

Provisional common framework: Nutrition labelling, composition and standards

September 2022



The Welsh Parliament is the democratically elected body that represents the interests of Wales and its people. Commonly known as the Senedd, it makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this document can be found on the Senedd's website:
research.senedd.wales

Copies of this document can also be obtained in accessible formats including Braille, large print, audio or hard copy from:

Welsh Parliament
Tŷ Hywel
Cardiff Bay
CF99 1SN

Tel: **0300 200 7571**

Email: Lucy.Valsamidis@senedd.wales

Twitter: [@SeneddResearch](https://twitter.com/SeneddResearch)

Senedd Research: research.senedd.wales

Subscription: [Real time updates](#) | [Weekly and monthly updates](#)

© **Senedd Commission Copyright 2022**

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the Senedd Commission and the title of the document specified.

Provisional common framework: Nutrition labelling, composition and standards

September 2022

Author:

Lucy Valsamidis and Sara Moran



The UK and devolved governments published the **provisional common framework on nutrition labelling, composition and standards** in October 2020.

Common frameworks are agreements between the UK and devolved governments on how to work together and manage divergence in areas previously governed at EU level.

The governments are publishing common frameworks in provisional form for scrutiny. The Fifth Senedd's **External Affairs and Additional Legislation Committee carried out scrutiny** of the provisional common framework on nutrition labelling, composition and standards in early 2021.

Once all parliaments have completed scrutiny, the governments intend to respond to recommendations and agree a final version of the common framework.

This briefing provides an overview of the provisional framework.

Contents

1. Background	2
Legislation.....	2
International obligations.....	4
2. The common framework	6
3. Principles.....	7
Common frameworks principles.....	7
Nutrition labelling, composition and standards principles	7
4. Managing divergence	8
Making decisions.....	8
Managing the impact of the UK Internal Market Act.....	9
Managing the impact of the Northern Ireland Protocol	9
5. Resolving disputes	10
6. Managing international obligations	11
UK-EU obligations	11
International obligations.....	11

7. Monitoring, review and amendment12

8. Transparency and accountability.....13

Summary

As an EU Member State, the UK followed EU law on nutrition labelling, composition and standards. EU law requires pre-packaged food sold in the EU to have a nutrition declaration setting out information about its energy and nutrient content. It also sets harmonised rules on the authorisation of nutrition and health claims; the addition of vitamins, minerals, and certain other substances to foods; the composition and labelling of food supplements; and the composition and labelling of food intended for infants and young children.

Now that the transition period has ended, EU law on nutrition labelling, composition and standards has been retained in domestic law and functions have been transferred from EU institutions to domestic authorities. The UK, Scottish and Welsh governments can diverge from retained EU law. Under the Northern Ireland Protocol, EU law on nutrition labelling, composition and standards continues to apply in Northern Ireland .

The common framework sets out how the UK and devolved governments will work together and make joint decisions in this new context. The governments will jointly work to maintain harmonisation or agree to divergence in approving applications for new nutrition and health claims; modifying relevant registers and lists; and making policy proposals within the scope of the framework.

The governments will seek to agree whether to take the same approach to law and policy or diverge. If the governments do not agree on whether to take the same approach or diverge, a dispute may be raised.

Part of the purpose of the framework is ensuring the functioning of the UK internal market. Shortly after the framework was published, the UK Parliament passed the UK Internal Market Act 2020. Under the Act, goods permitted or imported into one part of the UK can generally be sold in any other part of the UK. This could limit the practical effect of changes to Welsh law on nutrition labelling, composition and standards. The governments have now agreed a process for considering exclusions from the Act in common framework areas.

The framework recognises that the devolved governments are responsible for implementing international obligations in devolved areas of competence. However, it gives limited consideration to how the governments will work together on international obligations. Since the framework was published, the UK and EU have agreed the Trade and Cooperation Agreement which sets the terms for their

new relationship. The governments have also now agreed standard wording on international obligations, UK-EU relations and the Northern Ireland Protocol for common frameworks.

The framework does not require the governments to update parliaments and stakeholders on how it is working, or to involve parliaments and stakeholders in review and amendment. The UK and devolved governments have agreed in principle to report regularly to parliaments on common frameworks. The Welsh Government has also agreed unilaterally to report to the Senedd on common frameworks and to consult the Senedd and stakeholders during review and amendment.

1. Background

Legislation

Retained EU law

EU law on nutrition has been retained in domestic law following the end of the Brexit transition period. Appendix II of the framework document sets out the legislation in scope of the framework.

