

## Clarifying misconceptions about the UK law on the marketing of infant formula: BFLG-UK briefing document

This new briefing document (intended for use by journalists, policy makers, politicians and health care professionals) has been produced to clarify the intention of the current UK law on the marketing of infant formula, highlight and summarise relevant provisions, and to dispel recent misinterpretations of the law observed in the media.

### The UK law on the marketing of (infant) formula

#### Intention of the current UK law on the marketing of infant formula

In the UK, the overarching [Foods for Specific Groups \(FSG\) Regulation](#) on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control was adopted in 2013 and applied from 2016. The [Commission Delegated Regulation \(CDR\) \(EU\) 2016/127](#) supplements the FSG regulation, consolidates legislation on the composition, labelling and marketing of infant and follow-on formula, and was [adopted in 2016](#) and [fully applied from 2022](#).

The [Department for Health and Social Care Guidance Notes to the CDR](#) state: “The Commission Delegated Regulation and the overarching FSG Regulation together give effect to some but not all of the general principles and ambitions of the 1981 WHO Code on the Marketing of Breastmilk Substitutes covering marketing, information and responsibilities of health authorities in relation to infant formula and follow-on formula, as they set provisions which regulate labelling and restrict advertising and presentation of infant and follow-on formula so as not to discourage breastfeeding.”

The CDR contains provisions on labelling and packaging, placing on the market and notification, compositional requirements of infant formula (IF) and follow on formula (FoF), avoidance of risk of confusion between IF and FoF, advertising, promotion, and provision of information and education relating to infant and young child feeding. These provisions also therefore support of safe and appropriate formula feeding, as well as the protection of breastfeeding.

This is consistent with the intention of the WHO International Code of Marketing of Breast-milk Substitutes and subsequent World Health Assembly (WHA) resolutions (“The Code”) the first article of which states its aim to contribute “to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, **and by ensuring the proper use of breast-milk substitutes, when necessary, on the basis of adequate information and through appropriate marketing and distribution**” ([WHO, 1981](#)).

In summary, the current UK legislation restricting the marketing of infant formula is informed by the Code. However, since it contains only ‘some’ provisions (scoring only 40/100 in the 2022 Code Status Report - [WHO, UNICEF & IBFAN, 2022](#)), and it is poorly enforced,<sup>1,2,3,4</sup> the reality is that the current UK law provides limited protection for breastfeeding and does not properly enable safe and appropriate formula feeding.

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<sup>1</sup> Conway R, Esser S, Steptoe A, Smith AD, Llewellyn C. Content analysis of on-package formula labelling in Great Britain: use of marketing messages on infant, follow-on, growing-up and specialist formula. *Public Health Nutrition*. 2023;26(8):1696-1705. <https://doi.org/10.1017/S1368980023000216>

<sup>2</sup> Cheung KY, Petrou L, Helfer B, et al. Health and nutrition claims for infant formula: international cross sectional survey. *BMJ*. 2023. 380: e071075. <https://doi.org/10.1136/bmj-2022-071075>

<sup>3</sup> Hickman N, Morgan S, Crawley H, Kerac M. Advertising of Human Milk Substitutes in United Kingdom Healthcare Professional Publications: An Observational Study. *Journal of Human Lactation*. 2021;37(4):674-682. <https://doi.org/10.1177/08903344211018161>

<sup>4</sup> BFLG-UK. Infant milks marketed as foods for special medical purposes (FSMP): The case for regulatory reform to protect infant health. 2022. [https://www.bflg-uk.org/s/FSN\\_FSMP-Report\\_A4\\_DIGITAL.pdf](https://www.bflg-uk.org/s/FSN_FSMP-Report_A4_DIGITAL.pdf)

