

# UK Monitoring



**“The Committee on the Rights of the Child.. is concerned that implementation of the *International Code of Marketing of Breastmilk Substitutes* continues to be inadequate and that aggressive promotion of breastmilk substitutes remains common.**

**“The Committee recommends that the State party implement fully the *International Code of Marketing of Breastmilk Substitutes*.”**

**CRC report on the UK, 2008**

*Top: “Their future starts today” peak-time television advertising in the UK in 2016 suggests formula turns babies into mathematical geniuses.*



**BABY MILK  
ACTION**  
IBFAN UK

Violations of Code and Resolutions common in UK  
.....  
Government still to act on CRC recommendations  
.....  
No prosecutions for breaches of weaker national law  
.....  
New EU Delegated Acts provide opportunity for action

[babymilkaction.org](http://babymilkaction.org)



## A child rights issue .....

The UK is a signatory to the *Convention on the Rights of the Child* and its progress in meeting its obligations will be assessed this year by the *UN Committee on the Rights of the Child (UN CRC)*.

The Committee called on the UK to implement the Code in its 2008 recommendations (see cover). It made a similar recommendation in 2002.

The *Lancet Breastfeeding Series* published in January 2016 highlighted that the UK has the worst breastfeeding rates in the world at 12 months of age (<0.5%).

This is particularly troubling because most UK mothers say they wanted to breastfeed for longer. The *National Infant Feeding Survey in 2005* found:

*"Around nine in ten mothers who breastfed for less than six weeks said that they would have liked to continue longer."*

The 2010 survey says:

*"Of the mothers who had stopped breastfeeding by Stage 3 [8 to 10 months old], over three in five (63%) said that they would have liked to have breastfed for longer."*

The 2015 survey was cancelled, even though the government cites surveys going back to the 1950s in its submission to the UN CRC.

**PARLIAMENTARY ACTION:** Reinstate the National Infant Feeding Survey.

Let's take action so mothers are able to breastfeed as long as they want.

## We know what is needed .....

The UK has endorsed the *Global Strategy for Infant and Young Child Feeding*. This "identifies

*interventions with a proven positive impact."*

IBFAN, our international network, has developed the *World Breastfeeding Trends Initiative (WBTi)* to assess countries on their progress in implementing the *Global Strategy*. We brought WBTi to the UK and gained the support of the members of the Baby Feeding Law Group (BFLG), a coalition of leading health professional and mother support groups. Lactation consultants Helen Gray and Clare Meynell are coordinating the assessment. The Lactation Consultants of Great Britain (LCGB) hosts information on its website.

Organisations across the infant and young child feeding sector, including government, are working together to identify gaps and make recommendations for action. The assessment will be published in the near future.

## Cross-party action on policy .....

Baby Milk Action and other groups supported Alison Thewliss MP in setting up an All Party Parliamentary Group (APPG) on Infant Feeding and Inequalities, which was formed on 19 January 2016. The APPG listens to experts at regular meetings to formulate concerted action on implementing the *Global Strategy* in the UK.

The four countries of the UK (England, Northern Ireland, Scotland and Wales) have identical laws: the *Infant Formula and Follow-on Formula Regulations (2007)*. These are much narrower than the *International Code* and Resolutions.

New EU *Delegated Acts* are being introduced in 2016. We have achieved improvements to the draft text, but they still fall far short of the Code and Resolutions. Nonetheless, there are opportunities when implementing the *Delegated Acts* to better protect infant health.

## Enforcement needs strengthening.....

The Department of Health (DH) consulted in February 2016 on measures for a *Statutory Instrument* to enforce the *Delegated Acts*. The proposals are worrying. The DH proposes:

- Decriminalising many of the provisions in the regulations, such as labelling requirements and the need to notify DH prior to launching new products;
- Moving to a system of "Improvement Notices" with the stated purpose of "*removing unnecessary rules and burdens on business*".

