



March 30<sup>th</sup> 2023

To: Department for Culture, Media & Sport and Department of Health & Social Care,

**RE: Open consultation: Introducing further advertising restrictions on TV and online for products high in fat, salt or sugar: consultation on secondary legislation**

This submission detailed below is on behalf of the Baby Feeding Law Group UK (BFLG-UK), a coalition of 33 charities, organisations, health professional bodies and independent members who work together to protect infant, young child and maternal health by ending marketing practices which commercialise infant feeding, mislead consumers and threaten breastfeeding.

Our submission focuses on the products categorised as being in or out of scope for these regulations.

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## Consultation responses from the Baby Feeding Law Group UK

### Question 1

Do you agree or disagree that regulation 3 makes it clear how businesses and regulators can determine if a food or drink product is in scope of the advertising restrictions?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

### Question 2

Do you agree or disagree that regulation 3 clearly describes standards for determining the nutrient profiling model score for a product, including accessing the technical guidance document?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

### Question 3

Do you agree or disagree that the text in the Schedule clearly and accurately describes which products fall into each category?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

Please explain your answer

We find the text in the Schedule (Regulation 3) listing Categories of less healthy food confusing and in need of amendment. We believe the inclusion of the following products as “exempt soft drinks” to be inappropriate:

- infant formula and follow-on formula (subject to legislation: <https://www.legislation.gov.uk/eur/2016/127>)
- food intended for infants and young children, food for special medical purposes (subject to legislation: <https://www.legislation.gov.uk/eur/2016/128>)
- baby foods and processed cereal-based foods (subject to legislation: <https://www.legislation.gov.uk/ukSI/2003/3207>)

In addition, there is a need to include young child formula or milk-based drinks for young children aged 1-3 years (including ‘growing up’ and ‘toddler milks’).

Firstly, we do not believe that infant formula, follow-on formula, infant milks marketed as foods for special medical purposes and baby foods and processed cereal-based foods should be described and included in Category 1 alongside ‘soft drinks’ given that they are not soft drinks. They are breast-milk substitutes and foods for infants and young children and should be categorised accordingly.

Secondly, we believe that follow-on formula, infant milks marketed as foods for special medical purposes and young child formula or milk-based drinks for young children aged 1-3 years, should all be considered ‘less healthy’ foods and subject to these advertising restrictions to protect infant and young child health, for reasons outlined below (noting infant formula is already subject to advertising restrictions). While some of these products are likely ‘less healthy’ on the basis of their nutrition



composition, it is unnecessary to apply a nutrient profile model to these product types as all should be subject to advertising restrictions on the basis of them being breastmilk substitutes. We believe that it is important that the Government's advertising restrictions should align with and support the Government's public health recommendations for infant and young child feeding in order to better enable families to feed their babies and young children according to those recommendations.

Thirdly, baby foods and processed cereal-based foods should not be considered exempt as a category. There is ample evidence that many commercial infant and toddler foods contain high levels of free sugars and more generally do not align with public health recommendations for infant and young child feeding and are marketed inappropriately (PHE, 2019; Sparks and Crawley, 2018; Westland and Crawley, 2018; Crawley and Westland, 2017). These products are commonly consumed (McAndrew et al, 2012; Lennox et al, 2013; Mintel, 2022) and given concerns about their nutrition composition are likely to contribute to childhood obesity. As above for commercial milk formulas, we believe that it is important that the Government's advertising restrictions should align with and support the Government's public health recommendations for infant and young child feeding in order to better enable families to feed their babies and young children according to those recommendations. Therefore baby foods and processed cereal-based foods should be included in this legislation and those which warrant being subject to advertising restrictions should be identified through application of the WHO Europe Nutrient Profile and Promotions Model developed specifically for foods marketed for infants and young children (WHO, 2022).

