

In Confidence

Office of the Minister for Food Safety
Chair, Cabinet Legislation Committee

Food (Continuation of Dietary Supplements Regulations) Amendment Bill: Approval for Introduction

Proposal

1. I propose that the Food (Continuation of Dietary Supplements Regulations) Amendment Bill (the Bill) be approved for introduction to the House of Representatives.

Policy

2. On 9 March 2020, Cabinet agreed to amend the Food Act 2014 to extend the Dietary Supplements Regulations 1985 (the Regulations) by five years to 1 March 2026 [CAB-20-MIN-0081 refers]. The Bill will implement this decision.
3. Dietary supplements encompass a growing range of health and wellness products taken in a range of edible dose forms (for example, iron tablets and glucosamine capsules). The Regulations, which govern the composition and labelling of dietary supplements, provide some specific risk-mitigating measures, such as limits on the maximum daily doses for vitamins and minerals.
4. A new regulatory regime for natural health products is being developed, which will supersede the Regulations. The regime will not, however, be in place before the Regulations expire on 1 March 2021.
5. If the Regulations expire before the natural health products regime comes into full force, dietary supplements will be regulated by the general laws applying to food. These do not address the specific health risks associated with dietary supplements. Businesses and consumers would be adversely affected, including through a likely increased risk of unsafe and unsuitable dietary supplements. A large proportion of dietary supplements would not be able to continue to be sold as dietary supplements.
6. The Bill will provide for the continuation of the current regulatory regime while the regime for natural health products is developed and implemented.
7. The five-year extension is a realistic timeframe to avoid further extensions that would needlessly require resources from both officials and the House. The Bill:
 - allows sufficient time to implement the natural health products regime and provide a minimum two year transition period;
 - takes into account changing health priorities due to unforeseen events, such as Covid-19.

Impact Analysis

8. A regulatory impact assessment was prepared in accordance with the necessary requirements, and was considered by Cabinet when it approved the policy relating to the Bill on 9 March 2020 [CAB-20-MIN-0081 refers].

Compliance

9. The Bill complies with each of the following:
 - principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 1993;
 - relevant international standards and obligations; and
 - the Legislative Guidelines (2018 edition) maintained by the Legislation Design and Advisory Committee.
10. A departmental disclosure statement has been prepared and is attached to this paper along with the regulatory impact analysis.

Consultation

Government departments

11. The following departments and agencies have been consulted on this paper: Ministry of Health, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry of Justice, Environmental Protection Authority, the State Services Commission and the Treasury. Agencies responded with no comment. The Department of the Prime Minister and Cabinet was informed.

Private sector consultation

12. MPI and Ministry of Health officials met with key industry stakeholder groups on 25 February 2019. The groups strongly expressed the need for regulatory coverage of dietary supplements to continue until a new natural health products regime is in place.
13. In January 2020, a peak industry body representing large business interests, stated they do not support a five year extension if it means the natural health products regime will take until 2026 to be implemented. However, it also said it understood the need for a date that avoids the “extremely unlikely” event of a further extension of the Regulations.
14. MPI did not consider it necessary to consult with the public or businesses on the policy proposal as it extends the status quo to provide for the continued sale of dietary supplements.

Caucus consultation

15. I consulted with caucus and the Government's support parties.

Binding on the Crown

16. The Bill states that the Act will bind the Crown.
17. No new agencies or amendments to laws relating to existing agencies are required.

Allocation of decision making powers

18. No changes to the current allocation of decision-making powers are proposed.

Associated regulations and other instruments

19. No associated regulations or other instruments are proposed or required

Definition of Minister/department

20. No changes to the current definition of Minister/department are proposed or required.

Commencement of legislation

21. The Bill will come into force on the day after Royal assent.

Parliamentary stages

22. The Bill has a priority 2 on the 2020 Legislation Programme (must be passed in the year). The timeline, before Covid-19 occurred, was for the Bill to be introduced in April 2020 and passed by December 2020. I propose that the Bill now be introduced in May and referred to the Primary Production Select Committee and passed before the Regulations expire on 1 March 2021.

Proactive Release

23. Following Cabinet consideration I intend to consider the release of this paper, with certain redactions in line with the Official Information Act 1982.

Recommendations

The Minister for Food Safety recommends that the Committee:

1. **Note** that the Food (Continuation of Dietary Supplements Regulations) Amendment Bill holds a category 2 priority (must be passed in the year) on the year 2020 Legislation Programme;
2. **Note** that the Bill will amend the Food Act 2014 to extend the Dietary Supplements Regulations by five years to 1 March 2026 to provide for the continuation of the current regulatory regime while a new regulatory regime for natural health products is developed;
3. **Agree** to approve the Food (Continuation of Dietary Supplements Regulations) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
4. **Agree** that the Bill be introduced in May 2020;
5. **Agree** that the Government propose that the Bill be:
 - 5.1. referred to the Primary Production Select Committee for consideration;
 - 5.2. enacted by 1 March 2021.

Authorised for lodgement

Hon Damien O'Connor
Minister for Food Safety