

Government Response: The Nutrition and Health Claims (Wales) (Amendment) Regulations 2024

Technical Scrutiny point 1: The Welsh Government notes the point made however, whilst the full title has not been cited, it is clear that the reference is to Regulation (EC) No. 178/2002.

Technical Scrutiny point 2: The Welsh Government agrees that the term “specified provision of the Regulation” in the modified text of the 1990 Act has not been given a meaning. We are investigating with the SI Registrar the possibility of making the change by correction slip.

Technical Scrutiny point 3: The Welsh Government agree that the location of the modification to the 1990 Act is not correctly described and the numbering of “(1B)” should instead refer to “(1A)”. We are investigating with the SI Registrar the possibility of making the change by correction slip.

Technical Scrutiny point 4: The Welsh Government agrees that the reference to the sheriff in section 37(4) of the 1990 Act is unnecessary, however, in context, section 37(4) has no legal effect in relation to Wales.

Technical Scrutiny point 5: The Welsh Government agrees that section 37(2) of the 1990 Act should no longer refer to subsection 1(c), however, in context, section 37(2) does not have legal effect in relation to Wales as 37(1), as amended, only concerns improvement notices and not licences which do not have a mechanism to appeal to a tribunal.

Technical Scrutiny point 6: The Welsh Government agrees that the modification to section 37(1) inserted by paragraph 5 of the new Schedule in relation to “unauthorised” is incorrect and should instead be “authorised”. We are investigating with the SI Registrar the possibility of making the change by correction slip.

Merit Scrutiny point 7: The Welsh Government notes the point and will ensure that the Explanatory Memorandum is withdrawn, and a corrected version laid.

Merit Scrutiny point 8:

The Welsh Government notes the response and advises that the purpose of the 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 ability for a prosecution to be brought where that was considered to be the correct course of action remains in the amended Regulations. For minor cases of non-compliance, however, the criminal route may not be considered appropriate or proportionate. The introduction of improvement notices provide enforcement officers with an additional early enforcement step which may allow them to address minor breaches more quickly and cost-effectively.

The Regulations have been accompanied by clear guidance for enforcement bodies to ensure consistent and appropriate usage of improvement notices.