Companies have been breaking labelling requirements since they were first introduced in 1995, without ever being prosecuted. Current labels break the requirement to ensure that infant formula and follow-on formula labels are clearly different. Infant formula cannot be promoted, but a loophole in UK regulations allows advertising of follow-on milks (as with the Aptamil advertisement on the front cover). Companies label the products identically as shown below to make them cross promotional.



Despite companies breaking the law for decades, the DH proposes *Improvement Notices* as "*a more flexible approach giving industry additional time and support to resolve the problem identified in the Improvement Notice, enabling them to comply before it is escalated to a criminal offence.*"

Improvement Notices only make sense if their purpose is to protect the child's right to health and they are intended to be a more flexible way to prompt faster action. To achieve this, they would need to be public, have deadlines attached, and be backed by criminal prosecutions if the deadline passes without the required action being taken.

Other provisions of the law are routinely broken – as demonstrated by supermarkets promoting

Nestlé SMA infant formula to clear stocks of products with "excessive protein" (overleaf).

Baby Milk Action has submitted comments to DH on behalf of the Baby Feeding Law Group calling for regulations to be enforced, not weakened.

**PARLIAMENTARY ACTION:** Oppose Improvement Notices UNLESS they are part of a process of law enforcement and breaches lead to sanctions.

## MPs back enforcement .....

An Early Day Motion is a petition for MPs. The Chair of the Infant Feeding and Inequalities APPG, Alison Thewliss MP, submitted EDM 1189 calling for regulations to be enforced and not weakened: [www.babymilkaction.org/archives/8787](http://www.babymilkaction.org/archives/8787)

**PARLIAMENTARY ACTION:** Encourage prosecutions of clear breaches of the Regulations to build case law on interpretation. (Labelling, retail promotion, advertising, contact with the public, targeting of health workers).

## EDM 1189 on enforcing the law

That this House is concerned that the provisions of the Infant Formula and Follow-on Formula Regulations 2007 are disrespected in the UK, as evidenced by the current promotion for Nestlé SMA infant formula by Tesco in breach of Article 23 of that regulation, the near identical labelling of infant and follow-on formula to make them cross-promotional in breach of Article 19 of that regulation, the widespread advertising of infant formula brand names and logos in breach of Article 21 of that regulation and the use of idealising text and images on labels in breach of Article 17 of that regulation; therefore rejects the Department of Health's proposals to decriminalise certain of those requirements, such as labelling provisions in planned draft legislative proposals, related to EU Regulation 609/2015 which will replace these 2007 regulations; and stresses that any move to a system of Improvement Notices must have the purpose of speeding up compliance and be backed by prosecutions rather than giving companies who have flouted the law for many years additional time to comply.

# Promotion in retail outlets



## Tesco breaks the law to clear shelves of Nestlé formula with “excessive protein”

In January 2016, Nestlé sent an email to health workers in the UK promoting its “new improved” infant formula, branded as SMA Pro. It said that babies fed on existing formula have “protein intake in excess of requirements”. It suggested the new formula was “closer to breast milk”, making no apology for suggesting the current (and previous) formulations were almost identical to breastmilk.

With the launch imminent, Tesco put existing SMA formula on clearance sale across its chain with price cuts and special displays, despite these activities being clearly prohibited by the *Infant Formula and Follow-on Formula Regulations (2007)*. Many thanks to the many people who sent Baby Milk Action pictures and reports. We contacted Trading Standards and the Department of Health, but the promotions continued unabated, prompting Members of Parliament to call for the law to be enforced (previous page).

**Our new, improved, product range**

The European Food Safety Authority (EFSA) recognised that protein intake in infants is in excess of requirements, and recommends a reduction of protein quantity in infant formulae and follow-on formulae.<sup>6</sup>

SMA® Nutrition launches its new SMA® PRO core range in January 2016.

