



Coimisiún
na Meán

Copy of Submissions: Consultation on Revision Broadcasting Codes and Rules (Stage 2)

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Table of Contents

- Advertising Standards Authority
- Alcohol Action Ireland
- Association of Advertisers in Ireland
- Association of Lactation Consultants Ireland
- Baby Feeding Law Group Ireland
- Bauer Media Audio Ireland
- Breastival
- Conradh na Gaeilge
- Dairy Industry Ireland | Ibec
- Danone
- Department of Health
- Drinks Ireland | Ibec
- Food Drink Ireland | Ibec
- Friends of Breastfeeding
- HSE
- HSE Child Health Public Health Team
- HSE Health & Wellbeing
- HSE Healthy Weight for Children Group
- HSE National Child Health Public Health Programme
- Independent Broadcasters of Ireland
- Irish Heart Foundation
- National Disability Authority
- Nestlé
- Private individual
- Private individual
- Private individual
- Private individual
- Purpose Disruptors Ireland
- Regional Integrated Infant feeding committee for Sligo/ Donegal / Leitrim / Monaghan
- RTÉ
- Safefood
- TG4
- UNICEF Ireland
- Virgin Media Television
- Wireless Ireland



ASA Response to Coimisiún Na Meán's Stage 2 Consultation on Revision Broadcast Code & Rules

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 30th November 2024
Full name	
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Introduction

The Advertising Standards Authority is the independent Irish advertising regulator established in 1981. The Code of Standards for Advertising and Marketing Communications (ASA Code), now in its 7th Edition, covers advertising in all media of communication in Ireland, including advertising carried on audio visual media services, audio visual media on demand services and video sharing platforms. Our philosophy is that the Code goes where advertising goes and so we strive to continually evolve its remit.

We note that the Commission is carrying out a review and consultation on the media service codes and media service rules relating to broadcasting, and that in particular, the Commission wishes to consider whether any further changes are necessary following statutory reviews of the codes and rules.

We also note that Article 4a of the Audiovisual Media Services Directive states that Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. The ASA Code falls within the parameters set out in Article 4a.

We consider that Coimisiún Na Meán should encourage broadcasters to engage with the ASA as a complementary measure to the requirements of the General Commercial Communications Code and Children's Commercial Communications Code, to facilitate an enhanced system of audience protection.

In addition, we consider that both Codes should reference the complaints handling systems of both the ASA and those of the European Advertising Standards Alliance's network. This is so that consumers would be aware of the systems which are well established in both Ireland and in Europe.

Code Implementation: In addition to our complaints handling mechanism (see below), ASA provides a copy advice service to advertisers, agencies and media on whether a proposed advertisement is in compliance with the ASA Code. Whilst not binding on either the requestor or the ASA, it is an informed expert opinion and helps prevent the publication of non-compliant advertising. ASA also carries out monitoring on advertising, engaging with advertisers and in relation to influencer marketing, with influencers, to bring advertising that is not compliant with the ASA Code into compliance.

3.1. Stage 2 Review - Consultation questions:

Question 1 - Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

Response: This response is in relation solely to the issue of environmental sustainability in the context of commercial communications.

Advertising Standards Authority's Code of Standards for Advertising and Marketing Communications contains detailed definitions and provisions on environmental claims in advertising, around key concepts such as product lifecycle and absolute/qualified claims. As the remit of the ASA Code overlaps with that of the Broadcasting Codes, it is suggested that Coimisiún Na Meán have regard to the provisions in the ASA Code, and further engage in further consultation before finalization of the Broadcast Codes

Question 5 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

Response: Advertising Standards Authority's Code of Standards for Advertising and Marketing Communications contains detailed provisions for non-broadcast media in respect of advertising of High Fat, Salt and Sugar (HFSS) products. The ASA Code references the same Nutrient Profiling Model used by the Broadcast Codes. It is suggested that this NPM be retained as it provides consistency across all media that are regulated by Coimisiún Na Meán and ASA, which reduces the regulatory burden on media and brands, whilst providing a proportionate response to concerns about the advertising of HFSS products

Question 6 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / nonalcoholic?

Response: Advertising Standards Authority's Code of Standards for Advertising and Marketing Communications contains detailed provisions for non-broadcast media in respect of advertising of alcohol products. In addition, the ASA oversees compliance with the Alcohol Marketing, Communication Sponsorship codes of practice, which contain provisions about placement and thresholds for alcohol advertising. These two codes broadly reflect the alcohol provisions in the Broadcasting codes for commercial communications.

On the issue of 0.0% alcohol products, also known as Non-Alcohol Product Variants (NAPV), ASA is reviewing its Guidance which was originally published in 2019. While recognising that these products are not alcohol products, ASA considers that additional provisions would strengthen the protection of children and would welcome the opportunity to consult further with Coimisiún Na Meán about the advertising rules for this product category.

Question 9 - Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

Response: Should the Commission decide to provide additional guidance documentation, ASA would welcome the opportunity to consult in advance on areas where there is an overlap between the two organisations Codes.

Question 12 – Are there any other additions or amendments that you believe should be made to the Commission’s broadcasting codes and rules?

