Consultation:
The Nutrition (Amendment) (EU Exit) Regulations 2018

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Summary

Which? supports the transposition of this important legislation for consumer protection into UK legislation. It must be ensured that any changes are limited to technical changes as any changes that have greater significance must be subject to fuller scrutiny. An effective regulatory regime, including clear and transparent processes for assuring the independence and robustness of the scientific advice that underpins it must be ensured. Longer-term, the opportunity should be taken to enhance consumer protection in this area, including establishing nutrient profiles for foods that can make health claims; ensuring consumers can trust claims relating to botanical ingredients used in foods and food supplements and reviewing safety provisions covering other substances besides vitamins and minerals added to foods and food supplements. The effective enforcement of this legislation must also be ensured.

Introduction

Which? welcomes the opportunity to comment on the proposed Nutrition (Amendment) (EU Exit) Regulations 2018. The EU legislation to which these regulations relate provide important protections for consumers to ensure that they can buy foods and food supplements confident that they will be safe and can trust the claims that they make.

The legislation on health and nutrition claims has for example ensured that nutrition claims are consistently defined. It has also ensured that any health claims made on foods and food supplements have been subject to an independent assessment of the scientific evidence that underpins them to ensure that they can be substantiated (and therefore appear on either an

EU approved or rejected list). This applies to both direct and implied claims and has led to a large number of misleading health claims being removed from the market.

The legislation on vitamins, minerals and certain other substances added to foods, as well as on food supplements, has also meant that consumers can have greater confidence that the levels and nature of vitamins and minerals added to foods are meaningful (through the setting of minimum levels and a positive list to deal with purity for example), that they are safe and that labelling helps enable informed choices.

It is therefore important that the provisions within them are retained in EU law and that an effective, independent regulatory regime is put in place to underpin them.

Consultation questions

1. Do you have any comments on the proposed fixes to retained EU law as set out in this consultation?

The consultation document makes proposals for how the following laws which are regulated by the European Commission in consultation with Member States, taking into account the advice of the European Food Safety Authority (EFSA), will be applied in UK law in the event of a "no deal" scenario:

- Nutrition and health claims made on foods
- The addition of vitamins, minerals and certain other substances to foods
- Foods for specific groups, including: infant and follow on formula; processes cereal-based and baby foods; foods for special medical purposes; and total diet replacement for weight control; and
- Food supplements.

The Nutrition (Amendment) (EU Exit) Regulations are intended to fix inoperabilities in retained EU law by clarifying how responsibilities currently undertaken through EU institutions will be carried out in the UK.

Any changes that are made must be strictly limited to purely technical fixes and should not in any way seek to change the current approach set out in this legislation. We are therefore concerned that the consultation document states that changes will be "predominantly" technical, suggesting that wider amendments could be made.

A key principle that underpins the legislation is the importance of independent scientific assessment. This applies to the scientific substantiation of claims, for example, as well as the setting of safe upper levels for vitamins, minerals and the safety assessment of other substances added to foods and food supplements.

In the event of a no deal and the failure to agree any arrangements for on-going co-operation with EFSA, the UK will need to create a parallel process for provision and consideration of scientific advice. This must be able to assure consumers of the independence of the process, the experts that are part of it, the robustness of the assessment and that the underlying priority is public health and consumer protection. It must also be transparent.

Nutrition and health claims

The proposal for nutrition and health claims is that scientific advisory processes conducted by EFSA will be transferred to a new UK Nutrition and Health Claims Committee (UKNHCC) which will be under the remit of Public Health England, but will be responsible for scientific substantiation and advice to the four UK administrations on any new nutrition and health claims made within the UK post exit. We agree with this approach, subject to this committee meeting the above conditions of independence, robustness, consumer-focus and transparency.

Our consumer research (a survey representative of the UK general population conducted in January 2018)[1] found that three-quarters of respondents (75%) agreed that health claims made on foods should be independently assessed to ensure they are accurate.

We also agree, as is proposed, that the UK should adopt the existing EU lists of claims, including restrictions and conditions of use. Any changes that are made to these lists by the "appropriate UK authority" referred to, but not specified, must be done on the same conditions as set out in the current Regulation and ensure that there is no weakening of consumer protection that would lead to a lower level of substantiation being applied.

Other considerations set out in the Regulation, and which are currently taken into account by the Standing Committee procedure based on an EFSA opinion, should also be conducted independently, transparently and in the consumer interest.

Vitamins, minerals and certain other substances

The proposal for vitamins, minerals and certain other substances added to foods are vaguer in that they state that scientific advice will be sought from "a UK Committee designated for this purpose". It is essential that this Committee meets the criteria we have set out above for independence, robustness, transparency and consumer focus.

We agree that the lists of vitamins, minerals and certain other substances contained in the annexes to the EU legislation should become retained law and apply across the UK. As with health claims, any subsequent modifications that are made must not result in any lowering of consumer protection – and should aim to enhance it.

Composition and information requirements of food for specific groups

We have the same comments as for vitamins, minerals and certain other substances in relation to limiting any changes to technical matters and the criteria that should underpin the "UK Committee designated for this purpose".

Food supplements

We agree that the annexes in the EU legislation should be transposed into UK law. It is essential, as with the other areas set out above, that the process for making any changes to

[1] Research Now, on behalf of Which?, interviewed 1003 adults residing in the UK online, between 12th and 17th January 2018. Data were weighted to be representative of the UK population by age and gender

the legislation relating to food supplements is limited to technical changes and that any revisions that go beyond this must be subject to transparent consultation and must not lower consumer protection, but aim to enhance it. An independent scientific committee (ie. the UKNHCC, if constituted and operational as described above) must also be allocated to provide any subsequent scientific advice that is needed in this area and any "UK authority" that is designated to amend the lists must be independent and focused on consumer interests.

2. Can you identify any fixes to retained EU law that appear not to have been addressed adequately?

As set out above, greater clarity is needed on how the independence and robustness of the scientific advice and approval processes for these pieces of legislation will be ensured.

3. Do you agree with the impacts that have been identified with this consultation?
4. Are you aware of any impacts that have not been identified in this consultation?

We agree that there should be limited impacts as the aim should be to ensure transposition of current requirements.

5. While this consultation addresses what is being done to ensure retained EU law remains functional in the unlikely event of a "no deal" scenario, do you have any general comments regarding nutrition and health claims, composition and labelling regulation that the government should make note of for when the UK leaves the European Union.

There are three main aspects where the UK should take the opportunity to strengthen consumer protection in this area, where the EU legislation is too weak or provisions within it have not been fully implemented:

- Establishing nutrient profiles to ensure that health and nutrition claims, even if substantiated, cannot be made on foods that contradict healthy eating advice (ie. because they are high in fat, sugar or salt).
- Ensuring that consumers are effectively protected from misleading claims in relation to botanicals that are used in foods and food supplements. A large number of claims that are made on these products have been rejected by EFSA in terms of scientific substantiation but have been put on hold by the European Commission so have not been added to the EU approved or rejected claims lists. This needs to be resolved so that consumers can trust claims that these products make where sold under food law.
- Reviewing the legislation to ensure that it is sufficient to deal with the safety of "other substances" besides vitamins and minerals that are added to foods and food supplements. This includes greater oversight of botanicals that are sold as foods.

The opportunity should also be taken to ensure effective enforcement of this and other food labelling and composition legislation.

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