



# **Consultation on the Feeding Products for Babies and Children (Advertising and Promotion) Bill**



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## BACKGROUND

On Wednesday 16<sup>th</sup> November 2016, MPs unanimously approved a ten minute rule motion in the House of Commons by Alison Thewliss MP, seeking leave to introduce a bill to control the advertising and promotion of feeding products for babies and children; to establish arrangements to set standards for the efficacy of products and to measure claims against those standards; to make provision about penalties for advertisers and promoters who do not meet the standards; and for connected purposes.

With leave having been given to introduce the bill, an online consultation was launched via [www.alisonthewliss.scot](http://www.alisonthewliss.scot) on Monday, 5<sup>th</sup> December 2016. The consultation ran from Monday 5<sup>th</sup> December 2016 until Monday 9<sup>th</sup> January 2017.

In total, 332 written consultation submissions were received in addition to representations from a number of stakeholder groups, including Baby Milk Action, the Breastfeeding Network, Unicef Baby Friendly, First Steps Nutrition Trust, Kendal Nutricare and the British Specialist Nutrition Association.

The document summarises the responses received from the consultation, which will form the drafting of the Feeding Products for Babies and Children (Advertising and Promotion) Bill. The bill is due to have its second reading in the House of Commons on Friday 24<sup>th</sup> February 2017.

## ORIGINS OF THE BILL

We all expect the food we consume to be safe. We would like to hope that the standard of that food is monitored and that the advertising that tries to encourage us to buy it is accurate; should that not be the case, we would hope that the companies involved would be punished for misleading us. We expect our health professionals to be knowledgeable, and we expect them to be able to give impartial advice on foods from a position of expertise. We expect parents to have access to information so that they can make informed choices about how they feed the most vulnerable and precious people in our society: babies and young children.



Unfortunately, that is not the case. The present means of regulating products intended for babies and children—the infant formula and follow-on formula regulations—has loopholes and is not enforced in any meaningful way. That is the reason why I have brought forward the proposed Feeding Products for Babies and Children (Advertising and Promotion) Bill.

My Bill would tighten controls on the advertising and promotion of infant and young child formula. Under the present regulations, the advertising of formula intended for babies under six months is not permitted, so formula manufacturers have instead focused their efforts on promoting follow-on milks. Such products are heavily promoted on TV and in the media with soft-focus visuals of babies. Looking at the products on a supermarket shelf, it is clear that they are branded in a similar way so that parents get the impression that a child will progress from one to the next. They are numbered from one through to three or four. The branding is very distinctive and attractive—golden, with shields, crowns and animals. This is a growing market, and competition is fierce.

Dr Nigel Rollins from the Department of Maternal, Newborn, Child and Adolescent Health at the World Health Organisation recently predicted that the market value of the formula industry would reach US \$70.6 billion by 2019. The majority of growth in the sector comes from follow-on and toddler milks, but the truth is that those products are not necessary. They have emerged because of the tightening of regulations around formula intended for babies aged zero to six months. They are marketed on TV, in print and online as important for child development, but many agencies globally are concerned about their high sugar content, and young children will receive all the nutrients they require from a healthy, balanced diet. As such, I am concerned that parents are not hearing that message and that there is an impact on family budgets as a result.

Infant formula milks are not cheap. The size of the containers is getting smaller while the cost is increasing. As a rough guide, the price of a tin of infant formula can range from £8.50 to £14.

Ready-prepared milks are even more expensive, and using one of the brand leaders in the first week of life could cost a family more than £100.

Certain heavily advertised niche brands can cost nearly £23 for 900 grams of powdered formula. For a baby in the first six months of life, one of those tins of formula might last around a week.

This cost can have a significant impact on household budgets. If families do not have access to impartial information about the content and merits of infant and young child formula, they make the decision on which product to choose by the way in which formula is presented on the shelves and by the marketing produced by formula companies. They might well consider the most expensive formula to be the best. I do not believe that formula companies are providing good enough and transparent enough information to allow parents to make an informed decision. That is being left to small charities such as First Steps Nutrition Trust, which has excellent guides to infant formula on its website. We do not have any independent analysis to check whether the information provided by the companies about their products is accurate.

The Mintel baby food and drink report from April 2016 noted that one of the main factors determining parental choice of milk is “brand”.