Response:

Media Service Code - General Commercial Communications Code| Section 8. Complaints

Media Service Code - Children’s Commercial Communications Code| Section 8. Complaints

Section 8 in both Codes refers to Complaints, and that audiences may make a complaint if they believe that a broadcaster has not complied with the Code.

The ASA has a well-developed, robust and free complaints service which is accepted by the advertising eco-system; advertisers (brands), agencies and media.

As a cross-media industry regulator, the decisions of our Independent Complaints Committee have impact across all media, where appropriate. While we can and do take account of the specificities of media, for example, an advertisement that is not appropriate for an outdoor site may be acceptable for a high fashion magazine, the fact is that we can make a finding that an advertisement is in breach of our Code, and have that applied to a) all executions of that advertisement across all media and b) all similar advertisements across all product sectors across all media. This ensures that there is a level of consistency across media in the requirements for the advertisements they publish.

As part of the advertising regulatory framework in Ireland, we suggest that the draft Code should refer to alternative complaints handling processes which audiences may avail of, with the ASA process being one such. Alternatively, and/or in addition, we request that such reference is made in the area on the Coimisiún Na Meán’s website which outlines how members of an audience may make a complaint.

End.

ALCOHOL ACTION IRELAND **SUBMISSION**

Coimisiún na Meán consultation on
revised Broadcasting Codes and Rules

Future review of the Broadcasting
Codes and Rules – Stage 2 Review

November 2024

Alcohol Action Ireland (AAI) was established in 2003 and is the national independent advocate for reducing alcohol harm. We campaign for the burden of alcohol harm to be lifted from the individual, community and State, and have a strong track record in campaigning, advocacy, research and information provision.

Our work involves providing information on alcohol-related issues, creating awareness of alcohol-related harm and offering policy solutions with the potential to reduce that harm, with a particular emphasis on the implementation of the Public Health (Alcohol) Act 2018.

Alcohol Action Ireland Directors: Prof. Frank Murray (Chair), Pat Cahill, Aidan Connaughton, Paddy Creedon, Michael Foy, Dr Jo-Hanna Ivers, Dr Mary O'Mahony, Dr Colin O'Driscoll, Dr Bobby Smyth

Patron: Prof. Geoffrey Shannon

Alcohol Action Ireland is a registered Irish Charity.

Registered Charity Number: 20052713

Company No: 378738.

CHY: 15342.

Question 6 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

Summary

For the purposes of this submission Alcohol Action Ireland (AAI) would like to address some pertinent issues in relation to the General Commercial Communications Code (Radio and Television Broadcasters) and the Children's Commercial Communications Code. AAI notes that the proposed Code is very similar to the previous Code in relation to alcohol advertising. However, AAI also notes the discretionary powers of Coimisiún na Meán under the Online Safety and Media Regulation Act 2022 to introduce media service codes or media service rules to regulate areas that are currently not addressed by the Draft Codes and Rules. AAI urges An Coimisiún to use these powers to protect children from being exposed to alcohol brand marketing (in whatever guise), a known risk factor for children starting to drink.

1. In particular, AAI wish to highlight concerns about the advertising of zero alcohol products using identical branding to the alcohol master brand and the exposure of children to alcohol advertising as a result. AAI recommends that zero alcohol product advertisements which use the branding of alcohol producers should be subject to the same restrictions as alcohol advertisements. This approach is in use in Norway.[1]

2. Coimisiún na Meán must make clear that alcohol advertising during sporting events e.g. on pitches and hoardings cannot be broadcast prior to the broadcast watershed for alcohol advertising which comes into effect from Jan 2025.

3. AAI have concerns that some elements of the proposed Broadcasting Code are not robust enough to ensure that children are protected from alcohol advertising.

4. Alcohol and zero alcohol product placements in broadcast programmes should be explicitly banned

5. AAI recommends that regular monitoring of children's exposure to alcohol branding should be carried out and published

6. Any adjudication on advertisements should be solely carried out by Coimisiún na Meán and not outsourced to any self-regulatory body such as the Advertising Standards Authority (ASA).



Introduction

There is extensive and robust evidence that children who are exposed to alcohol marketing are more likely to start drinking as children and if already drinking, to consume more.[2] While there have been some modest decreases in youth drinking in Ireland, at least 50,000 children start drinking every year.[3] Starting to drink alcohol as a child, which is the norm rather than the exception in Ireland, is more likely to lead to heavy episodic drinking and is a known risk factor for later dependency.

There is overwhelming public support for action on alcohol advertising on television, with an opinion poll from Ireland Thinks putting support for such measures at 70 percent.[4] From 10 January 2025 the advertising restrictions contained within the Public Health (Alcohol) Act 2018 (PHAA) will finally ensure certain advertising restrictions take effect. These restrictions will ensure a daytime broadcasting ban on alcohol advertising. As such, there can be no advertisement for an alcohol product on television from 3am - 9 pm and on radio on a weekday from 3pm - 10am the following morning.

