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The Nutrition (Amendment) (EU Exit) Regulations 2018: a public consultation

<https://www.gov.uk/government/consultations/the-nutrition-amendment-eu-exit-regulations-2018>

Baby Milk Action IBFAN UK. December 14th 2018

General Comments

- Baby Milk Action IBFAN UK has, since 1983, helped coordinate the work of the International Baby Food Action Network (IBFAN) in the campaign to adopt EU legislation implementing the *International Code of Marketing of Breast-milk Substitutes* and subsequent World Health Assembly Resolutions. Since 1997 we have been the secretariat of the *Baby Feeding Law Group* (BFLG), a coalition that has brought the UK's leading professional organisations and mother-support groups together to achieve these ends. (See Chronology¹).
- Since 1981 the UK has strongly endorsed the adoption IC and the Resolutions as a Directive for Europe and put one of the strongest cases for the Code's adoption in 1981
- The UK ratified the *Convention on the Rights of the Child* (CRC) in 1990, Article 24 of which calls on governments to provide parents with information on nutrition and breastfeeding. CRC General Comments Nos. 15 and 16 stress the obligation for States to protect, promote and support breastfeeding through the implementation of the World Health Assembly *Global Strategy for Infant and Young Child Feeding* (GSIYCF) and set a direct obligation that companies abide by the IC and Resolution universally '*in all contexts.*'
- Nations that ratified the CRC are therefore bound to it by international law and have clear obligations, that should not be undermined or misinterpreted.
- The IC and WHA Resolutions are embedded in many global declarations, standards and strategies, including the *Codex Code of Ethics*,² the *EU Action Plan of Childhood Obesity*³ and the *Political Declaration and Framework for Action* adopted in the 2nd International Conference on Nutrition in November 2014. Breastfeeding is one of the EUs *CORE Health Indicators for Determinants of Health*.
- The UK, as an active member of the EU, has claimed to recognise the importance of promoting high quality public health principles, standards and legislation in its relations with non-EU countries and international organisations in the field of public health.^{4,5}

¹ <http://www.babymilkaction.org/wp-content/uploads/2018/12/Baby-Milk-Action-IBFAN-UK-EU-Chronology.pdf>

² Codex CODE OF ETHICS FOR INTERNATIONAL TRADE IN FOOD INCLUDING CONCESSIONAL AND FOOD AID TRANSACTIONS CAC/RCP 20-1979 4.4 National authorities should be aware of their obligations under the *International Health Regulations (2005)* with regard to food safety events, including notification, reporting or verification of events to the World Health Organisation (WHO). They should also make sure that the international code of marketing of breast milk substitutes and relevant resolutions of the World Health Assembly (WHA) setting forth principles for the protection and promotion of breast-feeding be observed.

³ http://ec.europa.eu/health/nutrition_physical_activity/docs/childhoodobesity_actionplan_2014_2020_en.pdf

⁴ EU in the World http://ec.europa.eu/health/eu_world/policy/index_en.htm

⁵ Public Health (17-09-2015) *Commission and WHO Europe scale up cooperation* http://ec.europa.eu/dgs/health_food-safety/dyna/enews/enews.cfm?al_id=1620

Answers to the 5 questions:

Question 1 Do you have any comments on the proposed fixes to retained EU law as set out in this consultation?

We agree that the EU Law and Delegated Acts as set out should be retained. On no account must the hard won safeguards they contain must be lost.

Question 2 Can you identify any fixes to retained EU law that appear not to have been addressed adequately?

Throughout the many years of consultation on EU legislation, the UK has called for implementation of the IC and Resolutions in EU Legislation, while citing the need to harmonise with the EU as an excuse for failing to go further when implementing domestic regulations.

For example, in 2007, the Food Standards Agency said the reason for failing to implement the *International Code* is that “it is no longer open to Member States to introduce national rules in this area except in so far as they are specifically authorised by the Directives.” The BFLG sought several legal opinions about this and entered into correspondence with the European Commission. Eventually the FSA that they would be willing to ‘go further’ and take up our recommendations, for example to control follow-on milk advertising, provided the Directive is a ‘Partial’ not ‘Total’ Harmonisation Measure

If this document envisages a no deal Brexit, it must explicitly acknowledge that the UK endorses and will implement the International Coe and all subsequent relevant WHA Resolutions and that further action will be taken to protect child health. The Delegated Acts should be referred to as providing a basis for further strengthening.

Question 3 Do you agree with the impacts that have been identified within this consultation? No, we do not agree. The impact of the proposed amendment covers nutrition and health claims and issues relating to labelling and advertising of products marketed as foods for specific groups is highly significant for families and the wider population in terms of public health, food security, the environment. It is not only of significance to manufacturers of products.

Breastfeeding constitutes one of the single most effective ways to reduce inequalities, to fulfil the child’s right to life and to the enjoyment of the highest attainable standard of health. Strengthening the Regulations in line with the IC and Resolutions, is an essential step in ensuring that British parents receive objective and truly independent information, that obstacles to breastfeeding are removed and that breastmilk substitutes are used safely if needed.

Question 4 Are you aware of any impacts that have not been identified in this consultation?

- **Policy Coherence with the World Health Assembly recommendations:** The safeguards on nutrition and health claims relating to foods for infants and young children are stronger than in current legislation, but still fall far short of the necessary safeguards recommended – and consistently endorsed by the UK - by the World Health Assembly. A key recommendation is WHO’s **Guidance on ending inappropriate marketing of foods for infants and Young children.** (WHA69.9)⁶ These Guidelines and 8 other World Health Assembly Resolutions include important Conflict of Interest safeguards.
- **Formulas for babies over 6 months:** The major weakness in EU legislation is that most of the necessary marketing restrictions do not apply to products targeting babies over 6 months. This has to be ‘fixed’.

⁶ <https://www.who.int/nutrition/topics/guidance-inappropriate-food-promotion-iycc/en/>

- **Precautionary Principle:** It is also essential that key safeguards embedded in EU regulations, such as the *Precautionary Principle* (PP) are highlighted, retained and extended. In the event of a hard Brexit the British population must be protected from risky imports, milk from hormone treated cows, products with high sugar levels etc.
- **Sugar and 6 month labelling:** The law should, as a matter of urgency, act on the clear call from the EU Parliament in 2016 for reductions in sugar levels in line with WHO recommendations and 6-month labelling of baby foods.
- Any calls for minimal restraints on marketing and safety should be opposed and the protection of Human Rights should be paramount.

Question 5: While this consultation addresses what is being done to ensure retained EU law remains functional in the unlikely event of a ‘no deal’ scenario, do you have any general comments regarding nutrition and health claims, composition, and labelling regulation that the government should make note of for when the UK leaves the European Union?

In relation to manufacturing, labelling, and marketing all foods for infants and young children the new law should specify that:

- a) all ingredients are pre-authorised following rigorous independent scrutiny, (with particular care over new technologies, such as nanotechnologies);
- b) systematic reviews of all available evidence are carried out *independently* of the manufacturers and distributors of the products in question;
- c) evidence is reviewed on a regular basis to ensure infants are not exposed to levels of nutrients that might put a burden on their metabolism, (a concern already raised by EFSA);⁷
- d) there is regular post market surveillance indicating the frequency of such reviews;
- e) food ingredients not listed as essential are kept to the bare minimum;

⁷ *ibid*