

Check Delivery

# Impact of Unregulated Importation of Health Products From the Channel Islands

An Adjournment Debate

In Westminster Hall

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By Dr Brian Iddon

Member of Parliament for Bolton South East

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**Mr Deputy Speaker:**

I am grateful for this opportunity to raise my concerns about some food supplements and herbal remedies marketed in the UK by companies based in the Channel Islands.

This issue has been raised before in an Adjournment Debate, in June 2007, by my Hon Friend the Member for Norwich North (Dr Ian Gibson) but, as the problem continues to grow, I felt that I should raise it again.

My attention was focussed on this issue by the Health Food Manufacturers' Association (HFMA) and my concern is shared by many Hon Members, including those who have signed my current Early Day Motion (No 152) and EDM No 357, which I tabled in the previous session.

Most, if not all, of the health food businesses based in the Channel Islands market food supplements and herbal remedies to UK consumers which either contain illegal ingredients and/or are marketed with claims that would be illegal if the products in question were to be placed directly onto the UK market.

Many Rt Hon and Hon Members, and certainly millions of our constituents, will have received or seen copies of catalogues marketing vitamins, minerals, food supplements and herbal remedies. But, the issue is that, whilst such marketing is tightly regulated here in the UK, such regulation does not cover operators based in the Channel Islands.

This is particularly worrying because many people in the UK assume that our consumer protection laws also cover the Crown Dependencies. But, this is not the case.

Some of the products marketed by Channel Islands operators contain ingredients that are considered illegal in the UK, including ingredients such as DHEA (dihydroepiandrosterone) - a steroid which is a class C drug in the UK. Another such ingredient is melatonin, which is categorised as a medicine here.

Another aspect of the problem is that some of these products are marketed with illegal claims, including medicinal claims.

The use of unsubstantiated medicinal claims is especially worrying as it targets vulnerable people.

The illegal medicinal claims include claims relating to cancer, cardiovascular disease, dementia and diabetes, for example:

- probiotics “significantly decrease a risk of cancer”, or
- Chelogarde “reduces heart disease by up to 50%”

The use of such medicinal claims is extremely dangerous as they can discourage people from seeking proper medical advice and so put their health at serious risk.

Here in the UK, we have strict regulation in place to prevent this, and no medicinal claims may be made for products that do not hold a marketing authorisation under the Medicines Act 1968.

The European Union (EU) has recently introduced a raft of directives and regulations applicable to foods in general that are designed to protect consumers.

These include:

- the Food Supplements Directive; and
- the Regulation on Nutrition and Health Claims Made on Foods, known by its shorter title, the Nutrition and Health Claims Regulation

Our Government is also in the process of implementing the Traditional Herbal Medicinal Products Directive, which is intended to further protect consumers.

The UK has implemented, or is in the process of implementing, all this legislation, and responsible UK operators have to comply with it. As my Hon Friend will be aware, I have serious concerns that much of this legislation is unnecessary and disproportionately burdensome, but we are obliged by our treaty obligations to implement it.

Our Medicines and Healthcare Products Regulatory Agency (MHRA) and our Trading Standards Officers have powers to take steps against UK operators contravening these regulations. They do not, however, have jurisdiction in the Channel Islands.

And, therein lies the crux of the problem. Because the Channel Islands do not have similar legislation in place, companies based in Guernsey and Jersey are able to abuse the situation and market vitamins, minerals, food supplements and herbal remedies to UK consumers using illegal claims and/or containing illegal ingredients.

It is clear that operators are keen to take advantage of this lack of regulatory control.

During the last decade the turnover of Channel Islands businesses dealing with these products has risen from zero to an estimated £100 million, and is still growing, whilst the turnover of the UK sector has stagnated.

The problem is further exacerbated by the inequities of the Low Value Consignment Relief (LVCR) regime, which allows companies based in the Channel Islands to avoid paying VAT on deliveries valued at less than £18.

I shall not go into the details of this issue as it was recently raised in the House on 27th January by my Hon Friend the Member for Burton (Janet Dean). However, the freedom to make illegal medicinal claims with impunity, combined with the price advantage generated by the LVCR, has led to Channel Islands operators capturing a substantial share of the UK food supplements market.

This not only poses a serious threat to UK consumers, but also gravely undermines responsible UK suppliers and health food businesses, who continue to make considerable investments in order to comply with the law.

This unlevel playing field arises because the Channel Islands are not Members of the European Union (EU). The relationship between the Channel Islands (as well as the Isle of Man) and the EU is set out in Protocol 3 to the Act of Accession, annexed to the Treaty of Accession 1972, by which the UK became a member of the then EEC.

Even though the Channel Islands are not Members of the EU, it is the case that some EU laws do apply to them.

