DEFRA

2 Marshall Street

London, SW1P 4DF

Andrea Martinez-Inchausti

Deputy Director Food

andrea.minchausti@brc.org.uk

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Sent by email (markingofretailgoods.consultation@defra.gov.uk)

Dear Sir or Madam,

Thank you for giving us the opportunity to respond to the consultation on the Marking of Retail Goods Regulations.

1. The BRC (British Retail Consortium) is the lead trade association for UK retail. Our purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future.
2. Retail is the ‘everywhere economy’, a vital part of the socio-economic fabric of the UK.  The industry makes up 5% of the UK GDP and is the largest private sector employer, providing 3 million direct jobs and 2.7 million more in the supply chain. Retail has a presence in every village, town and city across the country.
3. Over 200 major retailers are members of the BRC, with thousands of smaller, independents represented by BRC’s trade association members. Together, these businesses operate across all retail channels and categories and deliver over £350 billion of retail sales per year.  We build the reputation of the retail industry, work with our members to drive change, develop exceptional retail leaders, and use our expertise to influence government policy so retail businesses thrive and consumers benefit. Our work helps retailers trade legally, safely, ethically, profitably, and sustainably.
4. On food, our membership comprises over 5,000 businesses, accounts for £180 bn of grocery sales and employs over 1.5 million people in food outlets and distribution.

**Our response**

1. This is a complex consultation for BRC to respond to. This is because the provisions will impact our members in very different ways practically, logistically, and financially, due to their different operating models.
2. Most of our members will be responding individually and covering the specific impact of the proposed provisions on their businesses. Our response focuses on those elements on which our members have reached a consensus views.

**Different approaches**

1. We have some members who operate in Northern Ireland and exclusively send goods via the green lane. Some of our members operate in Northern Ireland but use all available routes to send food products: green lane, red lane and direct from the EU. Most of these members operate in the Republic of Ireland and other European countries. We have some members who exclusively operate in GB and others which trade in GB and EU, but not NI.
2. We represent retail companies who will need to make changes to retail products aimed at the final consumer, and many companies which will be impacted by the requirement to label products moving from business to business to be processed into final products.
3. This diversity means businesses will have different needs and will slightly different views on what will help them implement the future Regulation.

**Timing and approach**

1. The scale of the suggested label change would normally take a minimum of 2 years to complete. It will be practically very challenging to change the label of most products, but it is especially problematic to complete the work for seasonal lines and products which label only gets reviewed ones a year, and products with a very long self-life such as tinned goods. All members agree that the proposed date of October 2024 is unrealistic.
2. Those companies moving goods to Northern Ireland via the green lane, need the GB labelling requirements to aligned with the timing and compliance requirement applicable to the movement of goods into NI via this route. Misalignment will mean not seeing the benefit of the GB labelling policy for years, which will impact those members’ logistical operations and ultimately the market and consumers in Northern Ireland.
3. Conversely, asking companies who will not benefit from the introduction of these provisions, to change labels within a few months, will be completely disproportionate. Pragmatism and the proportionate enforcement approach usually applied to labelling matters suggested in the proposal, are welcomed by those companies.
4. **We strongly believe that the only way of breaching that gap, is by aligning the dates and approach to compliance in GB and NIRMS. However, since the dates of October 2024 and July 2025 are unrealistic, we need those dates to be moved by a minimum of 6 months, and ideally a year.**
5. We understand those dates are set in the SPS Regulation and formally changing those would be difficult, however, it is important to be realistic about what can be achieved. It is crucial to recognise the effort and all that has been achieved to date for products moved to Northern Ireland. Sticking with the set dates will only set those companies using the green lane to fail, which will defeat the purpose of what NIRMS was set for in the first place.
6. Our members can manage changes to their own products, but they cannot control label changes to branded goods. Managing the required label changes for phase 1 GB-NI movement, has been challenging, but the fact that a large proportion of the product categories covered in that phase are supermarket own brand, has made it more achievable. The food categories and products covered in phase 3 GB-NI (phase 2 in GB) are more heavily branded led, and this will cause our members difficulties.

**Products**

1. It is disappointing that the consultation does not include a list of the products which will be in scope of the different phases. These lists should have been available by now to enable the assessment of the future provisions properly. The fact that they are not, is another reason why compliance by the set dates will not be achievable.
2. Our members employ custom specialist and they have struggled to make definitive decisions on what products are in scope of each phase. Smaller companies with fewer resources will really struggle. The second phase in GB (phase three GB-NI) is particularly complex and wide scoping.
3. These product lists and CN codes must be available as soon as possible.

**Exemptions**

Five exemptions are listed in the draft regulation.

(a)(i) Small businesses

1. We strongly disagree with this exemption. Plenty of products produced by small businesses are stocked by our members and a different approach to labelling based on the size of the company which produces them will confuse consumers.
2. Some products produced by small businesses would be moved to Northern Ireland, and the exemption could confuse these companies and their legal requirements.
3. We do not believe this exemption can be justified on the bases of a disproportionate impact. The proposed provisions bring no benefit to many of our member companies. Many retailers, especially those who export products to the EU, will be very heavily impacted by these provisions, since they will have to produce a second label and segregate storage and distribution of foods. This will come at a very high cost.
4. Furthermore, no impact assessment has been conducted to quantity that impact.

(a)(ii) local

1. We disagree with this exemption. There is no legal definition for local and one has not been proposed in this draft.
2. A historical LACORS definition has been recently cited in Court. This definition states that local is the same country or neighbouring county or counties. This is a vast geographical area.
3. Our members support local businesses and stock their products in branches close to their location. As per the exemption suggested for small businesses, a different labelling approach for local businesses can confuse consumers.

(b) Products produced in Northern Ireland

1. We are supportive of this exemption not to require the inclusion of the statement ‘Not for EU’ in products produced in Northern Ireland, since those products do not have to be labelled when placed in the Northern Ireland market. This will provide consistency.
2. However, this could have political implications. British beef and lamb born reared and slaughtered in GB will require to be labelled with ‘Not for EU’. For chicken, when reared and slaughtered in GB, it will require the label, but if reared and slaughtered in NI, it will not. This could be confusing to consumers who may draw the conclusion that Northern Ireland chicken is better quality. The Government will need to carefully consider how to explain this to consumers.

(c) Loose and PPDS

1. We support the exemption for foods sold loose and prepacked for direct sale.

(d) Catering

1. We are supportive of the exemption for catering operators. The exemption does not address foods which are moved from one business to another for further processing or to be served loose to the consumer, and therefore we assume these are covered. Many companies are confused or unaware of the provisions applying to those goods, which are covered by NIRMS. Clarification through guidance is key.

**Other issues**

There are a few other issues which need to be clarified in guidance to be published alongside the Regulation.

1. *No box level labelling* – we have received numerous queries on whether box level labelling for those foods which do not require product labelling, will be required. Our understanding is that box label labelling will not be a requirement in GB. This should be covered in guidance.
2. *European products* – Many companies are confused by the fact that EU products moving straight into Northern Ireland do not have to be labelled with the ‘Not for EU’ statement, but when those products move to GB, the statement must be on their label. This is creating an inconsistency. We appreciate that EU products moved through NIRMS, must be labelled and that is what the GB label is aligning with. European suppliers are confused, and many are unaware of the requirements they will have to comply with when supplying GB. The Government needs to understand how they are going to disseminate information with suppliers in Europe.
3. *Lack of understanding of provisions* – despite the publication of the consultation, there are still many companies who do not understand they will be impacted by these provisions. The Government needs to look into how they are going to communicate these future provisions widely.