SMA® PRO First Infant Milk has a high quality, low quantity protein profile and is the only formula clinically proven to achieve a growth rate comparable with a breastfed baby.<sup>6</sup>

- Protein profile closer to breast milk\*
- Contains GOS/FOS\*
- Contains Omega 3 and 6 LCPS

**No apology for implying the old product was also comparable to breastmilk - just repeats the same strategy**



**THE RIGHT QUALITY PROTEIN IN THE RIGHT QUANTITY HELPS YOUR BABY TO GROW AT AN APPROPRIATE RATE, HELPING TO REDUCE THEIR CHANCE OF OBESITY IN LATER LIFE.**

**80% OF MUMS SURVEYED DID NOT KNOW THE IMPACT OF TOO MUCH PROTEIN ON THEIR BABY'S GROWTH**

*mums surveyed did not know the impact of too much protein on their baby's growth". It said, SMA "experts are passionate about educating mums on protein during the first 1,000 days of a baby's life, imparting this knowledge now can make a positive difference on babies health that will last into their adult years."* It also recruited parenting bloggers to write articles on the topic and direct readers to the SMA website where the new SMA PRO is promoted. The “media doctor” Dr Ellie Cannon was offered up for interviews on the “changing protein composition of breast milk”. Dr Cannon, according to her website, is “best known for her weekly health column in the Mail on Sunday and her regular appearance on Sky News Sunrise”. If you have ever wondered why experts linked to formula companies speak on breastfeeding rather than, say, independent academics or experts from mother-support groups here is part of the answer.

The protein content of the new formula is 1.87g/100kcal (1.25 g/100ml), according to Nestlé. First Steps Nutrition says, “the difference is not sufficiently significant to differentiate it from all other brands; the difference in protein content between it and the brand with the next lowest protein content is 0.02g/100kcal (0.01g/100ml).” For analysis and guides to formula on the market see [firststepsnutrition.org](http://firststepsnutrition.org)

## Boots breaks law to push Danone's new Aptamil formula .....

Danone is countering Nestlé's SMA PRO launch with its new Aptamil PRO formula, with prominent displays across Boots stores. Baby Milk Action has received pictures showing the infant formula being promoted on the special displays, which is illegal.



Sometimes when challenged, managers have claimed it was a mistake to include the infant formula alongside the follow-on formula, which can be promoted under weak UK Regulations. That said, the labels of the new formula do not comply with the requirement for infant formula and follow-on formula to be different (see page 3).

## Does formula give babies skills? .....

Even before Danone launched its new Aptamil product, it advertised the brand as giving babies skills. For example, a peak-time television advertisement suggests it turns babies into mathematical geniuses (front cover) and gives them the strength, balance and stamina to be ballerinas (below). The Advertising Standards Authority (ASA) rejected Baby Milk Action's complaints, arguing that these are common skills.



The advertising promotes the Aptamil brand, but companies argue it is for follow-on formula. However, the infant formula is almost identically labelled to the follow-on formula (in breach of UK Regulations) to make it cross promotional. Although Danone falsely claims in small print that follow-on formula is not a breastmilk substitute, the larger message is it is based on "40 years breastmilk research" implying it is the same a breastmilk (above).

## ASDA refuses to tell customers Nestlé toddler milk claims misled them .....

Baby Milk Action won a case against a joint Nestlé and ASDA email promotion for SMA toddler milks in October 2014. The companies implied children might not get enough of nutrients such as iron and Vitamin D unless they consumed the fortified milks.

The ASA warned the companies not to repeat the advert and *'told them not to state or imply that health could be affected by not consuming a product, or to give rise to doubt the nutritional adequacy of a reference product.'*



We asked ASDA to email members of its Baby and Toddler Club with a correction, but ASDA said, *'the ruling doesn't require us to send an update.'* We had to bring a second complaint to force Nestlé to remove the claims from its product website.

## Targeting parents .....

Various articles in the UK Regulations aim to ensure that pregnant women and parents are not targeted with gifts or misleading information, but these do not work in practice.



Danone gives an Aptamil-branded bear as a gift to pregnant women and new mothers to encourage

them to join its branded parenting club.



Emails are sent to members of clubs, timed to key dates during pregnancy and the child's development after being born.

These are often highly promotional. For example, promoting a formula starter kit to pregnant women close to their due date.