The purpose of this measure is to reduce the exposure of children and young people to advertisements for alcohol products.[5] The reasons for this are straightforward. Alcohol is advertised to us in a variety of ways. Sponsorship at sports and music events, products promoted in our favourite movies and TV shows, and displays in shops to celebrate Valentine's Day, Father's Day, weddings, and birthdays. It is everywhere we look. Big alcohol companies spend millions linking alcohol with the things we love – watching football, GAA, or rugby, going to a gig, sharing a romantic meal. The purpose of this is to normalise alcohol and influence when we start to drink, how much we drink, and how often we drink.[6] The outworking of this is children being exposed to this same advertising.

We have known for some time alcohol advertising seeks to recruit new drinkers and increase sales among existing consumers of alcohol, including those with alcohol use disorder and dependency and young people.[7] It was for this reason that the PHAA aimed to reduce the direct or indirect promotion of alcohol products.

As mentioned, the PHAA is a foundational piece of legislation laying the legal basis for how Ireland deals with alcohol and its harms. Given its aim to reduce alcohol consumption and the harms caused by alcohol use, it contains significant sections relating to broadcasting and advertising in respect of alcohol. The Act contains several legislative requirements regarding alcohol and how it should be advertised reflective of the fact that alcohol is not an ordinary product.



Advocacy from Alcohol Action Ireland (AAI) and other public health bodies was central to the introduction of the PHAA. We support the legislation, however, as an organisation we are extremely frustrated that not all its statutory requirements are in force. In the context of this submission, we are disappointed at the failure of successive governments to commence the following sections:

Section 13: Content of advertisements

Section 18: Advertisements in publications

Section 21: Review of operation of section 13 to 20

Nevertheless, one of most significant points of frustration for AAI is how the alcohol industry is being facilitated in breaking both the letter and the spirit of the law by using zero-alcohol products to circumvent the regulatory protections in relation to alcohol advertising which specifically defines such features as the logo or other branding features of alcohol producers as advertising.

Zero alcohol product advertising

AAI believes that 0.0/alcohol-free products are currently being used to promote alcohol brands and thereby circumvent current broadcasting rules as well as the PHAA. Many leading alcohol producers now have alcohol-free and low-alcohol variants, beverages known in different countries around the world as no, low, zero, alcohol free or non-alcoholic drinks or simply NoLos.[8] Of significant concern are those products which share similar branding to their regular-strength counterparts, as they further normalise a culture of alcohol consumption and blur potential conflicts of interest in developing public health policies and broadcasting rules. Researchers and public health bodies including the World Health Organisation have been drawing attention to these concerns in recent years.[9]

The PHAA does not ban alcohol sports sponsorship but in November 2021 a modest measure was implemented outlawing alcohol advertisements on the field of play, while still allowing them on hoardings around the pitch. However, 0.0/alcohol-free products are now being used to circumvent these restrictions and have become prevalent in settings where alcohol is not allowed to be marketed e.g. on public transport and on advertisements close to youth-oriented facilities such as schools and public parks. We are also now seeing alcohol brands being broadcast on TV channels during the day and on the field of play in sports events, this then creates a further issue in terms of broadcasting as alcohol branding emblazoned on playing surfaces is then being carried on television. The increase of 0.0/alcohol-free ads, especially during sports events, using the same logos and branding of full-strength products, is exposing children to alcohol brand marketing and the normalisation of alcohol-like products in new settings.

Just as restrictions under the PHHA came into force, big alcohol brands began brand sharing – that is advertising zero alcohol beers using the same parent branding. It is of note that in the outdoor space where most of the PHAA restrictions are in place, zero alcohol ads made up 25 percent of the spend of alcohol brand advertising in 2022, up 31 percent from 2021, even though these products only make up around 2 percent of the market.[10]

It is accepted that zero alcohol products are not suitable for children. Even the industry funded body the Advertising Standards Authority (ASA) says that zero alcohol product advertising should not be in children's media or proximate to schools.[11] So why then are they being advertised in the very areas which are deemed protected for children?



A means to promote alcohol brands

Zero alcohol ads are not being pushed because the alcohol industry wants people to drink less but because of the aforementioned restrictions on where they can advertise their products. Brand sharing means that children who see people drinking what appears to them to be alcohol – because of the same branding – will at a young age be conditioned to think differently about when and where it is appropriate to drink alcohol.

Studies have shown that children as young as 3 display brand awareness, remembering both the brand and the product after seeing the brand's logo, packaging and character, and with brand awareness showing an increase in direct proportion to age.[12] Brand recognition (choosing the right brand from a number of available visual options) is far more significant than brand recall (mentioning the brand name), with two- to three-year-olds recalling only 1 out of 12 brands, whereas they recognized 8 out of 12 brands, which highlights the critical aspect of logos, brand colours, and other associated branding to overall marketing efforts.[13] Recent research from Thailand demonstrates that young people exposed to shared alcohol/0.0 branding associated the logos primarily with beer - the flagship product.[14]

Strong brand recognition, whether driven by advertising the brand through zero-alcohol or alcohol products, can result in higher sales and profit margins. Indeed, the marketers of Heineken 0.0 have admitted as much in their submission to Effie Awards Ireland 2021.

