Response by the Health Food Manufacturers' Association (HFMA)
to the Call for Written Evidence from the
Retained EU Law (Revocation and Reform) Bill Committee

Overview

The Health Food Manufacturers' Association (HFMA) welcomes the opportunity to provide written evidence to the Retained EU Law (Revocation and Reform) Bill Committee as it carries out scrutiny of the legislation.

By way of background, we are the leading trade association representing the UK's natural health industry. We represent around 150 businesses that manufacture and supply natural health products across the UK. Members play a crucial role in helping to improve public health, with nearly 70% of the adult population, over 40 million consumers, now taking food supplements. The industry supports over 20,000 jobs in the UK.

The HFMA is a long-standing supporter of seizing the opportunities of regulatory autonomy outside of the European Union. We support the development of a bespoke regulatory regime for health foods that ensures public health remains a core priority and enables a competitive, innovative, and future-proof sector.

As such, we welcome the Bill and its objective to enable the review and where appropriate revocation of retained EU laws. We have closely engaged with the work that has already been done by Government in this space, such as the BEIS Consultation on Reforming the Framework for Better Regulation and the Taskforce on Innovation, Growth and Regulatory Reform, which was a vital contribution to the debate on how the UK can reform its regulatory approach post-Brexit to do things in a proportionate, bespoke manner.

In our HFMA 'manifesto', published in 2020, we set out our own five objectives for how the UK could take advantage of the opportunities of Brexit, namely: recognition of national characteristics, ending unnecessary harmonisation in legislation, enhancing consumer choice, proportionate regulation and encouraging innovation. We hope that, following the passage of this Bill, as retained EU law is reviewed, these principles will be at the heart of the approach that is taken.

Areas for Reform

While we recognise that this legislation does not get into the specifics of individual EU laws and regulations, we felt it may be beneficial to the Committee to have an understanding of the types of changes which could be made in future as a result of this legislation, for one particular sector of the economy, namely the natural health sector.

We believe that legislation relating to the natural health industry, the vast majority of which originates in the European Union, is ripe for reform. We would welcome changes which recognise that EU law in this area has been designed to provide market harmonisation, which often results in restrictive and disproportionate regulation.

This review process presents the opportunity for sensible regulatory reform that reflects the specific needs and circumstances of the UK. After all, it must be wrong to assume that the nutritional needs of a person in Athens are inevitably the same as those of someone in Aberdeen, therefore not reflecting national characteristics like climate, diet and lifestyle.

For example, anticipated proposals by the European Commission on both maximum and minimum permitted levels for vitamins and minerals will inevitably reflect bureaucratic decision-making that, were the UK to adopt the proposals, would fail to take into account the UK's leading scientific evidence of safe levels, removing choice for over 20 million UK consumers who safely take food supplements on a weekly basis.

In addition, a bespoke UK regulatory regime can implement much-needed reforms to streamline and simplify approval processes, labelling and the failure to address certain supplement sub-categories. Here are four examples of areas in which we see an opportunity to ultimately create a better system of regulation, thus benefitting consumers:

- Dealing with the absence of permitted additives for the infant and young children's food supplement category, that have been safely used in such products for decades – as per Retained EU Additives Regulation 1333/2008.

- Address the barriers created in retained EU Novel Foods Regulation 2015/2283 which requires companies to demonstrate a history of consumption prior to 15th May 1997, a time when electronic records were not readily available. A fixed-forever date of 15th May 1997 seems arbitrary, inflexible and unrealistic.

- Delete the unnecessary and disproportionate proposal for maximum and minimum permitted levels of vitamins and minerals in food supplements as established in the retained EU Food Supplements Directive 2002/46/EC.

- Reform of the retained EU Nutrition and Health Claims Regulation 1924/2006 including addressing guidance to permit descriptors such as 'probiotic' and allowing a graded approval process for botanical health claims. **We have addressed these two important points in further detail below.**

Permitting the descriptor term "Probiotic"

It is not only in areas requiring legislative change that the UK Government can take a different approach, and indeed there are some changes which could be made now to the way in which some EU rules and regulations are interpreted.

One such area pertains to restrictions on the use of the term 'probiotic' on labels of food that contain probiotic microorganisms in the UK, derived from a non-binding guidance document issued in 2007 by the European Commission.

The global market for probiotics products is growing rapidly everywhere, except in the UK and EU where growth is much slower. That is because research shows that consumers are confused by alternative terms permitted in the UK and EU such as 'live cultures' and opt instead for non-UK/EU products marketed with the term 'probiotic'. Not only does this disadvantage UK businesses, but it poses a major risk to consumers who may inadvertently be led towards products for which quality is not strictly controlled.

A number of EU Member States have now begun rejecting the old interpretation of the European Commission guidance and are allowing the term probiotic to be used on food labels to support consumers and businesses. The UK however continues to apply the original interpretation, and ultimately risks being left behind in this booming market. The UK's departure from the EU creates an

opportune moment to relax this regulatory burden. We must seize this opportunity swiftly to benefit consumers, the natural health sector, and the UK economy as a whole. We do not need to await the passage of the Retained EU Law (Revocation and Reform) Bill to do so.

Allowing a graded approval process for Botanical Health Claims

Under EU rules on nutrition and health claims, established in 2007, an EU Register of Nutrition and Health Claims lists all permitted nutrition claims and all authorised and non-authorised health claims. Following an incomplete review process in 2009-11, a list of some 1,500 botanical health claims which could continue to be used in EU member states, subject to certain provisos, was published.

The Department of Health and Social Care has been conducting a review of potential approaches to assessment of these claims in the UK, a process with which the HFMA has been engaging and brings significant expertise.

We have developed an alternative approach specifically for botanical claims for consideration, and we believe some of the principles underpinning this approach may also be considered for a wider review of the approach taken for the assessment of health claims in general.

Under our proposed model, a 'graded' approach to the assessment of botanical claims would be deployed, using qualified language, ranging from the certain to the plausible, to communicate potential health benefits. This would give more clarity to consumers and provide additional information to make an informed choice, while continuing to meet obligations regarding claims being truthful, clear, reliable and useful to the consumer and stimulating innovation.

We believe this is another clear example of an area in which the freedom to take a bespoke approach will enable the UK to achieve better outcomes for both consumers and industry.

Conclusion

The HFMA believes that the Retained EU Law (Revocation and Reform) Bill represents another important step towards realising what we have called the 'Brexit Dividend', namely seizing the opportunities of legislative and regulatory autonomy outside the European Union. We therefore support the Bill and its objective of sunsetting the majority of retained EU law and ending the supremacy of retained EU law by the end of 2023.

We believe that, specifically for our sector, there are real opportunities to do things in a different and better way, which are more appropriate to the needs of consumers and industry. As the examples given above illustrate, however, not all of these opportunities require changes in legislation and we would strongly encourage Government to get on and seize the opportunities that exist right now to support a better approach.

We would be happy to meet with members of the Bill Committee to discuss these opportunities in greater detail. If you would like to arrange a meeting or have any other queries, please contact:

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