EU Regulation No 1169/2011 requires pre-packaged food sold in the EU to have a nutrition declaration setting out information about its energy and nutrient content. Further legislation sets out additional requirements:

- **Regulation (EC) No 1924/2006** sets out a framework for businesses to make **nutrition and health claims** about their products, and enables the such claims to be approved following scientific assessment;
- **Regulation (EC) No 1925/2006** sets out which **vitamins, minerals and certain other substances** may be added to foods; sets out how new substances can be assessed and approved; and outlines compositional and labelling requirements for foods that have substances added to them;
- **Regulation (EU) No 609/2013** sets out general compositional and information requirements for **food for specific groups**; provides for EU tertiary legislation to set out specific requirements; and establishes a list of substances that may be added to those foods;
- **Directive 2002/46/EC** sets out rules for vitamins and minerals used in food supplements and sets out lists of permitted vitamins and minerals.

The framework states that there will be crossover with “other policy areas designed to protect public health”, including the common frameworks for food compositional standards and labelling and for food and seed safety and hygiene.

Transfer of functions to domestic authorities

The **Nutrition (Amendment etc) (EU Exit) Regulations 2019** (‘the 2019 regulations’) make corrections to EU law on nutrition labelling, composition and standards to allow it to work in a UK context after the end of the Brexit transition period.

As part of this, they transfer responsibility for functions such as the authorisation of nutrition and health claims from EU institutions to domestic bodies.

The 2019 regulations provide that the appropriate authority for applications is the Welsh Ministers, or the Secretary of State with the consent of the Welsh Ministers.

They provide that when a business makes an application for a nutrition or health claim in one part of the UK or Great Britain (GB), the authority in that part of the UK should make a decision on that application after consulting authorities in other parts of the UK.

When a business makes an application for a nutrition or health claim to be approved across the UK, all authorities must consult each other before the claim is approved.

Ministers are required to take scientific advice into account when making certain decisions. The 2019 regulations transfer scientific advisory functions conducted by the European Food Safety Authority to an appropriate UK expert committee.

The regulations do not provide a statutory basis for the new expert committee to be established or provide for roles for the UK or devolved governments in its operation and oversight.

In October 2020, Public Health England announced the appointment of eight members to the new **UK Nutrition and Health Claims Committee** (UKNHCC), which advises on scientific evidence underpinning nutrition and health claim applications. The Committee’s Secretariat sits in the Office of Health Improvement and Disparities (OHID) at the UK Government’s Department of Health and Social Care. The eight members of the Committee are based at institutions in England, Scotland, Northern Ireland, Finland and Denmark. No Committee member is based at an institution in Wales. The UKNHCC published its first **annual report** in March 2022.

The 2019 regulations also transfer scientific advisory functions for food for specific groups and vitamins, minerals and certain other substances to other appropriate UK expert committees. In **response to the consultation on the 2019 regulations**, the UK Government said that the responsible committee would be decided on a case-by-case basis.

The **Nutrition (Amendment etc.) (EU Exit) Regulations 2020** amend the 2019 regulations to implement the Northern Ireland Protocol. They provide that EU law on nutrition continues to apply in Northern Ireland and make updates to reflect EU legislation in the transition period.

UK Government review of retained EU law

The **UK Government has set out plans** to introduce a Retained EU Law Bill (“Brexit Freedoms Bill”) to make it easier to change or repeal retained EU law (REUL) and to remove the special status it has in UK law.

The **UK Government has said** that it “will not seek to make changes to retained EU law within Common Frameworks without following the ministerially-agreed processes in each framework.”

The Counsel General and Minister for the Constitution, **Mick Antoniw, has stated** that there should be “no derogation from the standards that we actually hold to” and that the Welsh Government wants to improve on standards in Wales in devolved areas of responsibility.

International obligations

The UK has taken on new international obligations following the end of the transition period previously exercised on its behalf by the EU. The UK Government is responsible for negotiating international obligations, while the **devolved governments are responsible for observing and implementing them** within their competence.

International obligations relating to food transcend multiple areas and types of international obligations, from international food trade to public health and human rights legislation.

International obligations

The right to food, including adequate food, is enshrined in a number of international conventions, for example the UN's **International Covenant on Economic, Social and Cultural Rights** (ICESR).

