

Feeding Products for Babies and Children (Advertising and Promotion) Bill

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Schedule – Infant and Young Child Nutrition Agency: Further Provision

A
B I L L

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.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Infant and Young Child Nutrition Agency

- (1) *There shall be a body to be called the Infant and Young Child Nutrition Agency (referred to in this Act as “the Agency”) established for the purpose of carrying out the functions conferred on it by or under this Act.*
- (2) *The main objectives of the Agency in carrying out its functions are to set standards appropriate for compositional and safety for feeding products for infants and young children and to control the advertising and promotion of feeding products for infants and young children with the aim of ensuring—*
- (a) *that foods and drinks sold for infants and young children meet nutritional standards and contribute to the attainment and maintenance of optimum health,* 10
 - (b) *that the importance of protecting and promoting breastfeeding is fully integrated into health and nutrition policy,*
 - (c) *that when mothers do not breastfeed, or only do so partially, that breastmilk substitutes (that act as alternative feeding products) are compositionally and microbiologically safe, and are suitable for a diverse population, and* 15
 - (d) *that the advertising and promotion of breastmilk substitutes does not mislead families or health professionals, that marketing is controlled to ensure that accurate information about products is provided and that families are offered cost effective products that clearly meet set compositional and safety standards.* 20
- (3) Before setting standards under subsection (2) the Agency must consult such persons as it considers appropriate.

2 Appointment of chief executive and directors and the operation of the Agency

- (1) The chief executive shall be responsible for (among other things) securing that the activities of the Agency are carried out—
- (a) efficiently and effectively, and
 - (b) in accordance with the requirements of this Act. 5
- (2) A Director of Standards shall be appointed by the Agency with responsibility for determining and applying compositional and safety standards at section 5.
- (3) A Director of Enforcement shall be appointed by the Agency with responsibility for enforcing the standards set by the Agency.
- (4) *The Schedule (Infant and Young Child Nutrition Agency: further provisions) makes further provision about the Agency.* 10

3 Annual and other reports

- (1) The Agency shall prepare a report on its activities and performance during each financial year.
- (2) The Agency shall, as soon as possible after the end of each financial year, lay its report for that year before Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. 15
- (3) The Agency may from time to time lay other reports before any of those bodies.

4 The Agency's principal functions

- (1) *The principal functions of the Agency shall be to —* 20
- (a) *set standards for the composition, safety and labelling of feeding products for infants and young children and any claims that can be made about efficacy of these products;*
 - (b) *license feeding products suitable for feeding to infants and young children when sufficient information is provided about the composition and safety of products from manufacturers;* 25
 - (c) *ensure all licensed products meet these standards and do not make claims that have not been set by the Agency;*
 - (d) *control the advertising and promotion of feeding products for infants and young children; and* 30
 - (e) *provide advice, information or assistance in respect of such matters to—*
 - (i) *Ministers of the Crown, Scottish Ministers, Welsh Ministers and the Northern Ireland Executive,*
 - (ii) *any public authority, and*
 - (iii) *health workers, families of infants and young children and other members of the public.* 35
- (2) Before setting standards under subsection (1) the Agency must consult such persons as it considers appropriate.
- (3) The Secretary of State, after consulting Scottish Ministers, Welsh Ministers and the Department of Health for Northern Ireland, may make regulations adding to or changing the principal functions of the Agency set out in subsection (1). 40

5 The Agency's powers: standards, definitions and guidelines

- (1) The Agency may—
- (a) license breastmilk substitutes for sale in terms of, but not restricted to, nutrient content, quality and safety;
 - (b) license food and drink for sale suitable for feeding to infants over 6 months of age and young children up to 36 months of age in terms of, but not restricted to, nutrient content, quality and safety; 5
 - (c) set and publish guidelines for such feeding products suitable for infants and young children up to the age of 36 months in terms of, but not restricted to—
 - (i) ingredients, nutrient and non-nutritional component content, 10
 - (ii) labelling requirements,
 - (iii) quality,
 - (iv) storage,
 - (v) preparation, and
 - (vi) safety; and 15
 - (d) set guidelines for the promotion of feeding products suitable for infants and young children up to the age of 36 months.
- (2) In licensing feeding products under subsection (1) the Agency may impose restrictions as provided at or under section 6.
- (3) The Agency may review its licensing arrangements, determinations and guidelines from time to time and revise them. 20
- (4) The Secretary of State, after consulting Scottish Ministers, Welsh Ministers and the Department of Health for Northern Ireland, may make regulations adding to or changing the Agency's powers set out at subsection (1).