It is not well enough known that all formula milks have to be of a very similar composition to comply with the requirements set by the EU, and claims are made primarily for unnecessary ingredients. Most of the rest of the difference is simply in the label and the branding, which parents are paying for: companies spent about £23 for every baby born in the UK on marketing follow-on formula in 2015. Given the disproportionate prevalence of bottle feeding in less affluent areas, the poorest families in our society are losing out the most.

This is an area in which one might expect health professionals to be able to help. Unfortunately, their ability to do so is constantly undermined by formula companies and by the lack of support, funding and leadership from Government in protecting them via legislation. There is a significant loophole in the regulations, which means that all infant formulas, for use from birth, can be advertised “in a scientific publication, or...for the purposes of trade prior to the retail stage, in a publication of which the intended readership is other than the general public”.

That includes adverts in professional medical and health journals that health professionals will read. Dr Helen Crawley of First Steps Nutrition Trust recently published a report entitled “Scientific and Factual? A review of breastmilk substitute advertising to health professionals”, which analysed some of the claims made in advertising to healthcare professionals. Many of the headline health claims made cannot be substantiated.

The sources they cite are not in line with health policy, graphs set out to mislead and the adverts may fail to meet the Government's requirement for such claims to be supported by peer-reviewed work.

Even more frustratingly, the adverts cannot be challenged, as they could be in any other publication, by taking the matter to the Advertising Standards Authority, and that is just not fair.

The intent of these adverts is to influence health professionals, who are the first line of support to families, but families need proper, independent information. The Bill would aim to tighten up this loophole and protect the integrity of health professionals from misleading claims.

My Bill proposes arrangements for controlling claims. Claims in adverts are challenged successfully and regularly by organisations such as Baby Milk Action. At present, claims can be made by formula companies for ingredients that are not necessary. For example, there is a global trend at the moment to add probiotics to formula, and for many years companies in this country have made claims about prebiotics in formula, which scientific authorities say have no benefit. There may also be issues with the degrading of formula composition over time, but we just do not have any information about that. Formulas can sit on the shelf for years, and we do not know what the impact of that is. There is no independent verification of formula composition or of claims. Furthermore, the Government take no formal national role in testing and monitoring all infant formulas to ensure that the products are safe and meet compositional regulations. I think parents would be quite shocked to find out that this is the case. These products are chosen with care to give to our youngest citizens in this country, and I propose that the Government makes improvements in this area.

Finally, there have been no prosecutions under the current regulations since 2003, despite numerous flagrant breaches. Under the present regulations, contravention or failure to comply is an offence liable, on summary conviction, to a fine not exceeding level 5 on the standard scale, which is a fine of up to £5,000. Given the size and scale of the companies and of the industry, that level of fine barely impacts upon industry. This is in stark contrast with Romania, which has recently signalled its intent to bring in a new law banning the promotion of infant formula products for children up to the age of two. Breaching the rules will constitute a criminal offence, with fines of up to 100,000 Romanian new leu.

The WHO resolution adopted in May 2016 clarified that all infant milks marketed as a breastmilk substitute in the first three years of life should be covered by the international code of marketing of breastmilk substitutes, including follow-on formula, toddler milks and other milks. The United Kingdom has not fully adopted the code and should do so immediately.

**Alison Thewliss MP**

## SUMMARY OF CONSULTATION SUBMISSIONS

The vast majority of respondents indicated support for the broad aims of the Bill. The British Specialist Nutrition Association - which represents Abbott, Danone Nutricia Early Life Nutrition, Mead Johnson, NANNYcare and Nestle – is opposed to the Bill.

A number of respondents suggested the following be included within the scope of the Bill:

- Full implementation of the World Health Organisation (WHO) International Code of Marketing of Breastmilk Substitutes;
- A specific definition of a breastmilk substitute as any milk product (or milk substitute) marketed as being suitable for babies up to the age of 36 months (including all follow-on formula and growing up milks);
- A requirement that other food and drink intended for babies up to the age of 36 months meet strict national guidelines on nutrient content, quality and safety and be promoted only for babies over 6 months of age;
- A ban on health claims made on foods and drinks promoted to children under the age of 36 months;
- The establishment of an adequately resourced Government body to test products independent of industry, to monitor and enforce of the regulations, as well as to issue penalties when companies break the law;
- A ban on companies engaging in direct or indirect promotion of any breastmilk substitute or cross-branded foods marketed for children under the age of 36 months to parents through traditional media, social media, parenting clubs, classes or through any part of the health care system;
- A requirement that any claim made about a product used in marketing on websites, to health professionals and in any other way is independently evaluated if it is not in line with currently agreed scientific opinion in the UK.
- Plain packaging for all formula milks;
- A reasonable and visible font size on all packaging;
- The prohibition to suggest a progression of formula products, i.e. Stage 1, 2, 3, etc., and remove terms like 'follow-on', toddler/growing up milk;
- Explicit information on the packaging to indicate clearly the minimum temperature of 70oC to be used when making up powdered formula milk;
- The inclusion of a standardised nutritional information table on each packet, much like the traffic light system used on other food. This should also have a column that included the vitamin and mineral content of breast milk for comparison;
- All advertisements for follow-on formula should be withdrawn from TV and professional journals;