There are a number of bodies and standards relevant to food compositional standards and labelling. For example:

- the Codex Alimentarius Commission (CAC) is the international body that sets minimum food standards (including labelling), guidelines and codes of practice for all foods;
- the United Nations' World Health Organisation and Food and Agriculture Organisation (FAO) develops standards;
- the World Trade Organisation SPS and TBT agreements set the benchmark for harmonisation of global food standards;
- the **International Organisation for Standardisation** (ISO) develops standards relating to food, food safety and nutrition; and
- the United Nations has developed **Sustainable Development Goal (SDG) 2**, to improve nutrition, and **SDG 3** on healthy lives and wellbeing.

UK-EU obligations

Withdrawal Agreement: Northern Ireland Protocol

Under the Protocol, Northern Ireland must remain aligned with EU law in certain areas, including nutrition labelling, composition and standards.

The Protocol has implications for trade in food between Northern Ireland and Great Britain:

- for goods moving from GB-NI, relevant EU law continues to apply in Northern Ireland; and
- for goods moving from NI-GB, the UK Government's commitment to ensuring **unfettered access** between Northern Ireland and Great Britain means that qualifying goods can mostly move freely, with a few exceptions.

The main forum for discussing implementation of the Protocol is the **Withdrawal Agreement Joint Committee** and its Specialised Committee on the Protocol (see **Senedd Research explainer**). Since its entry into force, the Protocol has been the subject of **multiple UK-EU disputes**.

Trade and Cooperation Agreement

The UK-EU Trade and Cooperation Agreement sets out obligations relevant to food compositional standards and labelling, in particular:

- **level playing field provisions** (which include environmental impacts of food production, notably the use of antibiotics and decontaminants); and
- extensive requirements to comply with international instruments, including agreements of the UN's Food and Agriculture Organisation (FAO).

International trade

The UK Government is negotiating trade agreements with other countries following the end of the transition period.

For example, free trade agreements with **Australia** and **New Zealand** will both introduce full tariff-free access for agricultural imports to the UK, phased in over a number of years.

Some stakeholders have raised concerns that trade agreements could lead to increases in imports from countries that have different or lower food standards than the UK.

The **UK Government must report** on whether certain trade agreements are consistent with statutory protections on human, animal or plant health, animal welfare and the environment, informed by the **advice of the Trade and Agriculture Commission**.

2. The common framework

The **provisional common framework** sets out how the governments will work together to make decisions about nutrition labelling, composition and standards in this new context. The framework is given effect by a Concordat agreed between Ministers.

The framework was developed while there were no Ministers in the Northern Ireland Executive. It states that if a Northern Ireland Executive is established, there will be a review of the framework. It is not clear whether any such review took place before the Northern Ireland Assembly election in 2022.

The framework and Concordat include text on the internal market and compliance with international agreements that was disputed at the time of publication. The governments have since reached agreement on standard text for common frameworks on these issues.

3. Principles

Common frameworks principles

The framework confirms that it will be consistent with the **Joint Ministerial Committee (European Negotiations) principles for common frameworks**.

The framework states that it:

... recognises the shared view of all parties that a common framework is highly desirable across UK, to **ensure the functioning the UK internal market**, while acknowledging policy divergence; and to **ensure any future trade arrangements can be done on a UK basis** whilst recognising the common frameworks principles agreed at JMC(EN) in the Committee's communique of 16 October 2017 (see Appendix I)

This suggests that the framework is considered necessary to meet the first two of the six criteria for common frameworks agreed by the JMC(EN).

The **Fifth Senedd's External Affairs Committee asked the Welsh Government** which of the principles applied for this framework. The Welsh Government said that all six criteria applied.

Nutrition labelling, composition and standards principles

In the EU, nutrition policy is largely harmonised. The 2019 regulations retain this harmonisation in the UK. The framework allows for future divergence within the UK and from the EU.

The Committee asked the Welsh Government why the framework allowed a different scope for divergence than EU law. The **Welsh Government said** that:

There is now the opportunity to diverge if risk assessments demonstrate it to be necessary and proportionate and, can ensure consumer protection and the functioning of the Internal Market can be maintained. This approach recognises the new powers transferred to Ministers and respects and reflects Devolution settlements.

The framework states that:

although **divergence in areas where law is currently fully harmonised is unlikely**, the ability to discuss and address any possible changes to the overarching principles are covered within these framework arrangements e.g. the substance must be safe, and claims/labelling must not mislead the consumer.

The concordat states that:

...the opportunity for consistency of approach across administrations will be sought in the first instance. The ability for divergence must be retained, while taking account of its impact on **consumer safety and confidence**, and the **functioning of the UK internal market**.

