

**A weak formula for legislation:**  
how loopholes in the law are putting babies at risk





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Advertisements for formula milk kindly provided by Baby Milk Action and the Baby Feeding Law Group

UNICEF UK, the NCT and Save the Children UK are asking the Government to stop formula milk promotion in the UK. Parents need reliable information based on evidence, not commercial pressure from baby milk companies.

Our three organisations are members of the Breastfeeding Manifesto Coalition, an alliance of 39 organisations – including five Royal Colleges and the trade unions UNISON, UNITE and the CPHVA – working to improve awareness of the health benefits of breastfeeding and its role in reducing health inequalities in the UK. The changes to the law recommended in this report form part of Objective 7 of the Breastfeeding Manifesto.

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MIDIRS sponsors this report as part of its ongoing support of the Manifesto's aims to improve awareness of the health benefits of breastfeeding and its role in reducing health inequalities across the UK.



# A weak formula for legislation: how loopholes in the law are putting babies at risk

The UK has a law that is intended to protect parents from the promotion of formula milk, since this undermines breastfeeding as the healthiest way to feed a baby. However, the law is not working because parents say they are seeing adverts for infant formula. Companies' promotional activities have become cleverer and more aggressive since the law was adopted. By failing to honour its commitment to implement the WHO International Code of Marketing of Breastmilk Substitutes, the Government is putting mothers' and children's health at risk.

## EXECUTIVE SUMMARY

### What's the issue?

Breastfeeding is the healthiest and cheapest way to feed a baby, yet the UK has one of the lowest breastfeeding rates in Europe. The promotion of artificial feeding undermines breastfeeding as the healthiest way of feeding a baby, and leaves those parents who formula feed confused about the choice and preparation of a suitable formula. Protecting breastfeeding and making formula feeding as safe as possible is essential for protecting the health of the nation.

### What is the law supposed to do?

The law is supposed to protect parents' right to receive objective and accurate information about feeding their babies and young children – this applies whether they breastfeed or formula feed. It is meant to do this by banning the aggressive marketing of artificial milks to parents, which leads many parents mistakenly to believe formula feeding is as good as breastfeeding.

The law, however, is not doing what it was designed to do, because almost two-thirds of parents say they are seeing adverts for infant formula. With companies fighting to win customers in a highly profitable market, commercial pressure is a significant factor in how parents decide to feed their children. This is what the law is meant to prevent.

### Why isn't it working?

The law contains loopholes that allow the promotion of infant formula via the advertisement of so-called 'follow-on milks' (a product invented to evade the restrictions), and permit manufacturers to push other products and materials that share the same brand name and logo. **There is more advertising now than before the law came in – making it harder than ever for parents to make an informed choice.**

### What can be done?

The Food Standards Agency is currently consulting on amendments to the law, for introduction at the end of the year. The changes are intended to bring the legislation on the promotion of formula milk into line with the World Health Organization's International Code of Marketing of Breastmilk Substitutes, a move which the Government has consistently endorsed. Yet unless significant changes are made to the draft, the loopholes will remain and the Code will not be implemented. **There is a window of opportunity to make the UK's law fit for purpose and make good the Government's commitment to protect parents and children through the provision of impartial information about infant feeding.**

The Government has previously managed to ensure that there are no loopholes in the legislation prohibiting tobacco promotion. Now, cigarette manufacturers cannot use their company names and logos to promote their brands. This report highlights a need for similar legislation to close the loopholes in the marketing of formula milks.

### Close the legal loopholes

The Government can ensure the law is in line with the Code so that all forms of promotion for breastmilk substitutes, not just advertisements, are covered by the forthcoming regulations.

We therefore call upon policymakers to:

1. Close the legal loopholes that allow companies to advertise infant formulas via their follow-on formulas, by making follow-on formulas subject to the same restrictions as infant formula.
2. Ensure that companies' names and logos are subject to the same restrictions as the names and logos of specific product brands, where these are recognised by the public as the same or similar.