- All food and drink intended for babies up to the age of 36 months should be promoted from no younger than 6 months;
- Greater financial penalties for supermarkets flaunting current guidelines with promoting and selling infant formula;
- A ban on companies engaging in direct or indirect promotion of any breastmilk substitute or cross-branded foods marketed for children under the age of 36 months to parents through traditional media, social media, parenting clubs, classes or through any part of the health care system;
- A requirement that other food and drink intended for babies up to the age of 36 months meet strict national guidelines on nutrient content, quality and safety and be promoted only for babies over 6 months of age - if permitted at all;
- A requirement that any claim made about a product used in marketing on websites, to health professionals and in any other way is independently evaluated if it is not in line with currently agreed scientific opinion in the UK;
- Prohibition of adverts for all follow on formula milks.

## TESTIMONIALS FROM STAKEHOLDERS

*"I feel particularly strongly that formula milk should not be allowed to be advertised to health professionals. It turns them into sales reps for a product with adverse health outcomes for the short and long term health of the mothers and babies they serve. It is a massive conflict of interest. The NHS is struggling under the weight of the consequences of having been complicit in quietly promoting artificial feeding as though it was almost the equivalent of the biological norm, in maternity hospitals since 1945. This has to stop. A ban on advertising would send a clear message to the nation, just as it did on smoking.*

*The guidance includes extending the ban on advertising and promotion to health professionals and to all formulas from 6-36 months. I would welcome this aspect particularly. Follow-on formula is currently advertised to beguile parents that they can give this to toddlers instead of proper, nourishing food.*

*Follow-on milk is high in sugars, cumulative plasticiser contaminants and aluminium from the tins and processing (that the babies will have been exposed to almost since birth) and supplants the cheaper, healthier, wider diet that we as a responsible government should be promoting instead."*

- Submission from a Health Professional

*"I totally agree with the points raised as part of the bill and believe that banning unnecessary follow on formula advertisement would further contribute to the enhancement of health and wellbeing of mothers and infants. As an associate professor in Nutrition with more than 20 years experience in the field of Nutrition and a father of a toddler, I have experienced the impact of the powerful advertisement in the field, and the way that this dominant media presence undermines the decision of the families and health care professionals. I think the bill is of significant value and impact considering that with current advertising pressure, the provision of the consumption of the follow on formula has become a 'norm', not only adversely affecting the budget of the families, and adding unnecessary sugar to newly shaping taste and diet of the infant, but also further affecting the process of weaning or supplementary food consumption."*

- Submission from a General Practitioner

*“NCT believes that mothers using formula milk (exclusively or in combination with breastfeeding) should have support to do so safely, and access to factual, helpful information that is free from commercial influence. The current information context does not sufficiently protect parents or health professionals from inaccurate claims; leading to parents buying specialised products they do not need, that have no proven effectiveness or that are unreasonably expensive. NCT supports the introduction of new legislation to improve the quality of information available to parents and to health professionals about feeding products for babies.*

*In order to achieve this the Bill should be consistent with strengthening current legislation to comply with the International Code of Marketing of Breastmilk Substitutes (the Code) and with subsequent World Health Assembly resolutions relating to the Code. This includes:*

- Adopting a definition of a ‘breastmilk substitute’ as any milk product (or milk substitute) marketed as being suitable for babies up to the age of 36 months (including all follow-on formula and growing up milks);*
- Requiring that breastmilk substitutes and other food and drink intended for babies up to the age of 36 months meet national guidelines on nutrient content, quality and safety and be promoted only for babies over 6 months of age;*
- Requiring transparency from companies about the composition of their products, how they test these for safety and nutritional content and open presentation of annual results on product testing;*
- Preventing companies from engaging in direct or indirect promotion of breastmilk substitutes or cross-branded foods marketed through traditional media, social media, parenting clubs, classes or through any part of the health care system to parents for children under the age of 36 months;*
- Requiring independent verification of new claims included in marketing relating to breastmilk substitutes where these claims are not in line with currently agreed scientific opinion in the UK;*
- Establishing an adequately resourced national system for monitoring and enforcing regulations; including penalties when companies break the law.”*