## Provisions on infant formula marketing in current UK law

<p><b>Regulation (EU) No. 609 of 2013 on Food for Specific Groups</b></p> <p><b>Article 10:</b> Additional requirements for infant formula and follow-on formula</p> <ul style="list-style-type: none"> <li>• “The labelling, presentation and advertising of IF and FoF shall be designed so as not to discourage breast-feeding.</li> <li>• The labelling, presentation and advertising of infant formula, and the labelling of follow-on formula shall not include pictures of infants, or other pictures or text which may idealise the use of such formulae. (... graphic representations for easy identification of IF/FoF and for illustrating methods of preparation shall be permitted.”</li> </ul>
<p><b>Commission Delegated Regulation (EU) 2016/127</b></p> <p><b>Articles 5-9</b> deal with <b>labelling and packaging</b> requirements of infant formula and follow-on formula:</p> <ul style="list-style-type: none"> <li>• <b>Article 6:</b> Specific requirements for food information, including: <ul style="list-style-type: none"> <li>• Necessary information about the appropriate use (preparation, storage and disposal) of IF and FoF and warnings about inappropriate preparation and storage. <ul style="list-style-type: none"> <li>○ Mandatory particulars for IF: statement that the product is suitable for infants from birth when not breastfed; instructions for appropriate preparation, storage and disposal of the product; warning against health hazards of inappropriate use; a statement (preceded by the words ‘important notice’) concerning the superiority of breastfeeding and recommending that the product be used only on advice of health professionals.</li> <li>○ Mandatory particulars for FoF: A statement that the product is suitable only for infants &gt; 6 months, as part of a diversified diet, not to be used as a substitute for breast milk during first six months of life and that the decision to begin complementary feeding should be based on the individual infant's specific growth and development needs; instructions for appropriate preparation, storage and disposal of the product and a warning against the health hazards of inappropriate preparation and storage.</li> </ul> </li> <li>• The labelling, presentation and advertising of IF and FoF shall provide the necessary information about the appropriate use of the products, so as not to discourage breast feeding and <b>shall not</b> use the terms ‘humanised’, ‘maternalised’, ‘adapted’, or terms similar to them.</li> <li>• The requirement for IF and FoF to be clearly distinct from each other (in relation to text, images and colours), to ensure appropriate product use and prevent confusion. Cross-promotion of IF and FoF is clearly prohibited.</li> <li>• Article 7: Mandatory information required, including the nutrition declaration.</li> <li>• Article 8: Prohibition of nutrition and health claims for IF.</li> </ul> </li> </ul> <p><b>Article 10</b> provides requirements for promotional and commercial practices (<b>i.e., marketing and advertising</b>):</p> <ol style="list-style-type: none"> <li>1. Advertising of IF is restricted to publications specializing in baby care and scientific publications, and such advertising shall contain only information of a scientific and factual nature.</li> <li>2. No point-of-sale advertising, giving of samples or any other promotional devices at retail level (such as prominent shop window displays, special or free-standing displays, shelf talkers discount coupons, premiums, special sales, loss-leaders and tie-in sales).</li> <li>3. No provision (by manufacturers or distributors of IF), of free or low-priced products, samples or gifts, directly or indirectly, via health care system or health workers. Guidance Notes: “this could include multi-packs (bulk buys), loyalty or reward card schemes, free formula, price reductions, discounts or mark downs and ‘buy one get one free’ and gifts provided via baby clubs or similar activities are also prohibited.”</li> <li>4. Donations or low-price supplies of IF to institutions or organisations, shall only be distributed for infants who have to be fed on infant formula and only for as long as required by such infants.</li> </ol> <p><b>Article 11</b> of the Commission Delegated Regulation provides information on the requirements for producing and publishing <b>information and educational material relating to infant and young feeding</b> when it is permitted. Information and educational material (whether written or audio-visual) that deals with feeding of infants and is intended to reach pregnant women and mothers of infants and young children, needs to include certain information: benefits and superiority of breastfeeding; maternal nutrition and preparation for and maintenance of breastfeeding; possible negative effect on breastfeeding of introducing partial bottle feeding; difficulty of reversing the decision not to breastfeed; and where needed, the proper use of infant formula. This information must not use any images or text which idealise the use of infant formula.</p> <p>The Guidance Notes provide examples of representations of information that are categorised as advertising.</p>

## **Clarifying recent misinterpretations of UK law on infant formula marketing observed in the media**

Misinformation can do damage, especially with regard to public health and the protection of the most vulnerable groups in the population, including infants and young children. Misinformation is false information that can be spread either by mistake or intentionally and has the potential to cause substantial harm to individuals and society. One way to protect people against being misinformed, is by exposing and discrediting such misinformation<sup>5</sup>.