# 1. The loopholes and how they are being exploited

Promotion of artificial feeding has been shown to undermine breastfeeding as the normal and healthiest way to feed babies<sup>1</sup>– whilst at the same time leaving parents who choose to formula feed confused about which sort of formula they should use, and how to prepare it.<sup>2</sup> The 1995 law was brought in to protect parents from the commercial promotion of infant formula so that they could get reliable, impartial information to make an informed choice about feeding their babies. It did this by implementing parts of the WHO International Code of Marketing of Breastmilk Substitutes. Although the law fell short of the Code, it was hoped parents would be given the protection they needed.

Yet adverts like these (right) started to appear in magazines for parents, on television, on radio and on the internet, meaning almost two-thirds of parents say they have seen adverts for infant formula in the past year.<sup>3</sup>

## How can this be?

Formula manufacturers are exploiting two loopholes in the law. First, they are promoting follow-on milks in a way that makes them difficult to distinguish from normal infant formula. Second, they are deliberately confusing their company name and logo with their formula milk brand names.

## Loophole 1: Promoting follow-on milks in a way that makes them difficult to distinguish from normal infant formula

This is not in breach of the law at the moment because the advertising ban only applies to infant formula. However, by naming and labelling follow-on milks almost identically to infant formula, manufacturers ensure that both products are promoted at the same time. Typically packaging and branding across a manufacturer's range of products is designed to look very similar; follow-on milk is only



After the introduction of the law banning the advertising of formula milk, adverts like these started to appear in parents' magazines and on television.

mentioned in small print, and the product is often compared to breastmilk. When parents see adverts for follow-on formula they think they are seeing adverts for infant formula.

## Follow-on formula is infant formula

At the time the International Code – the basis of the current law – was written, all formula milk was known simply as “infant formula”. The creation of “follow-on formulas” was a reaction by manufacturers to the introduction of the Code. They claimed that formula milks for children over six months were not “breastmilk substitutes” and therefore not subject to the same marketing regulations as infant formula. But this is not the case:

### (1) The Code applies to all breastmilk substitutes

The Government itself recommends that milk continues to be the main part of a baby's diet for the first 12 months, and that it provides an important source of nutrients in the second year of life<sup>4</sup>. Follow-on milks replace that part of the child's diet best provided by breastmilk between 6 and 24 months and are, therefore, breastmilk substitutes, and should be subject to the same marketing regulations.

### (2) Follow-on formulas are virtually identical to standard infant formulas for babies up to 6 months' old

The World Health Organisation says follow-on formulas are “not necessary”.<sup>5</sup> The Food Standards Agency states that babies should continue to be breastfed or receive infant formula until they are at least a year old: additional nutritional requirements are met by solid foods and a change to follow-on milk is not necessary at any stage.<sup>6</sup>



The Milupa Aptamil advert (above) demonstrates many of these tactics. It features Aptamil Forward (a follow-on milk) but the comparison is clearly made with breastmilk, implying it is a breastmilk substitute, the very thing manufacturers deny.

Formula manufacturers advertise their follow-on milk, or their range of products, or are simply vague about what is being promoted. This helps them get round the legal ban on infant formula advertising. The Cow and Gate advert (left) features a pregnancy test, and is unclear about which product is advertised, thereby promoting both infant and follow-on formula. The Farley's

advert (right) appears to be for infant formula: it features the Farley's formula brand name, makes no reference to follow-on milk, and the toy shown is for an infant under 6 months. When a complaint was made to Trading Standards, the company argued that because the background was purple – the colour of its follow-on milk tins – the advert was clearly for follow-on milk.

This also ensures that all Aptamil formulas are advertised.

1. The advert refers to 'Aptamil' in general, and the follow-on milk advertised is so similar in name and appearance to their infant formula (directly above), that it misleads parents about the product.
2. It is not immediately clear that the baby in the advert is older than 6 months – implying the product could be for younger babies.

The ambiguity of the law enables manufacturers to merge the promotion of infant formula and follow-on formula. Trading Standards authorities themselves are confused about which product is being advertised, and which regulations are being broken – meaning they struggle to make a case for prosecution.<sup>7</sup> By taking the wording of the law literally, and only being able to prosecute in cases where infant formula is mentioned, the health of mothers and babies is being put at risk.

Meanwhile, companies boast about their profits, in what should be a highly restricted market.<sup>8</sup>

### Loophole 2: Deliberately confusing the company name and logo with the formula milk brand name.

The law states that companies can give information materials about infant formula to parents, providing the information is not "marked or labelled with the name of a proprietary infant formula" – although it can "bear the name or logo of the donor" (Article 21:3, c).

