&D manager explaining the changes to two corporate managers/directors. This equates to 2.1-3 hours of an R&D manager's time and 2 hours in total of corporate managers/director's time per business. Taking 6% of the costs estimated for England in its impact assessment (Wales is typically 5-6% of England) gives a lower estimate of £49k and an upper estimate of £112k with a central estimate of £71k. The total familiarisation costs (public and private) are therefore £78k (£7k+£71k).</p>			
Transitional: £78k	Recurrent: £0k	Total: £78k	PV: £78k

Cost-savings: There may be cost savings to businesses as improvement notices offer a lower cost compliance route than prosecution. However these have not been quantified.

Transitional: £0k	Recurrent: £0k	Total: £0k	PV: £0k
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Net administrative cost: PV £5k

Compliance costs

No additional compliance costs are anticipated as the thrust of the legislation is the same.

Transitional: £0k	Recurrent: £0k	Total: £0k	PV: £0k
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Other costs

No

Transitional: £0k	Recurrent: £0k	Total: £0k	PV:£0k
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Unquantified costs and disbenefits

None

Benefits

Businesses are likely to face less bureaucracy and lower costs as improvement notices can be issued instead of proceeding straight to prosecution. Local authorities may be more willing to issue improvement notices, so the overall level of enforcement activity may rise. However, this is a proportionate use of legislation that will help businesses to stay legal and protect consumers from incorrect claims. Changes to the number of enforcements and resulting costs or benefits to business have not been quantified.

Total: [Click here to enter text.](#)

PV: [Click here to enter text.](#)

Key evidence, assumptions and uncertainties

The main assumptions relate to local authorities becoming familiar with the change to the legislation. We assume that businesses will become familiar through on-going CPD or enforcement action. This has not been investigated in detail.

7. Options

Option 1: Do Nothing

The Nutrition and Health Claims Regulations were brought into being in 2007 following EC Regulation 1924/2006. They aim to regulate nutrition and health claims made about food. Shoppers and consumers should have confidence that any claims made by manufacturers or retailers about ingredients or food sold should be based on sound evidence. Spurious marketing claims related to health should be avoided. The 2007 Regulations aimed to ensure nutrition and health claims were accurate and that any claims made were supported by scientific evidence.

In the event of non-compliance, the 2007 Regulations made clear that this is a criminal offence liable to prosecution. This prosecution would be taken forward by

local authorities under their food and trading standards remit. Whilst local authorities might be reluctant to move straight to prosecution, the Regulations provided no alternative method of enforcement.

It is considered that a more proportionate way of ensuring compliance would be for local authorities to issue initially an improvement notice rather than having to proceed straight to prosecution. Improvement notices are a recognised tool that already exist in other areas of nutrition law. There is an opportunity to harmonise the Nutrition and Health Claims to include for improvement notices.

In doing nothing, there is no opportunity to provide another mechanism for dealing with non-compliance before moving to prosecution. Local authorities may be reluctant to proceed directly to prosecution so incorrect claims may be made by businesses that are left unchallenged for longer than if improvement notices were an option.

Option 2: Amendment of Regulations to introduce improvement notices

This option aims to amend the Regulation to include a provision for improvement notices as a step before moving to formal prosecution. This has already been done in England. It will harmonise English and Welsh regulation in this space which will be of benefit to businesses operating in both jurisdictions.

Alternative Options Considered

No other options were considered.

8. Costs and benefits

8.1 Costs Summary

The primary costs are administrative amongst local authorities and food & drink businesses who will have to become familiar with the change to the regulation as well as updating their systems and processes to issue improvement notices. To estimate these transitional costs, we assume 8 hours of time per local authority (22 local authorities in Wales) in transition multiplied by the uprated hourly wage of £40.01 for Trading Standards Office (TSO). This gives a cost for 8 hours work of £320 and £7041 across all 22 local authorities in Wales. For businesses, we rely on the estimates calculated in the English impact assessment which assumes one R&D manager explaining the changes to two corporate managers/directors. This equates to 2-3 hours of an R&D manager's time and 2 hours in total of corporate managers/director's time per business. Taking 6% of the costs estimated for England in its impact assessment (Wales is typically 5-6% of England) gives a lower estimate of £49k and an upper estimate of £112k with a central estimate of £71k. The total familiarisation costs (public and private) are therefore £78k.

We do not anticipate any other costs for food businesses who still have to comply with the Regulation.

8.2 Benefits Summary

The benefits have not been quantified. However, local authorities are likely to welcome the fact that they will have a new tool available to them in the form of improvement notices. This allows a more co-operative and collaborative approach to improvement with industry rather than the adversarial method of moving directly to prosecution with its associated costs.

Businesses may also welcome the opportunity to respond to improvement notices rather than the costs and stress of prosecution. Alignment of regulation between Wales and England will also be welcomed by businesses operating in both jurisdictions. Any reduction in business costs as a result of fewer prosecutions or threatened prosecutions has not been quantified.

In terms of overall compliance, there is still the opportunity to move to prosecution if improvement notices have been ignored. This means that determined offenders will still be dealt with by the legislation. On this basis, it is not anticipated that there will be any reduction in compliance as a result of the change.

9. Impact Assessments

Option 1: Business as Usual

Option 2: Amendment of Regulations to introduce improvement notices

Table 1: Summary of costs and benefits – Option 2 (£m)

Group affected	Impact	PV
Local Authorities	Transition - Familiarisation	-0.007
	On-going Admin Costs	
	Lost Profit	
Businesses	Transition - Familiarisation	-0.071
	On-going Admin Costs	
	Lost Profit	
Total public and private sector Impact		-0.078
NPV		-0.078

10. Post implementation review

A post implementation review should take place in 2027.