## Targeting healthworkers .....

Formula marketing in the UK has become noticeably more aggressive since Nestlé entered in 2012 by taking over the SMA brand. It has recruited a national network of sales staff it calls Clinical Representatives, offering £40k/year + bonus. A job description in April 2015 states,

*'Working with the National Health Service at a territory level, you'll be developing long-term, mutually beneficial relationships with key stakeholders and opinion leaders to support brand endorsement and strategically aligned education for Healthcare Professionals.'*

So while health workers may think they are immune to pressure, the marketers think otherwise. The aim is to sell more products:

*'your role is to work on the designated territory, visiting hospitals, doctors, health visitors and community midwives to develop key clinical*

*relationships within your local health Economies, leading to opportunities for the SMA brand and Nestlé Nutrition.'*

Many health facilities prohibit company representatives from meeting staff. Information can be provided to a designated expert who assesses it for accuracy and only communicates what is necessary. Nestlé, Danone, and more recently Hipp, try to bypass this restriction by organising their own study days.

Health workers have even been invited on a three-day trip to Nestlé's HQ IN Switzerland - with a free afternoon and evening trip to a vineyard for dinner.

Registrations have to be made via branded website where products are promoted. Guest speakers are used to entice health workers along, but the aim is to promote SMA formulas, with stalls and goodie bags promoting *SMA infant formula*. The example pictured shows how Nestlé uses the slogan "You're doing great", also used in Nestlé's online and television advertising for the brand.



An article by the marketing company *Futureproof*, employed by the previous owner's of the SMA brand, explained the strategy:

*"From our research, we discovered that the main thing that mums wanted was reassurance. Reassurance that at this incredibly tricky, emotional, and daunting time, they were making the right decisions and doing ok.... [the strategy] shifted the perceptions of SMA to a more 'caring' and 'supportive' space. But perhaps the most encouraging result has been that commercially the brand moved from number three in market to number two within six months, and is now pushing to regain the number one spot."*

See the *Local Infant Feeding Information Board* newsletter for assessment of this event.

[lifib.org.uk](http://lifib.org.uk)

## Danone pushing growing up milk with Vitamin D Mission .....

The *Department of Health* and the *World Health Organisation* say that fortified follow-on and growing-up milks are unnecessary products. All the same, the *Royal National Orthopaedic Hospital* has teamed up with Danone to promote Cow & Gate growing-up milk through the Vitamin D Mission campaign.

The Vitamin D marketing website invites parents to take a test to see if their child might lack Vitamin D, asking whether they use 'fortified milk'. We have asked the hospital why it is endorsing Danone's marketing campaign and if it is aware of rulings against the misleading claims.



The *Advertising Standards Authority (ASA)* told Danone's subsidiary *Nutricia* in a ruling on 18 June 2014 (A13-238372) that its advertising for Cow & Gate Growing Up milk: *'must not imply or state that a young child's intake of vitamin D, and as a result their health, could be affected if they did not consume Growing Up Milk.'*

The ASA reports the Department of Health warned of, *'potential adverse effects from excessive vitamin intake, and their recommendation for delaying supplementation was not intended to imply that formula was somehow superior to breast milk because it was fortified, or that formula (such as Growing Up Milk) should be used as a means of supplementing the diet. The DH's view was that Growing Up Milk was not necessary as infants could consume cow's milk from 12 months of age.'*

So why is *Royal National Orthopaedic Hospital* backing the conflicting message disseminated by the Vitamin D Mission marketing campaign?

Danone is also targeting nurseries, offering cash payments if they display posters and distribute booklets and vouchers for growing up milk. *Jazzy media* explains the campaign objective: *'Cow and Gate wanted to inform mums about their Growing-Up Milk in a safe and trusted environment... It was*

*also important for mums to receive their discount coupon by hand to prompt trial/purchase.'*

JFHC Professional has offered *Continuing Professional Development* training with a keynote speaker from Vitamin D Mission and exhibitors including Hipp Organic and Nestlé.



