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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

5. 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.

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6. Most of our members will be responding individually and covering the specific impact of the proposed provisions on their businesses.
7. The consultation focuses on the practical implementation of the inclusion of the statement 'Not for EU' on product labels. We understand the consultation is not addressing the principle of whether this labelling approach should be taken forward, but we wanted to note that our members feel strongly that the introduction of this requirement is disproportionate, it is like 'cracking a nut with a sledgehammer'. Labelling should not have been agreed as the way to ensure GB products do not end up in the Republic of Ireland.
8. The objective of the regulation is to protect the Northern Ireland market. The majority of our members feel that this can be achieved by permitting the 'Not For EU' labelling to be used voluntarily in the rest of GB. A pragmatic voluntary approach would mean that those retailers and brands trading in NI can continue to use the same label across GB and those retailers who do not trade in NI are not burdened with the cost of unnecessary labelling and trading restrictions.

Different approaches

9. 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, but not all, 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.
10. 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.
11. This diversity means businesses will have different needs and will have slightly different views on what will help them implement the future Regulation.

Timing and approach

12. 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 once a year, and products with a very long self-life such as tinned goods. All members agree that achieving the required level of change by the proposed date of October 2024 is unrealistic.

13. Those companies moving goods to Northern Ireland exclusively via the green lane/NIRMS, need the GB labelling requirements to be 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.
14. 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.
15. Additionally, there are companies who use a number of routes into Northern Ireland, and export into EU. These companies have agreed and implemented commercial routes and logistical processes to support these. These future provisions will challenge many of those, resulting in those companies having to look at the implications of these provisions, decide what this means for their operations and make the required changes.
16. For movement of goods into the EU, a second label will need to be produced and the whole supply chain will need to be segregated GB versus EU. This is a substantial change involving segregated space in depots, different picking stations, new IT solutions, managing volume estimations, etc. The scale of this change is large, and it will take considerably more time than a label change to implement.
17. The adverse impact on the ability to export British goods is not confined to exports to the EU. We have a member who sends consignments of products of animal origin to its store in Gibraltar (a British Overseas Territory) under export health certification. Operational issues necessitate these consignments being nominally cleared for the EU market prior to their onward journey from the Calais Border Control Post to Gibraltar. It is by no means certain that goods carrying 'Not for EU' will be accepted by the Border Control Post. It is wholly impractical for this member to produce goods carrying a second label without this statement to supply a single store.
18. One 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, those dates need to be moved.
19. Our members believe that those dates need to be changed by a minimum of 18 months, ideally 24 months, to allow both labelling and operational changes to be properly implemented.

20. We understand those dates are set in the SPS Regulation and formally changing those would be difficult, however, it is very 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 NIRMS/green lane up to fail, which will defeat the purpose of why NIRMS was introduced in the first place.
21. Having said that, if the European Commission was reluctant to change those dates and the UK Government did not feel they could support an extension of the dates to the timeframes suggested above, the majority of our members believe that a suitable transitional period and approach for the GB labelling requirements should be prioritised.
22. 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

23. 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.
24. 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 ranging.
25. These product lists and CN codes must be available as soon as possible.
26. Consideration should be given to the practicalities of the list of products in scope not being static. As well as the products in phase 1,2 and 3, products subject to EU BCP controls under Regulation 2017/625 and which are not covered under Article 44 of the same regulation, will also be subject to labelling. Those official controls may be permanent or temporary and may apply differently depending on the country of origin of the product affected.

Exemptions

Five exemptions are listed in the draft regulation.

(a)(i) Small businesses

27. 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. Additionally, it would further restrict customer choice in NI where our members use the green/NIRMS route unless this exemption was agreed with the EU/DAERA.

28. 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, or only trade in GB, will be very heavily impacted by these provisions. Those who trade in EU will have to produce a second label and segregate storage and distribution of foods. This will come at a very high cost.

29. Furthermore, no impact assessment has been conducted to quantify that impact.

(a)(ii) local

30. We disagree with this exemption. There is no legal definition for local and one has not been proposed in this draft.

31. 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.

32. 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

33. It makes sense 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. However, due to the way in which some of the retailers' distribution networks work, some of the products labelled with 'Not for EU' will return to GB from NI with that statement. This will result in inconsistencies.

34. In addition, 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

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

(d) Catering

36. 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.

37. *No box level labelling* – we understand box level labelling will not be required in GB. This must be made clear in guidance. Based on the number of queries we have received; it is obvious many companies are not clear.

38. *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.

39. Many companies, including some of our members, move continental European products to GB and ROI. This is one of the areas where a dual labelling approach will apply, and companies will need to rethink their routes into market and/or introduce robust segregation systems for both labels.

40. *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.