The Effie Awards, launched in 1968 by the New York American Marketing Association, are an awards program to honour the most effective advertising efforts.[15] It is the pre-eminent award in the industry, and the award recognises any and all forms of marketing that contribute to a brand's success.[16] Elaborating on their Heineken 0.0 campaign in Ireland, which won a silver medal at the Irish Effie Awards, the marketers were keen to show that their efforts are increasing brand loyalty and also contributing to increased sales not just of 0.0 but also of the main product – Heineken.[17] The case study reference guide for the Heineken 0.0 campaign stated that advertising the non-alcoholic product “drove advocacy through excellent product experience and positive conversation around the brand.”[18] This also had a beneficial effect on Heineken main brand.”. The submission further noted that the “success of the Heineken 0.0 campaign has compounded growth for the brand overall in a shrinking market.”[19]



The ongoing industry narrative about these products and their widespread advertisement in restricted areas is creating confusion for parents who are unsure about whether these products are suitable for children.[20][21] Research in Australia indicates that a third of adolescents have tried zero alcohol products. Some of the study participants acknowledged the potential for these products to serve as a gateway to alcohol use and recommended reducing their visibility and accessibility. [22]

Alcohol branding in sporting events

Recent sports events have revealed these practices first hand as big alcohol have sought to put their brand at the centre stage of important sporting events. Guinness displayed their logo and name with an additional, barely visible 0.0, onto the pitch during Six Nations matches earlier this year. Indeed, research from the University of Stirling found that alcohol brand references being shown at a rate of up to one every 8 seconds on the field of play during some high profile rugby matches after the PHAA restrictions came into place.[23]

Similarly, during the recent Nations League football match between Ireland v England, Carlsberg displayed their logo behind both goal end lines, again, with a barely visible 0.0 tagged on. There was a particularly egregious example of a zero-alcohol product being advertised on the sports surface which is not even available on the market.[24] Forged Irish Stout 0.0 was prominently displayed on the boxing ring during a high profile Katie Taylor fight which was broadcast in May 2023. Under PHAA rules, alcohol branding should not be displayed on the ring. The manufacturer claimed that the product was in development. This product is still not available (Nov 2024)

Issues for the broadcast regulator

While advertising alcohol brands on the field of play via zero alcohol products is hardly in keeping with the intent of the PHAA, it also poses questions regarding broadcasting rules, as on occasions such as those outlined, alcohol advertising is broadcast on television.

On the basis of national and international evidence, it is clear that zero alcohol ads are not being pushed because the alcohol industry wants people to drink less, but to circumvent the aforementioned restrictions on where they can advertise their products. Brand sharing means alcohol brands are being marketed to the public outside of the legal restrictions, and this is especially problematic in terms of its impact on children. It is clear that alcohol brands will do everything they can to get around even the most modest of restrictions and Coimisiún na Meán must ensure that their Broadcasting Codes and Rules protect against this.

Contraventions of Section 18 of the General Commercial Communications Code (Radio and Television Broadcasters)

AAI believes section 18, subsection 2, points (a), (b), and (c) and section 18, subsection 5 of the General Commercial Communications Code (Radio and Television Broadcasters) are being contravened. Section 18.2. (a) of the code states that broadcasters shall ensure that commercial communications for alcoholic beverages are cast towards brand selling and identification and do not encourage children or non-drinkers to begin drinking. However, brand sharing, advertising zero alcohol beers using the same parent branding, by its very nature is meant to encourage consumption of the brand advertised, and we know from international research that zero alcohol products are likely exposing children and adolescents to additional alcohol-related stimuli, potentially increasing their risk of underage alcohol consumption.[25]

Association of alcohol with sporting prowess

Similarly, advertising alcohol during sporting events, through broadcasters showing events where alcohol brands have their logos imprinted on the playing field, would appear to be a contravention of S.18.2.(b) as it links sports stars to alcohol and thereby creates a linkage between alcohol and enhanced physical performance. Furthermore, this would also appear to be a contravention of S.18.3.(c) as broadcasting successful sports stars playing rugby or football on a field emblazoned with alcohol brands creates the impression that the consumption of alcohol contributes towards success or social success. More broadly, these situations could all be considered to breach S.18.5 of the code – “Broadcasters shall ensure that sports programmes and sports bulletins, including competitions within sports programmes produced or commissioned by the broadcaster, do not promote alcohol brands.”.

Broadcast Watershed Alcohol Advertisements

From 10 January 2025 the broadcast watershed on advertising restrictions contained within the Public Health (Alcohol) Act 2018 (PHAA) will come into effect. These restrictions will ensure a daytime broadcasting ban on alcohol advertising. As such, there can be no advertisement for an alcohol product on television from 3am - 9 pm and on radio on a weekday from 3pm - 10am the following morning. It is essential that Coimisiún na Meán makes clear that the broadcast of alcohol advertising during sporting occasions e.g. on the pitch, on hoardings around the pitch etc., is forbidden before the broadcast watershed.

Audience profile

AAI also have concerns regarding S.18.7.(b), that alcohol beverages shall be broadcast only in or around programmes with an adult audience profile of 75 percent or greater. Children make up 23 percent of the population[26] and it is likely, where it comes to important GAA, rugby, and football events, that they are watching in the same proportion. For example, large sporting events, such as Ireland football and rugby internationals, can attract anywhere between 500,000 and 1,000,000 viewers.