Since 1995, however, manufacturers have made changes to their brand names, or logos, or both, with the result that the "name of a proprietary brand of infant formula" has become the same thing as the "name or logo" of the manufacturer. The law is therefore both permitting and prohibiting the same thing, making it impossible to enforce.

The provision of information materials bearing the donor name can thereby serve as an advertisement for that company's infant formula, which the law aims to prevent. A recent MORI

poll among women in their reproductive years showed that 80% associated the SMA logo with infant formula.

Because of the legal ambiguity between the acceptability of a company logo and its formula brand name, manufacturers are left with a host of advertising opportunities, while Trading Standards are left powerless to intervene and enforce the law.

1. Companies can advertise their entire product range through the promotion of "Carelines", which use the same company logo:

This echoes tactics used by tobacco manufacturers in the 1990s to avoid restrictions on advertising their products. The purple "Silk Cut" campaign was particularly well known – continuing to advertise the product without containing a single reference to cigarettes.

2. Manufacturers establish brand loyalty in parents – even before their children are born – by offering substantial benefits for mothers who join their "Mums clubs".

Mums' Clubs establish ongoing contact with parents with "age-appropriate"

# 1. The loopholes and how they are being exploited (continued)



Before 1995, the manufacturer of SMA milks was called John Wyeth and Brothers Ltd. It produced information materials for parents bearing the SMA brand name but the 1995 law made this approach illegal. The company changed its name to "SMA Nutrition" and switched its logo to match the logo on the labels of SMA milks.



In this Cow and Gate advert, no formula milk is mentioned by name, but it clearly refers to the products pictured below the advert.



In this Cow and Gate ad, mothers are offered the chance to win £1,000 worth of vouchers when they sign up to a "mum's club".

## The effect on parents

In 2005, surveys by the Department of Health, UNICEF UK, and the National Childbirth Trust found that two-thirds of pregnant women and new mothers believed they had seen adverts for infant formula in the past year.<sup>10</sup> Parents said they had seen them most often on TV and in magazines.

The adverts must have been – at least ostensibly – for follow-on milk or a company's brand name; but this was not clear to the people seeing the adverts. Parents believe they are seeing adverts for infant formula.

advice during the early years. Parents are sent booklets, videos, invitations to events, toys, stationery and other materials – all carrying the same logo as the company's formula brands, thus getting round the law against advertising infant formula. Increased investment in these advertising strategies compared with traditional advertising methods suggests that they are increasingly effective in promoting formulas.<sup>9</sup> This is what the law is supposed to prevent.

## The worsening situation

The 1995 law, and the introduction of the UNICEF Baby Friendly Initiative in some areas of the UK, prevented manufacturers from advertising their infant formulas directly to parents through the health system.

Manufacturers therefore created more inventive marketing strategies, such as promoting infant formula via follow-on formula under the same logo and using other channels in which to advertise to parents. In 1995 there was no advertising of formula milks in magazines, on television or over the internet – yet in the decade following the law, these media have become saturated with such advertising. This means that the promotion of artificial feeding to parents is actually more widespread now than it was in 1995. The law is not sensitive to the strategies manufacturers use, and parents receive less protection in law than ever.

Almost one-third of women in one survey said that the adverts gave the message that the milk advertised was "as good as breastmilk", and 6 per cent believed it was better.

# Hazel and Claire's experiences



Both Hazel and Claire have seen adverts by formula manufacturers:

Hazel said that one formula company has an automated screen in her local clinic advertising their follow-on formulas. The location of these adverts made it seem as if health professionals were endorsing infant formula. Hazel says: "A lay person isn't going to know the difference between infant formula and follow-on formula. It was clearly a way of avoiding the law to advertise directly to parents."

Hazel started giving her first baby a bottle of formula milk from around 13 weeks; "It was just what people did", she says; "and I felt a pressure to do it. All the stuff you see makes it seem like breast is best, but formula is good

enough. Formula is sold to women as a way to liberate themselves, by getting the baby to sleep, but that is absolute twaddle. This pervasiveness that 'formula equals good' is so damaging. I now know I was utterly wrong. It wasn't helping him sleep – his gut was still maturing, which meant his system was shutting down whilst it tried to break down the junk in there. I was angry that no one spelt out the risks to me, simply because they were worried I would feel guilty!"