The framework does not always use consistent language on when divergence will be accepted. For example, Part C Section 6 provides that all four governments have the ability to diverge where is **'both necessary and proportionate'** and goes on to say that the dispute resolution process should be engaged where 'divergence is not considered **either necessary or proportionate**'.

4. Managing divergence

Making decisions

The framework sets out how the governments will work together to maintain harmonisation or agree to divergence.

Appendix IV sets out the process for making decisions through the framework. A nutrition labelling, composition and standards (NLCS) policy group of officials from each government will be established. Taking into account scientific advice from the relevant expert committee, the NLCS policy group will assess:

- all applications for new nutrition and health claims (Appendix V);
- all requests to modify registers and lists of vitamins, minerals and certain other substances; foods for specific group; and vitamins and minerals for use in food supplements (Appendix VI); and
- new policy proposals brought forward by any of the governments.

If officials agree a UK (or GB-) wide approach is needed, they will submit that recommendation to Ministers.

If officials in the NLCS policy group agree that divergence is necessary, they will escalate the decision to senior officials. If senior officials agree, they will submit a

recommendation of divergence to Ministers. They will provide an “explanation of the different approaches being recommended and a summary rationale setting out why it is appropriate to diverge”.

Ministers will agree either a common approach or divergence. If they do not agree, the dispute resolution mechanism may be engaged.

The UK Government has published a table of **applications considered under the framework**.

Managing the impact of the UK Internal Market Act

Part of the purpose of the framework is ensuring the functioning of the UK internal market.

The **UK Internal Market Act 2020** (the Act) sets out in law market access principles for goods, services and professional qualifications. These principles aim to ensure that (in general) goods and services and professional qualifications that can be sold, and professional qualifications that can be recognised, in one part of the UK can be sold or recognised in any other part.

The market access principles in the Act could limit the practical effect of Welsh legislation on nutrition labelling, composition and standards.

The UK Government has powers to create new exclusions from the market access principles or vary the list of legitimate aims by regulations. Since the framework was published, the four governments have agreed a **process for considering and agreeing exclusions to the Act in common framework areas**. It is not clear whether the framework will be updated to reflect this process.

Managing the impact of the Northern Ireland Protocol

Under the Northern Ireland Protocol, Northern Ireland must continue to align with EU law on nutrition labelling, composition and standards. The framework does not make any reference to the Protocol.

In 2021, after the framework was published, the governments agreed standard text on how common frameworks should interact with the Protocol. For example, the common framework on **food compositional standards and labelling** sets out that:

- as the UK, Scottish and Welsh governments make decisions on policy and

regulation, the Northern Ireland Executive will participate in discussions and its views will fully be taken into account; and

- where rules in Northern Ireland change in alignment with the EU, the governments will consider the changes and determine “any impacts and subsequent actions”.

It is not clear whether the nutrition framework will be updated with similar provision.

The framework states that the NLCS policy group will “act as a discussion forum, providing an efficient process to keep pace with development elsewhere e.g. in EU.” The **UK Government has published** a table of EU regulations considered by the NLCS policy group and domestic legislation made in response. The table covers the period to April 2022 and will be updated every six months.

5. Resolving disputes

Appendix IV sets out the dispute resolution mechanism if a common approach or divergence cannot be agreed.

The framework provides that the dispute resolution mechanism will be used if:

- agreement cannot be reached on a common recommendation regarding an application, request, or policy proposals;
- or one or more parties considers the terms of reference or parameters agreed for the governance framework have been breached;
- one party considers that a JMC(EN) principle has been broken, or undue weight has been placed on one JMC(EN) principle (or part of a principle) at the expense of another.

If portfolio Ministers from different parts of the UK do not agree on whether there should be divergence, officials will first consider the disagreement and provide further explanation to Ministers of the different approaches being recommended and why divergence has not been agreed.

Officials will pause implementation of ministerial decisions during the dispute resolution process. This could result in delays to decisions. If Ministers reach agreement in the dispute resolution process, the decision will be implemented. If they do not reach agreement, the decision will be put on hold “for further evidence to be submitted”.

If the dispute cannot be resolved through this process, the framework says that it may be escalated to the intergovernmental dispute resolution process set out in the **Memorandum of Understanding on Devolution**. In January 2022, the **governments agreed** a new inter-ministerial dispute resolution process as part of the Intergovernmental Relations Review. The **Counsel General said** this was a “groundbreaking step”.

