

# **SL(6)538 – The Nutrition and Health Claims (Wales) (Amendment) Regulations 2024**

## **Background and Purpose**

The Nutrition and Health Claims (Wales) Regulations 2007 (“the 2007 Regulations”) provide for the execution and enforcement of specified provisions of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (“Regulation 1924/2006”). Regulation 1924/2006 is assimilated direct legislation.

Regulation 1924/2006 regulates the use of nutrition and health claims in the labelling, presentation or advertising of food. The 2007 Regulations provide that it is a criminal offence to contravene the specified provisions of Regulation 1924/2006. The 2007 Regulations also apply various provisions of the Food Safety Act 1990 (“the 1990 Act”) for the purposes of the 2007 Regulations.

The Nutrition and Health Claims (Wales) (Amendment) Regulations 2024 (“the Regulations”) amend the 2007 Regulations to make changes to the enforcement regime. This includes the application of modified provisions of the 1990 Act to the Regulations, in particular to introduce an improvement notice regime alongside the existing criminal sanctions.

## **Procedure**

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

## **Technical Scrutiny**

The following six points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

The preamble to the Regulations cites article 9 of “*the Regulation of the European Parliament and of the Council of 28 January 2002 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*”. This Regulation should be cited as “**Regulation (EC) No 178/2002** of the European Parliament and of the Council of 28 January 2002...” (emphasis added).



The Welsh Government is asked to explain why the full title was not cited and why identifying information has instead been included in the footnote, which is not an operative part of the instrument.

**2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Regulation 2(2) inserts a definition of the term “specified provision of the Regulation” into regulation 2(1) of the 2007 Regulations. Existing regulation 2(1) of the 2007 Regulations also contains a definition of the term “the Regulation”.

The terms are also used in paragraphs 1 and 2 of the Schedule, inserted into the 2007 Regulations by regulation 2(6), which modify provisions of the 1990 Act. However the terms have not been given a meaning in the modified text of the 1990 Act.

The Welsh Government is asked to explain why these terms have not been inserted as new definitions in the modified text of the 1990 Act.

**3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Regulation 2(6) inserts a new Schedule into the 2007 Regulations modifying provisions of the 1990 Act. Paragraph 3 of the Schedule requires that section 35 be read as if a new subsection (1B) were inserted “after subsection (1A)”. However there is no subsection (1A) in section 35 of the 1990 Act as it applies in relation to Wales. There is a subsection (1A) in section 35 of the 1990 Act as it applies in relation to Scotland.

As such it appears that the location of the modification is not correctly described and the numbering of “(1B)” is incorrect.

**4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Paragraph 4 of the Schedule inserted by regulation 2(6) provides that the heading to section 37 of the 1990 Act is to be read as if the words “or sheriff” were omitted. Paragraphs 5 to 7 then modify the text of subsections (1), (5) and (6) of section 37 to, among other things, remove references to the sheriff. However subsection (4) of section 37 also contains reference to the sheriff which has not been omitted or modified.

The Welsh Government is asked to explain why the reference to the sheriff in section 37(4) of the 1990 Act has not been modified.

**5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.**

Paragraph 5 of the Schedule inserted by regulation 2(6) modifies subsection (1) of section 37 of the 1990 Act. The effect of that modification is that there are no longer three paragraphs



within that subsection. However subsection (2) of section 37 contains reference to “subsection (1)(c)” and has not been modified.

The Welsh Government is asked why reference to subsection (1)(c) remains in section 37(2).

**6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.**

Paragraph 5 of the new Schedule inserted by regulation 2(6) modifies section 37(1) of the 1990 Act so that any person who is person aggrieved by a decision of “an unauthorised officer of an enforcement authority” to serve an improvement notice may appeal to the magistrates’ court. This modification does not appear to have any effect because an improvement notice is served by an “**authorised** officer” of an enforcement authority (emphasis added).

## Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

**7. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

Paragraph 3.1 of the Explanatory Memorandum makes reference to “Retained EU Law” and “retained EU Regulations”. From 1 January 2024 such legislation should be referred to as “assimilated law” in accordance with section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

**8. Standing Order 21.2(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.**

The Explanatory Memorandum suggests that local authorities may see enforcement notices as a better option for enforcement of the standards than the current criminal route, which may be complex and costly. In light of this, the Welsh Government is asked:

- a) Whether it has considered the risk that local authorities will choose, on the basis of cost, to pursue the improvement notice route even where the criminal route may be more appropriate, and
- b) Whether this creates any risk that the Regulations could amount to a rowing back on the enforcement of the standards set out in Regulation 1924/2006?

## Welsh Government response

A Welsh Government response is required to the technical reporting points and second merits reporting point.



## Committee Consideration

The Committee considered the instrument at its meeting on 11 November 2024 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**