6 Restrictions on the promotion and marketing of feeding products suitable for infants and young children 25

- (1) The Agency may restrict persons from using certain methods to promote licensed feeding products as suitable for babies and children up to the age of 36 months which include, but are not restricted to, the following methods—
- (a) advertising, 30
 - (b) advertising through specified media (such as, for example, television or professional journals),
 - (c) social media,
 - (d) internet websites,
 - (e) parenting clubs, classes, helplines, competitions and magazines, 35
 - (f) the provision of samples of feeding products, and
 - (g) approaches to, and contacts made with, health, social care or education professionals.
- (2) The Agency may impose different restrictions for different licensed products and different categories of persons. 40
- (3) The Agency may also specify different restrictions in respect of different ages of children, including a total ban of all advertising and promotion in respect of children under one year of age.

7 Monitoring and evaluation of claims made in promoting feeding products for babies and children

- (1) *The Agency must—*
- (a) *put in place arrangements to monitor health, compositional and promotional claims made on foods and drinks promoted to children under the age of 36 months;* 5
 - (b) *evaluate health, compositional and promotional claims made on foods and drinks promoted to children under the age of 36 months against the guidelines at section 5(1)(c);*
 - (c) *offer manufacturers the facility to have products, and prospective products and their labelling independently evaluated and verified against the requirements in section 5; and* 10
 - (d) *ensure compliance with the guidelines outlined at 5(1)(c).*
- (2) *The Agency must provide and publicise guidance on the requirements and application of the requirements set out at section 5.* 15

8 Packaging standards

- (1) The Agency must specify packaging and labelling standards for licensed feeding products suitable for infants and young children up to the age of 36 months.
- (2) The standards may include, but are not restricted to, requirements to— 20
- (a) use plain packaging or packaging of a specified colour,
 - (b) use a specified font, including its size and colour, for text on the packaging,
 - (c) use, or not use, specified graphics and photographs,
 - (d) include health and nutritional information (such as, for example, a “traffic light” evaluation of the product), 25
 - (e) include information about the advantages of breastfeeding,
 - (f) include clear and visible warnings (such as, for example, that a product is not suitable for a child under a certain age),
 - (g) include information about the storage and preparation of the product using graphical information, available on the packaging in an appropriate language to the country where it is sold and with visual representations suitable for those who cannot read, or are blind, or cannot understand the local written language, 30
 - (h) include the country of origin of the product and all other required information for food labels in the UK, and 35
 - (i) state that exclusive breastfeeding is recommended for the first six months of life and thereafter alongside other foods.
- (3) The Agency may specify that certain terms must not be used (for example, “follow-on”, “growing-up”). 40
- (4) The Agency may specify different packages, or no standards, for different types of product.
- (5) The Agency may review and revise its standards from time to time.
- (6) Packaging standards include the labelling of products.