Claire stopped breastfeeding her baby at 5 months' old. She says, "It was for my convenience really ... but if I had realised the implications on my child's health, then I would have stuck with it.

Hazel and her second baby, who was exclusively breastfed to 6 months.

"We all know breast is best", she says, "but the adverts disguise the difference and make it seem normal. Now I've done a breastfeeding course, and I've found out the benefits of breastfeeding against things like obesity, I'm gutted that I stopped'.

By allowing Hazel and Claire's decisions to be influenced by commercial pressure, the law is not doing the job it was designed to do. Parents need to be able to turn to well-trained health professionals and volunteers for reliable information about feeding, and not have to rely on companies who have a vested interest in their custom.

## 2. Why is this so important?

The law is meant to protect parents' right to receive objective and accurate information when making decisions about how to feed their babies. This is a right of all parents whether they breastfeed or formula feed. This is because it is a choice with significant health, financial and environmental implications – and an important part of how women experience motherhood, particularly in the early months. If inaccurate or misleading information is provided, mothers' and children's health is put at risk, and parents are left feeling angry and confused.

### a. To protect breastfeeding mothers and babies

The promotion of breastmilk substitutes is effective in undermining breastfeeding.<sup>11</sup> The adverts reproduced in this report imply that infant feeding is difficult, needs expert guidance and requires supplementary products. By encouraging women to think that breastfeeding alone is not a sufficient way to feed a baby (suggesting that mothers need to "top-up" their breastfeeds or replace breastmilk with follow-on milks after 6 months), these adverts undermine mothers' confidence in their ability to breastfeed and inaccurately suggest that exclusive breastfeeding is insufficient. This means that more mothers will switch to formula feeding, when they would prefer to carry on breastfeeding.

Nine out of ten women in the UK who stop breastfeeding their child before six weeks say that they would have liked to have carried on for longer.<sup>12</sup>

The promotion of follow-on milks creates confusion with infant formula. A UNICEF-NCT survey revealed that of the women who used follow-on milks, 1 in 5 had introduced it before 3 months. This confusion is of concern because, although similar in composition, the additional ingredients in follow-on milks can increase the risk of young infants falling ill.<sup>13</sup>

## Breastfeeding

- Reduces the risk of acute infections such as diarrhoea; chest; ear and urinary tract infections in babies
- Protects in later life against chronic conditions such as diabetes; cardiovascular diseases; high blood pressure and obesity
- Promotes child development and is associated with higher IQ scores in low-birth weight infants
- Reduces the risk of women developing ovarian cancer; breast cancer; hip fractures and bone density deficiencies
- Is free and "on-tap" – involving no sterilisation, packaging, transportation, heating or wastage of unused milk

Breastfeeding reduces inequalities in health. A millionaire's baby who is formula fed is at greater risk of falling ill than a baby in the poorest socio-economic group who is exclusively breastfed.<sup>14</sup>

Currently, however, babies from disadvantaged families are less likely to be breastfed, and are more at risk from common childhood infections.

Enabling more women to breastfeed in disadvantaged communities is the most effective health intervention to reduce health inequalities, after smoking cessation.<sup>15</sup>

### b. To protect formula feeding mothers and babies

Parents who decide to formula feed need proper information about the preparation, storage and handling of the products so that formula feeding can be as safe as possible. This is particularly important when using powdered infant formulas, which the World Health Organization warns may contain pathogens which cause serious illness.<sup>16</sup> According to the latest Government data, only 13 per cent of mothers who made up powdered formula followed the correct recommendations.<sup>17</sup>

Companies argue that they must promote their products in order to prevent the danger posed by incorrect use. However, no advert or leaflet from any manufacturer has ever clearly set out this information, even though they have the opportunity to do so. Companies prefer to dedicate space to misleading comparisons with breastmilk. Fortunately, we do not need to rely on companies for this information, since government and voluntary organisations produce and distribute reliable guidance about the preparation of formula milks.