Our recommendations on the inclusion of infant formula, follow-on formula, infant milks marketed as foods for special medical purposes and young child formula or milk-based drinks for young children aged 1-3 years in this legislation are as follows:

#### **Infant formula**

Rather than being classified as an exemption, it should be made clear that all public facing advertising of infant formula is already restricted under existing legislation, as above. Although it is important to note that enforcement of these advertising restrictions is extremely weak (Conway et al., 2023, Hickman et al., 2021). It should be noted that since part of the purpose of this consultation is to tackle childhood obesity, the restriction of advertising of infant formula (including on TV and online) is consistent with this purpose, as breastfeeding is protective against overweight and obesity (Harder et al, 2005, Azad et al, 2018; Rito et al, 2019). Furthermore, and acknowledging this evidence, the UK's public health advice promotes exclusive breastfeeding for the first 6 months of life with continued breastfeeding to two years (SACN, 2018; SACN, 2022).

#### **Follow-on formula**

Currently, follow-on formula is not subject to the same advertising restriction as infant formula in the UK, although the WHO recommends that the advertising of all breast-milk substitutes, including follow-on formula should be prohibited. Since SACN recommends continued breastfeeding to two years, then any replacement of breastmilk before then (e.g., follow-on formula, which is marketed for use from 6-12 months of age) is inappropriate.

The NHS advises: "Research shows that switching to follow-on formula at 6 months has no benefits for your baby. Your baby can continue to have first infant formula as their main drink until they are 1 year old" (NHS, 2019).



These products are breastmilk substitutes, and as above, breastfeeding protects against overweight and obesity. There is also much and also recent evidence of cross-promotion (WHO & UNICEF, 2019) between follow-on formula and infant formula in the UK (Conway, et al., 2023) which is currently prohibited by UK legislation but this legislation is clearly not well enforced (ibid).

It should be noted that in the Republic of Ireland, the online promotion of follow-on formula has recently been explicitly prohibited through the [Online Safety and Media Regulation Act, 2022](#) for the reasons cited above.

### **Foods for special medical purposes**

This regulatory category includes infant milks marketed as foods for special medical purposes. These products are required to be used under medical supervision and are not designed for use by healthy infants, posing additional health harms to the use of infant formula (BFLG-UK, 2022). Any advertising of these is unnecessary and inappropriate.

### **Young child formula or milk-based drinks for young children aged 1-3 years**

This category of products is not mentioned in the draft legislation, which creates ambiguity about their inclusion or exclusion. We assume this is because there is currently no specific UK/EU regulation covering these products. However, the growing up and toddler milks currently being marketed for use from 1 year of age are high in free sugars and can contribute substantial amounts of free sugars to a young child's diets, as well as accustoming young children to the sweet taste and a flavour profile of a product which is dissimilar to cows' milk (FSNT, 2021a).

These products are popular and likely to contribute to childhood obesity. Data from the last UK Diet and Nutrition Survey of Infants and Young Children (DNSIYC) in 2011 reported that 18% of 12-18 month olds were being given a 'growing up' milk marketed for use from 12 months and up (Lennox et al, 2013). More recent National Diet and Nutrition Survey (NDNS) data and market survey data also indicate unnecessary use of commercial milk formulas by some in to the second, third and even fourth years (SACN, 2022; Mintel 2022).

The NHS advises: "Growing-up and toddler milks are marketed as an alternative to whole cows' milk for toddlers and children over 1 year old. There's no evidence to suggest that these products provide extra nutritional benefits for young children. Whole cows' milk is a suitable choice as a main drink for your child from age 1. Semi-skimmed cows' milk is a suitable main drink for children over 2 who are eating a balanced diet" (NHS, 2019).

These products are breastmilk substitutes, and as above, breastfeeding protects against overweight and obesity. These products are also used to cross promote formulas marketed for use in infancy.

For all of the above reasons, we recommend that the advertising restrictions recommended in this secondary legislation (on TV after 9pm and through paid-for advertising) be applied to follow-on formula, foods for special medical purposes and young child formula / milk-based drinks for young children aged 1-3 years (including growing up and toddler milks).



#### Question 4

Do you agree or disagree that the text in regulation 3 makes it clear all categories apply to both retail and out-of-home food and drink products?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 5

Do you agree or disagree that the definition in regulation 4 accurately and clearly describes what businesses will be classified as 'food and drink SMEs'?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 6

Do you agree or disagree that the definition in regulation 4 accurately and clearly describes how to define employees of a business?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 7

Do you agree or disagree that regulation 4 clearly describes what features of a business would constitute a franchise?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 8

Do you agree or disagree that regulation 4 clearly describes what would constitute a franchise agreement?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 9

Do you agree or disagree that regulation 4 clearly describes that the total number of employees in a business includes those employed outside of the UK or by franchises?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 10

Do you agree or disagree that the definitions in regulation 4 provide sufficient overall clarity on the definition of an SME?