- (7) Labelling must only include necessary information about the appropriate use of the feeding product, and, where appropriate, the advantages of breastfeeding.
- (8) All licensed feeding products promoted or advertised as suitable for infants and young children up to the age of 36 months must— 5
- (a) have on the packaging, and include in any promotion and advertising, the following statement: “This product is licensed by the Infant and Young Child Nutrition Agency. It meets the standards and guidelines set by them as a feeding product suitable for an infant or young child under 36 months of age [or age range specified by the Agency].”, 10
 - (b) where a claim has been verified by the Agency such wording as the Agency may direct to be included, and
 - (c) the packaging must conform to any packaging standard issued by the Agency under this section.
- (9) Where a range of feeding products or feeding products in general are promoted or advertised the packaging and the promotion and advertising must include the following statement “These products are licensed by the Infant and Young Child Nutrition Agency. They meet the standards and guidelines set by the Agency as feeding products suitable for an infant or child under 36 months of age [or age range specified by the Agency].” 15 20

9 Offences

- (1) A person commits an offence if he or she instigates, pays for or directs the advertisement or promotion of feeding products as suitable for infants and young children up to the age of 36 months which— 25
- (a) are unlicensed (see section 5(1));
 - (b) do not meet licensing requirements (see section 5(2)); or
 - (c) do not meet the packaging standards set out at section 8.
- (2) A person commits an offence when he or she instigates, pays for or directs the promotion of a feeding product as suitable for infants and young children up to the age of 36 months by a method which is in contravention of a licensing condition made by the Agency under section 6 in force at the time. 30

10 Enforcement and penalties

- (1) It shall be the duty of the Agency to monitor the operation of the provisions in the Act on the advertising and promotion of feeding products, both licensed and unlicensed, as suitable for infants and young children up to the age of 36 months. 35
- (2) A person guilty of an offence under this Act shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 26 weeks, or to a fine not exceeding level 5 on the standard scale, or both; and 40
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine not exceeding level 5 on the standard scale, or both.

11 Promotion of the operation and functions of the Agency

- (1) The Agency has a duty to promote and publicise—

<ul style="list-style-type: none"> (a) its objectives, functions and methods of operation as set out in this Act; and (b) current scientific evaluation and guidance of the standards set for feeding products. 	5
<p>(2) The duty at subsection (1) should be exercised in respect of—</p> <ul style="list-style-type: none"> (a) families with infants and young children and other members of the public, (b) health, social care and education workers, (c) manufacturers of feeding products, and (d) retailers of the products. 	10
12 Regulations	
No regulations under this Act, other than those under section 15(3), shall be made by the Secretary of State unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.	15
13 Interpretation	
In this Act—	
“advertise” means to publicise a product in some public medium of communication in order to induce people to buy or use it and includes adverts aimed at children;	20
“breastmilk substitute” is any milk product (or milk substitute) presented as a partial or total replacement for breastmilk, whether or not suitable for that purpose and as being suitable for babies up to the age of 36 months (including all follow-on formula and growing up milks);	
“feeding product” means a substance that can be metabolized by an infant or young child to give energy and build tissue and includes foodstuffs, drinks and breastmilk substitutes and includes complementary food presented as suitable as a complement to breastmilk or to infant formula, when either become insufficient to satisfy the nutritional requirements of the infant;	25
“label” means any tag, brand, marks, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container or packaging of feeding products;	
“packaging” means any form of packaging of products for sale as a normal retail unit, including containers, wrappers and labels; and	30
“promote” includes presenting, advertising and marketing and any activity that communicates directly or indirectly a product, brand or service in order to—	
<ul style="list-style-type: none"> (a) make people aware of, (b) attracted to buy, or (c) induced to buy 	40
the product or category of product but does not include any advice or opinion given by a medical professional.	
14 Financial provision	
<i>There is to be paid out of money provided by Parliament —</i>	45

- (a) *any expenditure incurred under or by virtue of this Act by a Minister of the Crown, and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*

15 Short title, commencement and extent

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- (1) This Act shall be cited as the Feeding Products for Babies and Children (Advertising and Promotion) Act 2017.
- (2) This section comes into operation on the day on which this Act is passed.
- (3) All other sections shall come into force on such a day as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) This Act extends to England and Wales, Scotland and Northern Ireland.