Indeed, the audience for Ireland v England in the Six Nations rugby championship was 1,019,800[27] – 23 percent of that audience is 234,554. This means that a significant number of children could be seeing alcohol advertisements during popular sporting events, and we know from previous figures from the Broadcasting Authority of Ireland that seven out of 10 of the top programmes watched by children are big sporting events. This situation is further compounded by the fact that in 2021 the Broadcasting Authority of Ireland Statutory Report on the Effect of the BAI Children's Commercial Communications Code found that Diageo, the multinational alcoholic beverage company, was the number four advertiser to children in Ireland.[28] This demonstrates the weakness of the previous code and the need for much more effective practices in relation to alcohol brand marketing.

There is a clear contradiction between S.13.2.(h) of the code which forbids advertisements for alcoholic beverages that are aimed specifically at minors and yet children are clearly being highly exposed to alcohol advertising. AAI recommends that this section of the code should be replaced with a statement that children should not be exposed to alcohol advertising.



Product placement

Alcohol product placement should be explicitly banned. There is considerable evidence from other jurisdictions that this form of alcohol advertising is both significant and increasing. For example, a 2016 study in the USA measured the alcohol-related content, including brand placements, of 10 popular television shows. They found an average of more than two alcohol brand placements per show episode, with some shows featuring more than 13 brand placements per episode.[29]

A later study of reality tv programmes which were broadcast in the UK between 1st August 2019 and 1st August 2020 found that alcohol content was seen in 5,167 intervals (39%) across 258 episodes (98%). Using viewing figures and census data, it was estimated that alcohol content was seen 3.5 billion times by the UK population, including 197.3 million times by children aged under 16.[30]

Alcohol imagery is common in popular soap operas such as Coronation Street, East Enders and Home and Away. A UK study[31] of a six soap operas broadcast on UK television during periods in 2018-2019 found that alcohol occurred in 24% of 1-minute intervals across 95% of episodes. Most of these shows are also broadcast in Ireland. A 2022 study found that aspirational and usual brand to drink corresponded to television alcohol brand prominence, and television brand exposure was independently associated with drinking initiation and hazardous drinking.[32]

Alcohol Action Ireland recommends that alcohol product placement in televised programmes should be explicitly banned. While this might not be possible for Coismisiun na Meán at the moment, at the very least there should be systematic monitoring of the level of such placement in programming.

Monitoring and adjudicating of advertising

AAI also recommends that regular monitoring of children's exposure to alcohol advertising should be carried out and published. It is of note that it was only through the Broadcasting Authority of Ireland Statutory Report on the Effect of the BAI Children's Commercial Communications Code that the high level of alcohol advertising to children was exposed. AAI strongly recommends that any monitoring and adjudicating of advertising should be carried out directly by Coimisiún na Meán and not outsourced to other organisations. In particular self-regulatory bodies should not be involved in the regulation of commercial communications. Currently, the Advertising Standards Authority (ASA) code self-regulates advertising. The ASA is funded by the advertising industry and their clients. It therefore has industry interests at its core. AAI considers that it is not a suitable body to provide robust and independent adjudications on advertising carried out by its own members/funders.

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Draft Media Service and Rules Stage 2 Review

Once again, the AAI appreciates the opportunity to respond to the Stage 2 Review.

The Association of Advertisers in Ireland (AAI) is a member's organisation with the members being companies who advertise. At present there are 68 companies in membership.

Companies join the AAI because they recognise the need to be a responsible advertiser. AAI Members understand that the freedom to advertise responsibly is a crucial element of a healthy economy. By informing, educating and enriching our society, advertising adds to the quality of life.

The AAI is the **ONLY** association focused single-mindedly on the interests of Irish advertisers. The role of the AAI is to promote and defend the reasonable freedom to advertise. In my position as CEO of the AAI, I am a Director of the Advertising Standards Authority (ASA) and there are an additional two members of the AAI who are also Directors of the ASA.

The CEO of the Advertising Standards Authority in Ireland, Orla Twomey is Chair of EASA.

The AAI is also a member of the World Federation of Advertisers (WFA) and advises, where appropriate, global policy at a local level. Relevant for questions 5 and 6, the WFA has worked for decades on food and alcohol advertising.

It is worth pointing out to the value of advertising to the economy and the reason why proportionate measures are needed when thinking about further advertising restrictions.

The reason that proportionality of any advertising restrictions is so important, is that advertising does not only provide income and employment for those within the industry, and fund content and media, but by generating extra consumer expenditure and economic activity it supports the wider economy. For example, a Deloitte study from 2013 commissioned by Core Media in conjunction with RTE, Independent News & Media and Google found that €1 spent on advertising generates €5.7 for the Irish economy.

The report's findings are supported by other studies from overseas. These include a Deloitte report on the UK economy (*Advertising Pays*, 2012), a McKinsey & Company report on the major G20 economies (*Advertising as an Economic Growth Engine*, 2012) and a report by Maximilien Nayaradou on the French and US economies (*Advertising & Economic Growth*, 2006).

I also want to highlight that within the Children's Commercial Communications Code ("the Children's Code"), the definition of a child is 18 years of age, consequently the

Irish age threshold is one of the highest in Europe which clearly indicates that industry is holding itself to a high standard of responsibility and will continue to do so in this regard.