- Submission from National Childbirth Trust

*"I am always concerned at the tenacity of milk marketing companies to work around the law. As a health professional working as a Health visitor I am exposed to advertising through professional journals. This will often quote research of dubious origin and funding to back up pseudo-scientific research on breast feeding and formula milk. I am fortunate to work in the East End of London, Tower Hamlets where we have had strict policies in regard to resisting the influence of drug and formula companies on selling their advertising through the NHS staff. Within the UK not all Trusts are as effective against this wave of commercial interest."*

- Submission from a Health Professional

*"I was sent a targeted email when my son was 16 weeks through babycenter.co.uk from SMA talking about protein in breast milk (but also had SMA branding all over it and information about their products)."*

- Submission from a Parent

*"As a neonatal nurse I am so pleased to see this important issue being raised in parliament. Currently parents and health professionals are sold formula with false claims about the benefits of ingredients some of which cannot even be absorbed by a babies gut. I am tired of reading journals full of advertising for artificial milks and attending study days where products are pushed at us by profit hungry companies. Necrotising Enterocolitis kills preterm babies in the UK every year, and breastmilk is a huge protective factor in infants avoiding the disease. I would like to see all formulas independently regulated, advertising to health professionals banned, and advertising of follow on milks banned. I would also like to see breastmilk advertised."*

- Submission from a Staff Nurse

*"Formula milk is amongst the most strictly regulated of all foodstuffs (Regulation EU No 2016/127; EU Directive 2006/141/EC). The EU also strictly regulates levels of pesticides, contaminants and micro-organisms, along with packaging.*

*It is erroneous to suggest that formula milk is unsafe. It is a requirement of all manufacturers to ensure that their food products are safe in accordance with General Food Law and standard in many respect are even tighter for infant formulas. All ingredients used in infant formula must be proven safe, and undergo rigorous clinical testing.*

*The legislation also governs the marketing and sales aspect of infant formula, and represents the principles and aims of the WHO Code; this is also strictly enforced.*

*All product claims used in labelling and advertising must be approved by the European Food Safety Authority, and enforcement is carried out by Trading Standards. Regulations prohibit the advertising to the public of infant formula for babies 0 to 6 months of age."*

*- Submission from the British Specialist Nutrition Association*

*"I have mixed fed my son (now 5 months) almost from the start, having found myself just not making enough milk for him.*

*I really don't like the way companies like Aptamil make it sound like they will improve the child's intelligence or strength by saying they will have a brighter future (not sure of the exact wording). Another brand highlights the fact it contains iron "for brain development" - as if their brain won't develop without it!*

*I have no problem with however people feed their babies as we all have to do our best, but some of the advertising claims are annoying. I was also interested that advertising accounts for so much of the end price. £10 a tub makes it an expensive necessity."*

*- Submission from a Parent*

*"The Bill should reflect the International Code of Marketing of Breastmilk Substitutes (the Code) and subsequent World Health Assembly resolutions relating to the Code. In particular the Bill should set out to strengthen the UK's current legislation. This could include:*

- A definition of a breastmilk substitute as any milk product (or milk substitute) marketed as being suitable for babies up to the age of 36 months (including all follow-on formula and growing up milks).*
- A requirement that other food and drink intended for babies up to the age of 36 months meet strict national guidelines on nutrient content, quality and safety and be promoted only for babies over 6 months of age.*
- A ban on health claims made on foods and drinks promoted to children under the age of 36 months.*
- The establishment of an adequately resourced national system for monitoring and enforcement of the regulations including penalties when companies break the law.*
- A ban on companies engaging in direct or indirect promotion of any breastmilk substitute or cross-branded foods marketed for children under the age of 36 months to parents through traditional media, social media, parenting clubs, classes or through any part of the health care system.*
- A requirement for transparency from companies about the composition of their products, how they test these for safety and nutritional content and open presentation of annual results on product testing.*
- A requirement that any claim made about a product used in marketing on websites, to health professionals and in any other way is independently evaluated if it is not in line with currently agreed scientific opinion in the UK".*

- Submission from Unicef Baby Friendly

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