10

SCHEDULE

INFANT AND YOUNG CHILD NUTRITION AGENCY: FURTHER PROVISION

Membership, chair and deputy chair

- | | | |
|---|---|----|
| 1 | The Agency shall consist of a chair and not less than five or more than eight other members, of whom – | 5 |
| | (a) one member shall be appointed by the Welsh Minsters; | |
| | (b) one member shall be appointed by the Scottish Ministers; | |
| | (c) one member shall be appointed by the Department of Health for Northern Ireland; and | |
| | (d) the others shall be appointed by the Secretary of State. | 10 |
| 2 | The chair shall be appointed by the appropriate authorities acting jointly and, before appointing a person as one of the other members of the Agency, the authority making the appointment shall consult the other appropriate authorities. | |
| 3 | Before appointing a person as chair or member of the Agency, the authorities or authority making the appointment shall – | 15 |
| | (a) have regard to the desirability of securing that a variety of skills and experience is available among the members of the Agency, including experience in matters related to– | |
| | (i) infant and young child nutrition and feeding, and | 20 |
| | (ii) advertising and promotion; | |
| | (b) consider whether any person it is proposed to appoint has any financial, commercial or other interest which is likely to prejudice the exercise of his or her duties; and | |
| | (c) ensure that all appointees comply with the ethical standards expected of public office holders. | 25 |
| 4 | Before appointing members under paragraph (1), the authorities must consult the chair. | |
| 5 | The Agency may appoint one of the members as the deputy chair. | |

Term of office 30

- | | | |
|---|---|----|
| 6 | Members are to hold and vacate office in accordance with the terms of their appointment, subject to the following provisions. | |
| 7 | Members must be appointed for a term of not more than 5 years. | |
| 8 | A member may resign by giving notice in writing to the Secretary of State. | |
| 9 | A person ceases to be the chair if the person – | 35 |
| | (a) resigns that office by giving notice in writing to the Secretary of State,
or | |
| | (b) ceases to be a member. | |

- 10 A person who holds or has held office as the chair, or as the deputy chair or other member, may be reappointed, whether or not to the same office.

Staff and facilities

- 11 *The Secretary of State may provide the Agency with –*
- (a) *such staff,* 5
 - (b) *such accommodation, equipment and other facilities, and*
 - (c) *such sums,*
- as the Secretary of State may determine are required by the Agency in the exercise of its functions.*

Research 10

- 12 *The Agency may at any time request the Secretary of State to carry out, or commission others to carry out, such research on behalf of the Agency for the purpose of the carrying out of the Agency’s functions as the Agency may specify in the request.*
- 13 If the Secretary of State decides not to comply with the request, the Secretary of State must notify the Agency of the reasons for the decision. 15

Payments to members

- 14 *The Secretary of State may pay to or in respect of the members of the Agency such remuneration, allowances and expenses as the Secretary of State may determine.*

Status 20

- 15 The Agency is not to be regarded as –
- (a) the servant or agent of the Crown, or
 - (b) enjoying any status, privilege or immunity of the Crown.

Sub-committees

- 16 The Agency may establish committees and sub-committees. 25

Validity of proceedings

- 17 The Agency may regulate –
- (a) its own procedure (including quorum), and
 - (b) the procedure of any committee or sub-committee (including quorum). 30
- 18 The validity of anything done by the Agency or any committee or sub-committee is not affected by –
- (a) any vacancy in the membership of the Agency or committee or sub-committee, or
 - (b) any defect in the appointment of any member of the Agency or committee or sub-committee. 35

Discharge of functions

- 19 The Agency may authorise a committee or sub-committee or member to exercise any of the Agency’s functions.

Public records

- 20 In Schedule 1 to the Public Records Act 1958 (definition of public records) in Part 2 of the Table at the end of paragraph 3 at the appropriate place insert – “The Infant and Young Child Nutrition Agency”. 5

Parliamentary Commissioner

- 21 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) at the appropriate place insert – “The Infant and Young Child Nutrition Agency”. 10

Disqualification

- 22 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert – “The Infant and Young Child Nutrition Agency”. 15

Freedom of information

- 23 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general) at the appropriate place insert – “The Infant and Young Child Nutrition Agency”.

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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.

*Ordered to be brought in by Alison Thewliss,
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