- Agree, it is clear
- Disagree, it is not clear
- I don't know



#### Question 11

Are there any unintended consequences that the government should consider regarding the definition of an SME?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 12

Do you agree or disagree that regulation 5 clearly describes and fully captures what constitutes a service connected to regulated radio services?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 13

Do you agree or disagree that regulation 6 clearly describes and fully captures what audio-only content is?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

#### Question 14

Do you agree or disagree that regulation 6 makes it clear what is considered a visual advertisement included with an audio item?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

Please explain your answer

It is not clear. Audio advertising which has a visual component is in scope of the restrictions.

#### Question 15

Do you agree or disagree that the relevant parts of the regulations provide sufficient overall clarity on the services in scope of the advertising restrictions?

- Agree, it is clear
- Disagree, it is not clear
- I don't know

Please explain your answer

It is not clear. Audio advertising which has a visual component is in scope of the restrictions. We seek clarity as to whether this includes either brand or product identifiable, or both, within the visual component.

#### Question 16

Do you have any additional comments on the draft regulations?

Please see answer to question 3.



Further evidence of the need for restrictions to online marketing of infant milks to prevent childhood obesity (relevant to infant formula, follow-on formula, infant milks marketed as foods for special medical purposes and growing up and toddler milks) can be found in (Hickman, et al., 2020).

It is relevant to note that it was on the basis of this research that in 2020 First Steps Nutrition Trust recommended the following:

*“To help prevent obesity and to protect the health of mums and babies, online marketing of all infant milks marketed for children under 3 years of age should be totally restricted in the UK at the same time as a total online marketing restriction for high fat, salt and sugar foods.”*

Issues with the nutrition composition, inappropriate marketing and misleading and inadequate labelling of certain commercial milk formulas, foods and drinks aimed at infants and young children is long overdue addressing. These products are widely used across the UK by parents, and their consumption is one driver of childhood obesity. Reducing the prevalence of obesity will not be possible without taking preventative actions in the first 1000 days (FSNT, 2021b). What and how infant and young children are fed affects their growth, development and dietary habits and preferences with lifelong impacts. Addressing the inappropriate advertising of high fat, salt sugar foods is vitally important and will have a positive impact on reducing the consumption of these products, and on levels of obesity. But these restrictions can and should be broadened to address a fuller scope of the commercial milk formulas and baby and toddler foods being consumed by infants and young children. We recognise that some of the changes we propose above (specifically those related to baby foods and processed cereal-based foods) cannot be made in the current legislation during this round of consultation, but seek to highlight that future changes are needed and in as short a time frame as possible to meet the Government’s goal of halving childhood obesity by 2030.

We also wish to highlight that the enforcement of future legislation needs appropriate attention in light of issues with the poor implementation of existing legislation on the marketing and labelling of infant and follow on formula.

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**Baby Feeding Law Group UK Members:**

Association of Breastfeeding Mothers (ABM), Association for Improvements in the Maternity Services (AIMS), Baby Milk Action, Best Beginnings, the Breastfeeding Network (BfN), Breastival, the Code Monitoring Northern Ireland, Community Practitioners and Health Visitors Association (CPHVA), Doula UK, The Fatherhood Institute, First Steps Nutrition Trust, GP Infant Feeding Network (GPIFN), HENRY, Hospital Infant Feeding Network (HIFN), the Human Milk Foundation, Institute of Health Visiting, Lactation Consultants of Great Britain (LCGB), La Leche League GB (LLLGB), Leicester Mammias, Centre for Lactation, Infant Feeding and Translational research (LIFT), Local Infant Feeding Information Board (LIFIB), Midwives Information and Resource Service (MIDIRS), National Breastfeeding Helpline, NCT, Royal College of Midwives (RCM), Save the Children, UK Association of Milk Banking (UKAMB), Unicef UK Baby Friendly Initiative, Unison, Women's Environmental Network (WEN), World Breastfeeding Trends Initiative (WBTi) UK, Dr Robert Boyle and Natasha Day (independent members)

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