### **1. Fact: Legal restrictions on infant formula marketing exist to protect all babies, no matter how they are fed.**

**Misconception: Legal restrictions on infant formula marketing exist to protect and encourage breastfeeding only.**

- *Example of misinterpretation: "Promotions for baby formula for use from birth up to six months are banned in the UK, to ensure they do not discourage breastfeeding." ([Joanna Partridge, the Guardian, 23 Aug 2023](#)).*
- Formula marketing restrictions are informed by the Code and are intended to protect and encourage breastfeeding AND ensure safe and appropriate formula feeding. As well as protecting breastfeeding, the Code protects against marketing of unnecessary and potentially harmful formula milks, including follow on formulas, 'Growing Up' milks/toddler milks and formulas marketed as foods for special medical purposes which lack an evidence base, such as anti-colic formula.

### **2. Fact: Restricting inappropriate marketing of infant formula does not limit its accessibility. It is inaccessible when its price is unaffordable.**

**Misconception: Legal restrictions on infant formula marketing limits its accessibility.**

- *Example of misinterpretation: "The burden on parents could be eased by loosening restrictions on marketing... to allow promotions." ([Richard Walker, Iceland, the Guardian, 1 Dec 2023](#)).*
- Loosening restrictions on the marketing of infant formula would not address the root cause of the problem which is the overpricing by manufacturers ([Price inflation and competition in food and grocery manufacturing and supply - GOV.UK](#)). Allowing price promotions for infant formula would put the onus on parents to shop around to find the lowest price for what is an essential food that should be affordable in the first instance. Since there are no health and nutrition advantages of any one infant formula over another, current price differentials are meaningless. Controlling inappropriate marketing would remove brands' advantage, reduce prices, and increase demand for own brand. A proactive approach such as price caps is also needed and would be in accordance with the Code. The Code states (article 5.3) that "...this provision [article 10.3 in UK law] should not restrict the establishment of pricing policies and practices intended to provide products at lower prices on a long-term basis."

### **3. Fact: Restricting inappropriate marketing of infant formula does not cause high prices. High prices are largely the result of high profit margins and large marketing budgets.**

**Misconception: Legal restrictions on infant formula marketing are causing high prices.**

- *Example of misinterpretation: "Baby formula can't be advertised; it can't be sold in any kind of promotional deal in shops; you can't use store loyalty card points on it. The idea is that, were manufacturers or shops to do any of these, it might put mothers off from breastfeeding, and deprive their babies of the associated health benefits. But these, along with other rules on sales, have worked to drive up the price of formula during the cost-of-living crisis." ([Stuart Richie, iNews, 24 Aug 2023](#)).*
- High costs and the increased price of infant formula is not because of legislation and marketing restrictions, but because of prices set by manufacturers and retailers to safeguard very high profit margins ([Price inflation and competition in food and grocery manufacturing and supply - GOV.UK](#)).

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<sup>5</sup> Lewandowsky S, Cook J, Ecker UKH, et al. 2020. The Debunking Handbook 2020. <https://skepticalscience.com/docs/DebunkingHandbook2020.pdf>

**4. Fact: Shoppers need to spend hundreds of pounds to accrue sufficient points to purchase a single tin of infant formula. This is not a means to improve accessibility to families on the lowest incomes.**

**Misconception: Not allowing rewards scheme points to buy infant formula is preventing families from accessing it.**

- *Example of misinterpretation: "Laws are archaic and outdated and prevents Iceland from being able to accept loyalty cards, cash equivalents and High Street vouchers." ([Richard Walker, Iceland, BBC, 3 Dec 2023](#)).*
- It is not clear whether the law allows reward scheme points to be redeemed against infant formula. Moreover, regardless of how the law is interpreted, the accrual of sufficient rewards/loyalty scheme points to buy a single tin of infant formula would require spending about £1000, in a context where average food spend in the lowest income households is estimated to be £56 a week ([Average UK Household Budget 2023 | NimbleFins](#)). This is not a measure which can be said to prevent access, especially to those on the lowest incomes and it is also not equitable, since consumers need to spend money in the first instance, in order to obtain any "reward". A customer could redeem any points earned against other items in their shopping basket and purchase the infant formula with cash. By allowing rewards and loyalty scheme points to be used to purchase infant formula would make a very small difference to consumers and would not substantially increase access to infant formula. A much more significant and equitable action would be to lower the cost of all infant formula (through, for example, a government-instituted prices cap or by retailers and manufacturers reducing their profit margins) and increasing the ability of households to afford to purchase infant formula, (through, for example, increasing the value of the Healthy Start scheme).