The framework does not provide for disputes to be notified to parliaments or stakeholders. However, the **Welsh Government has committed** to notify the Senedd of disputes.

6. Managing international obligations

In 2017, **the JMC(EN) agreed** that common frameworks should be established where needed to ensure compliance with international obligations and to ensure that the UK can negotiate, enter into and implement new international agreements.

The framework acknowledges that the devolved governments are responsible for implementing international obligations in devolved areas of competence.

UK-EU obligations

The framework was published before the UK and EU signed **the Trade and Cooperation Agreement**.

Some frameworks provide for the UK and devolved governments to work together on the implementation of the UK-EU Trade and Co-operation Agreement. They provide for representatives of the devolved governments to attend relevant UK-EU meetings, in line with **wider UK Government commitments**.

International obligations

The framework states that there are no applicable international obligations relevant to the framework (Part B, section 2.6). The **Welsh Government reiterated** this in its correspondence to the Fifth Senedd’s External Affairs Committee.

However, multiple references to international obligations are included in the framework and within the retained EU legislation listed in the document.

To take one example, the UK is a member of the United Nations, whose FAO and

WHO jointly oversee the **Codex Alimentarius** (a voluntary food code of standards, guidelines and codes of practice covering all aspects of food regulation, including **nutrition and labelling**, food supplements and health claims). The Codex is recognised by the WTO in international trade and trade disputes. The framework and the EU legislation contained within it make reference to the Codex, as well as other similar international standards (for example, for the marketing of breast-milk substitutes). References to the Codex have been preserved in the UK via EU retained law (**Nutrition (Amendment etc.) (EU Exit) Regulations 2019**).

Each state has a vested interest in adhering to international standards such as the Codex, as they play an important role in the global movement of food, food trade and the avoidance of WTO disputes. The UK's current and future trade agreements incorporate these elements and it is expected that the NLCS framework will be compatible with these.

Some detail of the **UK's approach to future international obligations** is set out in the framework's four-nations Concordat, included as an Annex. For example, the UK Government's Department of Health and Social Care (DHSC) will retain overall responsibility for the formulation of relevant UK foreign policy.

The framework commits the DHSC to fully involve the devolved administrations in discussions of its formulation, including looking to agree a stance "where possible" (section 9). This text is highlighted as subject to negotiation.

The provisional common framework for **food compositional standards and labelling** was published in February 2022 and includes agreed text on international relations, committing the governments to work together on the basis of "the current Devolution MoU and its accompanying International Relations Concordat".

7. Monitoring, review and amendment

The framework states that it will be reviewed six months, one year and three years after implementation and thereafter at three-yearly intervals.

The Concordat provides that it will also be reviewed if any of the parties requests it and that all parties will need to agree any change. The framework does not set out any process for amendment.

The framework also states that the NLCS policy group will collate quarterly information on meetings and prepare an annual report on the framework. This will be provided to Ministers.

8. Transparency and accountability

Before the 2021 elections, the Senedd's **External Affairs and Additional Legislation Committee** and the **Scottish Parliament Health and Sport Committee** carried out scrutiny of the provisional common framework. The **House of Lords Common Frameworks Scrutiny Committee also considered** the framework. Committees raised concerns about the framework document not being up to date and called for further parliamentary engagement.

The **Senedd's External Affairs Committee asked the Welsh Government** about how stakeholders had been engaged in the development of the framework. The Minister said that the UK and devolved governments held a technical engagement session with food industry representatives (including from Wales) and a presentation was given at the UK BEIS department's Business Expert Group. The Welsh Government circulated invitations to both events.

The Committee asked the Welsh Government how stakeholder responses were reflected in the framework. The **Minister said that:**

Stakeholders (including those from Wales) were supportive of the purpose and principles of the framework but **expressed a desire for greater levels of co-ordination between departments on food frameworks; communications with stakeholders; clear engagement processes post exit and increased levels of consultation.**

Stakeholders advised that they also felt reassured by the proposals for joint decision making and dispute resolution mechanisms. The framework was refined as a consequence of the feedback received.

There are no commitments to give parliaments a role in monitoring the operation of the framework or scrutinising amendments. In March 2022, **the Counsel General agreed** in correspondence with the LJC Committee to notify the Senedd and stakeholders when a common framework is reviewed, and consider their recommendations before the review process concludes.

There is no commitment for reports on the operation of the framework to be produced or published. However, the **government have published** updates on applications and changes to EU legislation considered under the framework. In November 2022, the **Counsel General said** that the governments had agreed to future reporting to parliaments on common frameworks.