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55 YEARS AS THE VOICE OF THE NATURAL HEALTH INDUSTRY

HFMA response to BEIS Consultation on Reforming the Framework for Better Regulation

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By way of background, the Health Food Manufacturers' Association (HFMA) is a trade association founded in 1965 to represent the interests of manufacturers and suppliers of specialist health products in the UK. Its current membership of nearly 150 businesses includes the major brands, distributors and contract manufacturers in the sector. Our members play a crucial role in helping to improve public health, with over 70% of the adult population now taking food supplements, including nearly 20 million people now taking them on a daily basis. The industry supports over 20,000 jobs in the UK.

Overview

The HFMA welcomes the opportunity to respond to this consultation on Reforming the Framework for Better Regulation.

The HFMA is a long-standing supporter of what we call the 'Brexit Dividend', i.e. 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 warmly welcomed the report of 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 particular we were delighted to see a chapter in the TIGRR report focusing on nutraceuticals and the consumer health sector. We have long felt that our sector would benefit from a regulatory regime tailored to the unique characteristics and circumstances of the UK.

We are therefore pleased that BEIS is taking forward the principles set out in the TIGRR report for further consultation. As the Ministerial foreword sets out, we now have "the freedom to conceive and implement rules that put the UK first…they can be tailored to our needs and traditions". The five principles which are set out to underpin the proposed approach to regulation are welcome, and we are particularly supportive of 'a sovereign approach', 'proportionality' and 'recognising what works'.

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. There is clearly a significant degree of overlap in these objectives with the principles set out by Government and we therefore look forward to working with Government as this process unfolds to ensure that we have a regulatory regime for UK health foods that maximises the potential of this key sector and supports wider public health objectives.

We set out below responses to some of the specific questions posed in the consultation on the broad framework for regulation, as well as providing some examples of specific areas of regulation which could be reformed in line with these principles. However, we recognise that many of the sector-specific issues will be dealt with at a later stage by the relevant Departments and we look forward to engaging with those processes also.

Questions 1 and 2: What areas of law (particularly retained EU law) would benefit from reform to adopt a less codified, more common law-focused approach? Please provide an explanation for any answers given.

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 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 for those of someone in Aberdeen, therefore not reflecting national characteristics like climate, diet and lifestyle.

For example, proposals by the European Commission on both maximum and minimum permitted levels for vitamins and minerals reflect bureaucratic decision-making that fails 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 explore much-needed reforms to approval processes, labelling and the failure to address certain supplement sub-categories. Other examples of areas in which we see an opportunity to ultimately create a better system of regulation include:

- Nutrition and Health Claims reform including flexibility of wording, descriptors such as 'probiotic' and the approval process for new claims.
- Additives – dealing with the absence of permitted additives for the children's supplement category.
- The regulatory treatment of botanical food supplements and 'borderline' products.

Question 5 and 6: Should a proportionality principle be mandated at the heart of all UK regulation? Should a proportionality principle be designed to 1) ensure that regulations are proportionate with the level of risk being addressed and 2) focus on reaching the right outcome?

Yes, we would support the introduction of a proportionality principle. A more proportionate approach, based on the specific characteristics of the UK market will better serve the needs of UK consumers and enable greater innovation and choice in the market.

By way of an example from our sector, current regulations prevent use of the term 'probiotic' on UK health foods and supplements. This overly restrictive approach is disproportionate to the risks presented by use of the term and makes it more difficult for consumers to identify these products in retail settings. This is despite the fact that probiotics are recommended by health care professionals and that the term 'probiotic' continues to be widely used in the media. This leads to consumer confusion, which is only exacerbated by the continued presence of products labelled as probiotic in some online retail settings, often from less scrupulous suppliers or from those operating in countries with a less restrictive regulatory environment.

The issue clearly requires urgent attention, consistent with the recommendations of the recent TIGRR report that acknowledges the role of good regulation to protect consumers and support the economy. To avoid consumer confusion the term should be allowed on both food products and food supplements to assist consumers in making appropriate and informed food choices. We believe this case presents a strong illustrative example of where a proportionality principle would result in more common-sense decision making and prevent needlessly restrictive regulations that restrict consumer information and choice in important product categories that can support better public health.

Questions 8 and 9: Should competition and innovation be embedded into existing guidance for regulators or embedded into regulators' statutory objectives?

We are strong supporters of greater competition and innovation in the natural health sector and would welcome measures to ensure that regulators have due regard to these vital considerations when designing and implementing regulation. Greater competition and innovation in the natural health sector can only lead to more choice for consumers and we believe this will deliver tangible benefits to public health given that our latest 'Health of the Nation' research indicates that over 71% of the UK adult population are now taking food supplements.

Question 11: Should the Government delegate greater flexibility to regulators to put the principles of agile regulation into practice, allowing more to be done through decisions, guidance and rules, rather than legislation?

We are supportive in principle of measures designed to ensure a more proportionate approach. While we recognise that giving regulators greater flexibility could form a part of this strategy, we would be wary of any moves which run the risk of regulators making *more* rules and changing rules more frequently or with less consultation. A degree of stability and predictability in regulation is important and we hope that this would be carefully weighed up as part of any moves towards greater flexibility for regulators.

Question 16: Should regulators be invited to survey those they regulate regarding options for regulatory reform and changes to the regulator's approach?

Yes, we would welcome a survey by our regulators which presented our industry with an opportunity to suggest suitable areas for appropriate regulatory reform to reflect the unique characteristics of the UK, along the lines of those already referenced above.

Questions 30, 31 and 32: Should the one-in, X-out approach be reintroduced in the UK? What do you think are the advantages/disadvantages of this approach?

We are less concerned with the specific *number* of regulations than with the suitability and proportionality of those regulations. While the idea that the overall regulatory burden on businesses should be reduced is welcome, and the one-in, X-out (OIXO) approach is a logical way to achieve this aim, we are not wedded to the principle and would prioritise pursuing sensible reforms to existing regulations, cutting those that are unnecessary and revising those that could better fit the UK's circumstances, rather than creating a more arbitrary target.