## Partners with the Department of Health .....

The Department of Health (DH) is responsible for the *Guidance Notes* applying across the UK on how to interpret the formula Regulations and for nutrition policy in England. However, DH has a conflict of interest as it counts ASDA, Tesco, Nestlé, Danone and other formula marketers as 'partners' in its 'Change4Life' programme, asking these junk food sellers to voluntarily change practices that contribute to the rise in obesity. Over 2,000 people signed our petition presented to DH in August 2014 calling on it to end this conflict of interest.

## Independent information .....

*First Steps Nutrition Trust* has excellent independent information on formulas and feeding. [firststepsnutrition.org](http://firststepsnutrition.org)

The *Local Infant Feeding Information Board (LIFIB)* invites formula companies to provide information on products to a multi-disciplinary panel and produces its own critical appraisal of information and newsletters for health workers. This is a model that could be followed at national level. [lifib.org.uk](http://lifib.org.uk)

Order Baby Milk Action's poster on *Health workers, conflicts of interest and the baby feeding industry*. [babymilkaction.org](http://babymilkaction.org)

For guidance on the Code for health workers see: [www.unicef.org.uk/BabyFriendly/](http://www.unicef.org.uk/BabyFriendly/)

## Label constraints not working .....

The UK Regulations prohibit idealising text and images on labels, but these are commonplace due to lack of enforcement.

Danone's Aptamil has a shield to symbolise protection and a polar bear image.



It's Cow & Gate logo is in the shape of a heart and the infant formula has a teddy bear.



Nestlé's SMA logo incorporates a heart and breastfeeding mother.



The UK *Guidance Notes* from the Department of Health on how to interpret the UK Regulations explain that idealising images include 'baby or child related subjects and anthropomorphic characters, pictures and logos...'

They state that the following are prohibited: 'Pictures or text which implies health, happiness or well being is associated with infant formula' and 'graphics that represent nursing mothers and pregnant women'.

Not only do the labels break these requirements, but companies have had ample opportunity to correct them as they regularly relaunch products.

The enforcement authorities say they cannot act as they are limited to the text of the Regulations and are unwilling to take a case to court to test the interpretation in the *Guidance Notes*.

The forthcoming EU *Delegated Acts* also prohibit idealising text and images. The clarity provided in the *Guidance Notes* should not be lost, but updated and given enhanced states. Proposals from the Department of Health to decriminalise labelling and other requirements would be a retrograde step (see pg 3).

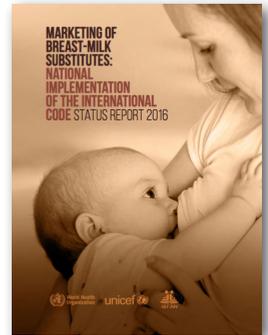
## Interpretation of the regulations.....

The *Statutory Instrument* to implement the Delegated Acts provides an opportunity to improve enforcement in the UK.

**PARLIAMENTARY ACTION:** Update the *Guidance Notes* on interpreting the regulations to reflect the new EU Delegated Acts – the vast majority still applies. Give these status so companies and enforcement officers treat them with respect.

## Scope of the regulations.....

A new WHO/UNICEF/IBFAN report on *National Implementation of the International Code* calls on governments, "to broaden the range of designated products under the scope of their legislation to include all milk products intended and marketed as suitable for feeding young children up to the age of 36 months".



The EU *Delegated Acts* do not cover this age range, but are not necessarily an obstacle.

**PARLIAMENTARY ACTION:** Include in the scope:

- Opt to prohibit all advertising of infant formula as specifically permitted in the Delegated Acts.
- Include follow-on formula (although EU regulations permit follow-on formula advertising, Luxembourg has prohibited this on health grounds - the UK could try the same).
- Milks for older babies, such as so-called growing-up milks (the Commission has said it will not be introducing its own regulations).
- Feeding bottles and teats (marketing is not covered by regulations at EU level).

Marketing is just one area for action, of course.

**PARLIAMENTARY ACTION:** Address the gaps in implementing the *Global Strategy for Infant and Young Child Feeding* by considering the recommendations in the forthcoming WBTi assessment.