### c. To save the NHS money

If all babies were breastfed for 3 months, the NHS would save £50 million a year in the treatment of just one childhood disease – gastroenteritis.<sup>18</sup> There are many more savings to be made in relation to other illnesses and in reduced costs to the NHS in the purchase of formula, teats and bottles.<sup>19</sup>

# The UK situation

The UK has one of the lowest rates of breastfeeding in Europe. Whilst 76 per cent of mothers initiate breastfeeding, this figure falls quickly in the first 6 weeks to less than 50 per cent, and by 6 months to just 21 per cent.<sup>20</sup> This compares poorly with WHO guidelines recommending exclusive breastfeeding for 6 months, and continuation in conjunction with other foods for up to 2 years or beyond.<sup>21</sup>

Whilst there are many reasons babies are not breastfed, advertising by manufacturers of formula milk plays a crucial role in influencing parents' decisions about feeding their children. It has been estimated that it costs parents £650 a year to feed a child with formula milk (a figure not taking into

account increased costs of illness and absence from work).<sup>22</sup> Each parent who formula feeds is therefore a lucrative prospect, and the formula milk business is worth £329 million a year in the UK alone.<sup>23</sup> This probably explains why, in 2006–07, for every pound spent by Government on the promotion of breastfeeding, over £10 was spent by leading manufacturers to promote baby milk and foods.<sup>24</sup>

On the other hand, the highest breastfeeding rates in Europe are normally found in countries with historically tight controls on the marketing of breastmilk substitutes. In Norway, for example, 98 per cent of children are breastfed at birth, and 80 per cent at 6 months.

Since 1970, the Norwegian Government has had a clear policy on infant feeding, and companies that sell baby milk are not allowed to promote their products. There is no advertising of any formula milks in parenting magazines and Norwegian health services carry no promotional material.<sup>25</sup>

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# 3. What can we do to solve the problem?

On the international stage, the UK Government has consistently supported the implementation of the International Code of Marketing of Breastmilk Substitutes; voting in 2002, for example, for the WHO/UNICEF Global Strategy on Infant and Young Child Feeding that requires governments to implement the Code urgently. But current legislation does not match this commitment.

This year, the Government is set to “transpose” (put into force) a Directive from the European Union that will replace the 1995 legislation concerning the marketing and composition of formula milks.

The Food Standards Agency states that the Directive is intended to ensure that the “rules on composition, labelling and advertising are in line with the principles and aims of the Code.” If adopted as it stands, however, the new legislation will not be in line with the Code, and will fail to tackle the problems outlined in this report. Parents and children will continue to be at risk from commercial promotion and inappropriate feeding.

## Recommendations to Government

1. Close the loopholes that allow manufacturers to advertise infant formulas via their follow-on formulas, by making follow-on formulas subject to the same restrictions as infant formula.
2. Ensure that manufacturers’ names and logos are subject to the same restrictions as the names and logos of specific product brands, where these are recognised by the public as the same or similar.

## Is the UK able to strengthen the law?

The short answer is ‘Yes’. Article 1 of the EU Directive states that it “... provides for Member States to give effect to principles and aims of the International Code of Marketing of Breastmilk Substitutes dealing with marketing, information and responsibilities of health authorities”, and indeed, it is in the nature of Directives that there is scope for discretion left to Member States and that there is a range of options for implementation.



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The UK is therefore able to implement restrictions on advertising that go beyond the minimum required by the Directive.

The overwhelming evidence in this report is that for UK parents, the advertisement of follow-on formula **is** the advertisement of infant formula, and the promotion of company logos **is** the promotion of brand name formulas. The UK therefore represents a special case in the European context, given the correlation between the promotion of formula milks to parents and the low levels of breastfeeding. Bringing the law more closely into line with the Code would protect parents and children, improve health and save money.

The Government has previously managed to ensure that there are no loopholes in the legislation prohibiting tobacco promotion, for example. Cigarette manufacturers cannot use their company names and logos to promote their brands. This report highlights a need for similar legislation to close the loopholes in the marketing of formula milks.

By strengthening the law to close these loopholes, Trading Standards will be clearer about illegal activity and be able to bring successful prosecutions. The Department of Health, DEFRA and the Food Standards Agency can ensure all forms of promotion are covered under the new regulations. By bringing legislation into line with the Code, the law will be able to do what it was designed to do – protect the health of parents and children.

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