**5. Fact: There are no legal restrictions preventing families from using store gifts cards (and equivalents) issued by food banks to buy infant formula.**

**Misconception: Legal restrictions prevent families from using foodbank vouchers to buy infant formula.**

- *Example of misinterpretation: "Regulations that prevent families from using foodbank vouchers to buy infant formula are no longer fit for purpose. We will not stand by while outdated restrictions have a damaging impact on those struggling to make ends meet... We will urgently review existing legislation on infant formula, ensuring that regulation is protecting families and their babies, not making life more difficult for them." ([Wes Streeting, Shadow Health Secretary, Metro UK, 25 Oct 2023](#)).*
- Food banks often provide supermarket store cards loaded with money. "Foodbank vouchers" don't in fact exist and the origin of cards distributed by food banks wouldn't be identifiable. Most supermarkets accept these for purchase of infant formula, and doing so is not against the law. The legislation prohibits the use of any promotional devices to induce sales of infant formula directly to consumers at retail level.

**6. Fact: Legal restrictions on infant formula marketing exist to safeguard the health of all babies, however they are fed.**

**Misconception: Legal restrictions on infant formula marketing are inappropriate.**

- *Example of misinterpretation: "Marketing restriction guidelines treat formula like tobacco – why can't we use loyalty points on formula?" ([Mother, the Guardian, 1 Dec 2023](#)); "There should be fewer restrictions, I can promote vapes or chocolate but not formula," ([Richard Walker, Iceland, the Guardian, 1 Dec 2023](#)).*
- Infant formula is a unique commodity, since for many families, it is an essential foodstuff. Therefore, its marketing needs to be treated differently to other foods and commodities and it has unique marketing restrictions. Recent research from a multi-country study conducted by the WHO shows the aggressive and exploitative marketing tactics being used by formula milk manufacturers. There is ongoing violation of the Code and national legislation. It has been demonstrated that this marketing negatively influences decisions around infant feeding ([WHO & UNICEF, 2022](#)), including undermining breastfeeding but also leading to unsafe and inappropriate formula feeding practices.

More information on the costs of infant formula in the UK is available on the Infant Milk Info website (<https://infantmilkinfo.org/costs/> ) and in the November 2023 cost report<sup>6</sup>.

First Steps Nutrition Trust recommendations of the four specific, important actions that the Government could and should be taking now, to ensure that all families using formula to feed their babies can be enabled to do so safely are:

1. Improvement of the Healthy Start scheme.
2. A public health messaging campaign around the nutritional equivalence of all first infant formula.
3. Enforcement of existing legislation designed to prevent inappropriate marketing of formula milks and to protect breastfeeding AND safe and appropriate formula feeding and strengthening of this legislation in line with the International Code of Marketing of Breastmilk Substitutes and subsequent World Health Assembly Resolutions.
4. Government establishment of pricing policies and practices to ensure infant formula is provided at lower prices on a long-term basis (e.g., through a price cap).

Read more in the First Steps Nutrition Trust press release in response to the CMA report<sup>7</sup>.

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<sup>6</sup> First Steps Nutrition Trust. Costs of infant formula, follow-on formula and milks marketed as foods for special medical purposes available over the counter in the UK. November 2023. [https://infantmilkinfo.org/wp-content/uploads/2023/12/Costs-of-IF-FOF-and-milks-marketed-as-FSMP-available-over-the-counter-in-the-UK\\_November\\_06122023\\_Final.pdf](https://infantmilkinfo.org/wp-content/uploads/2023/12/Costs-of-IF-FOF-and-milks-marketed-as-FSMP-available-over-the-counter-in-the-UK_November_06122023_Final.pdf)

<sup>7</sup> First Steps Nutrition Trust. Press release in response to the CMA report: Government action warranted after watchdog criticises “greedflation” by infant formula brands. 29 November 2023. <https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/6567ceb891496d7b0b232c73/1701301945259/FSNT+press+release+on+the+CMA+report+-+infant+formula+-+29112023.pdf>