To conclude, AAI represents the collective voice of responsible Irish Advertisers and works hard to sustain a robust self-regulatory framework to protect advertising freedoms. Advertising is disproportionately important to the economy – it stimulates consumer demand, promotes innovation, drives competition, enables the digital economy and encourages market growth.

I have included answers to Questions 5 and 6 for your attention and would be more than happy to discuss these with you and your colleagues if you consider this to be of assistance.

Once again, on behalf of the AAI, I want to thank you for the opportunity to respond to the Stage 2 Review.

Yours sincerely

Barry Dooley
Chief Executive

Question 5 – Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes in respect of the advertising of High Fat, Salt and Sugar products?

The AAI believes that we need policies and codes which strengthen the advertising sector – for brands, for media, for agencies and services.

Our view is that the current restrictions contained in the “broadcasting codes” are very effective and industry has adhered to these codes since launch. According to the BAI, the regulatory predecessor, there have been minimal complaints concerning advertising being in breach of these codes.

We should highlight that the current codes are very similar to those in the BCAP Code, the UK Code of Broadcast Advertising. This is beneficial to those brands who advertise on Television, namely, the content and media placement is common to both the ROI & UK markets.

The rationale for maintaining and introducing the same set of guidelines in respect of the advertising of High Fat, Salt and Sugar products is straightforward in that advertisers & broadcasters are aware of the rules and can continue to be compliant in this regard.

All scripts/concepts for broadcast advertising are submitted to RTE and/or Clearcast for approval in advance of production/transmission and this pre-clearance process is both workable and manageable.

We would have a concern regarding any plans to impose further restrictions for advertising of HFSS products. Additional restrictions could potentially result in companies deciding to reduce their media commitments to the broadcasting sector. Should Firms cut back on investing in advertising, Ireland’s advertising spend per capita will fall below the Western European average resulting in significant damage to business and the Irish economy in general.

In 2011, a number of companies moved their central marketing activities back to the UK, and in other cases companies seriously downgraded their marketing operations in Ireland.

As an FYI, the Voluntary Code of Practice (VCOP) led by the Department of Health, developed a non-broadcast code over a two-year period and this was launched in February 2018. The focus was on advertising for HFSS products. This was never enacted. In June 2021 the Advertising Standards Authority for Ireland introduced all of these HFSS guidelines/references to their code and industry complies.

We believe that everyone should play their part. The industry must act properly. Governments and regulators must legislate fairly. Consumers must behave responsibly.

Question 6 – Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0:0% alcohol content/non-alcoholic?

The alcohol sector in Ireland is fully regulated and the Public Health Alcohol Act was enacted on 17th October 2018.

Officers of the Environmental Health Service of the HSE (Environmental Health Officers) are the authorised officers for this legislation. The range of powers available to officers in order to undertake their duties are outlined in Section 25 of the Act.

The AAI strongly believes that there should be no further additions or amendments to the broadcasting code in respect of the advertising of alcohol products.

The rationale for this opinion is that the rules that are now in place are stringent. There will be a broadcasting watershed coming into effect on January 10th, 2025 which will result in significant additional media costs to alcohol advertisers due to a reduction in availability of media time on television channels. In May 2026, new health labelling requirements will come into effect.

Despite the introduction of the Public Health Alcohol Act and the associated widespread restrictions, the alcohol companies are still committed to supporting Central Copy Clearance Ireland (CCCI), a description/brief follows:

Central Copy Clearance Ireland (CCCI)

The CCCI, trading as CopyClear since March 2014, is unique in that there is only one other similar arrangement in the World and that is in New Zealand. CCCI was set up jointly by the AAI, IAPI (Institute of Advertising Practitioners in Ireland) and the drinks industry in 2003 as a pre-vetting of all advertising for all alcohol brands to show that their advertising complied with codes of practice. The essence of the service is that a brand advertisement will not be published unless it has been vetted by CopyClear and carries a CopyClear number. The media co-operate in this service which makes it possible.

CopyClear is funded by the alcohol industry but the industry is not involved in the running of it. The organisation and management of CopyClear is jointly carried out by AAI and IAPI – the CEO's of AAI and IAPI are the overall executive managers of CopyClear. The actual vetting of advertising is administered by a team of Copy Clearance Managers who are experienced in advertising but none of whom are or can be involved in doing any work for alcohol brands. IAPI looks after the financial administration side of CopyClear while AAI looks after the secretarial (minutes, formal meetings) side. Within IAPI, the accountant looks after CopyClear's financial administration. This is all done working closely with the CCCI's auditors who look after audit and company registration matters, annual returns, etc,. The CopyClear

board comprises 9 people – 4 each nominated by AAI and IAPI (including their respective CEO's) plus an independent Chair, Dara McMahon.

Appointment of a Director under the articles of association is for a period of 3 years though this may be extended for a further 3 years. The board meets quarterly, four meetings a year including an AGM. CopyClear produces an annual report, which deals with trends, numbers of submissions, outcomes, etc., but it does not publish its annual accounts – though these are formally audited.

(A copy of the 2023 CopyClear Annual report is attached for your information).