This was confirmed in May 2007, when a Minister in the other place acknowledged [Official Report, House of Lords, 23 May 2007; Vol. 692, cWA113] that:

*“The United Kingdom view is that the Nutrition and Health Claims Regulation, the Food Supplements Directive and the Medicines Directive remove barriers to the free movement of goods within the European Union... It is our view that the directives should apply to the Channel Islands under Protocol 3.”*

However, despite the fact that it is the view that Crown Dependencies should implement the legislation in question, only limited progress has been made.

The Guernsey Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law (2008) received Royal Assent on 10th December 2008 after a protracted delay.

Although introduction of this ‘Medicines Law’ in Guernsey is a very positive step, it is important to note that it is not fully consistent with the EU Medicines Directive, as was confirmed by the Minister in answer to a written question in the House of Commons [Official Report, House of Commons, 27 March 2008, c414W]:

*“The Medicines and Healthcare products Regulatory Agency (MHRA)*

*has reviewed the draft [as it was then] Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law 2008 in respect of human medicinal products and believes that it is not consistent with the Medicines Directive 2001/83/EC."*

The Government of Guernsey now has to bring forward secondary legislation in order to fully implement the EU Medicines Directive.

This must be an absolute priority and should take place as soon as possible. Only when Guernsey has fully implemented the Medicines Directive 2001/83/EC will it be able to prohibit and allow enforcement action to be taken against food supplements marketed with medicinal claims.

I am keen to have the Minister's views on what kind of assistance is provided to the Government of Guernsey in this respect?

Is there a time scale for Guernsey to bring forward such secondary legislation?

Guernsey has not made any firm commitment to a timetable for bringing forward the other pieces of legislation, including the Food Supplements Directive and the Nutrition and Health Claims Regulation.

May I ask my Hon Friend what steps the Government is taking to ensure that this happens?

Jersey has in place some very basic medicines law but, as in Guernsey, it does not meet the obligations set by the EU Medicines Directive. I understand that discussions are only beginning with the officials in Jersey on implementation of the EU Medicines Directive.

I would be keen to know what discussions have already taken place on this issue, and whether any further meetings are planned? Can my Hon Friend say what resources are provided to the Government of Jersey to assist them in implementing the Medicines Directive?

Encouragingly, Jersey has made a commitment to implement the Food Supplements Directive and the Nutrition and Health Claims Regulation as a part of a major update of food safety legislation, which is under way there.

I am aware that my Hon Friend's colleague from the Ministry of Justice, Lord Bach, visited Jersey on 17 April. Based on the feedback from that visit this debate is consequently extremely timely.

Is the Minister aware whether there is yet an agreed timescale for the bringing forward of this legislation by the Government of Jersey?

Whilst appreciating the limited resources available to Crown Dependencies in terms of drafting legislation, I am anxious to be reassured that our Government is doing

everything in its powers to encourage the authorities in the Channel Islands to meet their obligations and effectively implement these regulations without any further delay.

I am also anxious to be reassured that our Government and its officials in the relevant institutions should also work with other UK authorities and businesses, including the postal authorities, advertising regulators, periodical publishers, Her Majesty's Revenue and Customs and others, to ensure that every avenue is explored to protect UK consumers and the responsible UK health food trade.

I would be keen to know too what discussions the Minister has had with any of the above authorities on this issue?

It is not just about implementing this legislation; it is also about effective enforcement. I would like to press the Government and the relevant authorities to provide all necessary assistance to the Crown Dependencies in enforcing this legislation in order to protect UK consumers.

There is a pressing urgency about all of this because the European Commission is about to bring forward maximum permitted levels for vitamins and minerals under the provisions of Article 5 of the Food Supplements Directive, which may limit the potency and hence attractiveness of products in the UK market. That would give the Channel Islands suppliers another potential competitive advantage.

The Nutrition and Health Claims Regulation threatens to restrict even further the ability of responsible mainland suppliers to make a range of currently acceptable modest and accurate claims about their products, giving those companies operating in the Channel Islands yet another advantage over UK based suppliers.

And, come 2011, when the Traditional Herbal Medicinal Products Directive is fully implemented, herbal suppliers on the mainland will be unable to compete with their competitors in the Channel Islands.

So, urgent action is essential, and I ask my Hon Friend the Minister to give me an assurance today that there will be no further intolerable and unjustifiable delays in requiring Crown Dependencies to address these matters by legislation in place of earlier promises that have not entirely materialised.

I should add that the current economic recession is making it even harder for UK companies to stay in business, especially against such aggressive and unfair competition.

What is more, it is a constitutional quirk that, should the European Commission become aware of this failure to enact and implement appropriate legislation in the Crown Dependencies, it is the British Government, not the Authorities of the Crown Dependencies, that would face such enforcement action. That is something that I am sure the Government would wish to avoid.

I am grateful that my Hon Friend (Phil Hope) is in his place today and I look forward to his response.

**END**