It is important to stress that the CopyClear clearance managers and board representatives are completely independent and have no connection to the alcohol industry. There is no representation from the alcohol industry involved in the day-to-day activities nor is there any representation from the alcohol industry on the board of CopyClear.

It is also worth noting that there have been no consumer complaints upheld for any alcohol brand in the Advertising Standards Authority for Ireland over the last two years, 2022 and 2023.

The organisation is 12 years in existence. In 2013, the CCCI commissioned research among users of the service to better understand their needs and establish how the service could be improved. One of the issues that was constantly highlighted was the level of compliance that existed among alcohol advertisers. They referred to collaboration, to the significant efforts that are made by the alcohol industry to be best in class and to how the industry fully endorses the principles of co-regulation, compliance and best practice.

Conclusion of Answer to question 6

As a result of the Public Health Alcohol Act, the forthcoming broadcast watershed and health labelling requirements, we believe that there already exists a “restrictions overload” within this sector.

In addition, Central Copy Clearance Ireland, trading as CopyClear is a tried and trusted organisation which is funded by the alcohol industry at significant cost. It operates 3 days a week with four dedicated Compliance Advisors and I refer you to the Annual Report 2023 for a comprehensive de-brief indicating it's success.

The AAI also believes that there should no further additions or amendments to the broadcasting code in respect of the advertising of alcohol products advertised as 0:0% alcohol content/non-alcoholic.

In 2019, the ASAI, now The Advertising Standards Authority, (ASA) met with Industry when these 0:0% non-alcohol variants were being introduced and a set of guidelines were developed for the advertising of these non-alcoholic variants.

Industry has adhered to these guidelines and at a meeting on September 27th, 2023, I confirmed with the Chair and CEO of the Advertising Standards Authority for Ireland that there had been zero complaints to-date against 0:0% alcohol advertising.

In October 2023, the ASAI commenced a review of all advertising for these non-alcoholic variants and subsequently presented a review of this process in August 2024.

Seven Parent companies were contacted, of which three responded with the 2022 and 2023 advertising assets for their brand's non-alcoholic product variants. The remaining companies confirmed to the ASA that they did not run any advertising materials for non-alcoholic products in the years requested.

A total of 111 advertising assets were submitted for ASA's review. The marketing communications assessed included Television, Radio, VOD, Social, Sponsorship, Activation, OOH and Print.

As a result of this review, the ASA are preparing some amendments to their guidelines and they will be meeting with the parent alcohol companies to discuss these in due course.

The AAI believes that this process has been comprehensive and robust, consequently, it is our opinion that no further additions or amendments are required at this stage because of these ongoing developments within this sector.

+Consultation response form

Stage 2 Deadline 20th December 2024

This form lists the questions that Coimisiún na Meán is seeking submissions on in response to the stage 2 public consultation on draft revised Media Service Codes and Rules.

Please complete any or all sections of this form and return by email, by post or by hand to:

Post: Coimisiún na Meán, One Shelbourne Building, Shelbourne Road, Dublin 4, D04 NP20.

You do not have to respond to all questions in your submission to the consultation.

When preparing your response, please:

- refer to the full text of the Draft Codes and Rules and not the summaries provided in the consultation document, which are intended to be indicative only;
- clearly identify the specific section(s) or proposal(s) of the Draft Codes and Rules that are being addressed in the response;
- give reasons for your answer; and
- be concise.

Please note that this form is provided for your convenience only. Coimisiún na Meán accepts submissions in other formats or means should you prefer.

Respondents may wish to refer to Coimisiún na Meán's [Consultation Guidelines](#), which can be accessed on our website.

Important note on confidentiality:

It is Coimisiún na Meán's intention to publish submissions received in response to this consultation. If you wish to make all or any part of your submission on a confidential basis, please indicate this clearly at the start of your response to each relevant question.

Coimisiún na Meán will treat confidential information in accordance with its Consultation Guidelines.

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 20 th December 2024
Full name	Mairead O'Sullivan (ALCI President) on behalf of ALCI Council
Contact phone number	
Representing	Association of Lactation Consultants Ireland (ALCI)
Organisation name	Association of Lactation Consultants Ireland (ALCI)
Email address	

Your response:

Please insert your response under each of the respective questions below.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

Question 2: Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science, and health?

Commercial Milk Formula requires mass production by the dairy industry with consequent use of plastics and the degradation of land and waterways (Smith, 2019). Ireland is a major commercial milk formula producer and exporter. Investment in breastfeeding protection, support and promotion and eliminating the advertising of commercial milk formula can help safeguard planetary and human health by minimising environmental harm (Smith 2019)¹

Question 3: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?

Question 4: Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?

Question 5: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

Question 6: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

ALCI continue to work towards raising breastfeeding rates, an aim which is hindered by marketing of commercial milk formula (CMF) or other breastmilk substitutes, baby foods and feeding equipment to new parents. This marketing exploits concerns and new mothers' vulnerabilities, perpetuating myths about mothers' milk supply while misrepresenting breastmilk substitutes as comparable alternatives.

Breastfeeding is important not only for the individual health of children and their mothers but for wider public health and the environment with established benefits for society.

Breastfeeding significantly reduces healthcare costs by preventing illnesses like ear infections, diarrhoea and respiratory infections thereby reducing hospital admissions. Research findings indicate that breastfeeding protects against obesity, diabetes and other chronic diseases later in life. Conversely, CMF and early and inappropriate usage of complementary foods contributes to avoidable health burdens. The Lancet Breastfeeding Series (2023) indicted that reducing CMF advertising leads to improved or sustained breastfeeding rates globally, reducing the associated health risks ².

CMF is an ultra-processed food (UPF) and there have been concerns about its sugar content especially with follow on milks. UPF's can affect optimum gut development and affect the microbiome leading to higher risks of developing poorer health outcomes and increased inflammation within the body. This is particularly important in babies and young children as breastfeeding influences the development of a healthy microbiome which contributes to the development of a healthy immune system with lifelong consequences ³.

CMF companies gain access and persistently target new and vulnerable mothers and pregnant women via paid social media platforms where they promote their products through a variety of marketing techniques such as unsolicited social media posts, influencer endorsement and product placement. These may not always be recognised as advertising. ALCI strongly supports the global breastfeeding scorecard (2023) which shows that countries with strong restrictions on CMF advertising have achieved higher breastfeeding rates and thus a healthier nation ⁴

ALCI Council join the World health Organisation in calling on the government to monitor and enforce laws to end social media advertising and exploitative marketing of CMF and commercial foods for young children and to protect families at one of the most vulnerable times in their lives.

Possible addition or amendment:

In relation to follow-on formula, growing-up milk and all other milk products marketed for

infants and young children:— all products other than First Infant Formula and medically indicated specialist formulae are regarded as unnecessary, and they can be expensive. Logically, none of these products should be permitted to be advertised. When parents are using CMF, First Infant Formula is suitable until 12 months of age with the HSE stating that “full-fat cow’s milk may replace formula from 12 months.” (“Deciding to bottle Feed Your Baby From Birth”) ⁵

Possible addition:

Consideration should be made to the inclusion of commercial complementary foods along with CMF. These foods are often highly processed, may have a high sugar content, be labelled as suitable from too early an age and often have excessive packaging with consequent environmental impact.

Conclusion:

There are financial implications to parents for the purchase of CMF and commercial complimentary foods, with subsequent Food Poverty and Food Security issues.

Ireland has had low breastfeeding rates for several decades – while Ireland is also a leading manufacturer and exporter of CMF. Parents are the target for CMF from companies making large profits.

1. Smith J.P. A commentary on the carbon footprint of milk formula: harms to planetary health and policy implications. *Int Breastfeed J* 14, 49 (2019).
<https://doi.org/10.1186/s13006-019-1243-8>
2. Lacy-Nichols J, Nandi S, Mialon M et al. Conceptualising commercial entities in public health: beyond unhealthy commodities and transnational corporations (2023) 401 *The Lancet* 1214-28.
3. <https://www.firststepsnutrition.org/upfs-marketed-for-infants-and-young-children>
4. <https://www.unicef.org/documents/global-breastfeeding-scorecard-2023>
5. <https://www2.hse.ie/babies-children/bottle-feeding/deciding-to-bottle-feed-your-baby-from-birth>

Question 8: Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.

Question 9: Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

Question 10: Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

Question 11: Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?

Question 12: Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?



Baby Feeding Law Group Ireland

**BABY FEEDING LAW GROUP IRELAND'S SUBMISSION -
STAGE 2 REVIEW OF MEDIA SERVICE CODES**

CONTENTS

- **LIST OF ABBREVIATIONS**
- **INTRODUCTION**
- **EXECUTIVE SUMMARY**
- **BACKGROUND & EVIDENCE**
- **REFERENCES**
- **APPENDIX 1**

LIST OF ABBREVIATIONS

BFLGI	Baby Feeding Law Group Ireland
BMS	Breastmilk Substitutes
CMF	Commercial Milk Formula
HFSS	High in Fat, Sugar, or Salt
IYCF	Infant and Young Child Feeding
OSC	Online Safety Code
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund
VSP	Video Sharing Platform
WHO	World Health Organisation

INTRODUCTION

Baby Feeding Law Group Ireland (BFLGI) welcomes the opportunity to contribute to Coimisiún na Meán's review of Ireland's Media Service Codes.

As an alliance of organisations and professionals, BFLGI works to protect the rights to food and health of infants, young children, and families by addressing practices that commercialise infant and young child feeding, threaten breastfeeding, and undermine good health.

Our mission aligns with Ireland's commitments under the Sustainable Development Goals and the United Nations Convention on the Rights of the Child (UNCRC), as well as the WHO's International Code of Marketing of Breast-milk Substitutes ('the Code') (WHO, 1981).

The bulk of this document is a response to Question 7 of the consultation document: *Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?*

Breastfeeding is universally recognised as the optimal form of infant and young child feeding (IYCF), offering unparalleled health, economic, and environmental benefits. Yet, Ireland's breastfeeding rates remain among the lowest globally.

The pervasive and exploitative marketing of commercial milk formula (CMF) is a pressing public health issue. There is a wealth of evidence that this marketing undermines breastfeeding, misleads and distorts parental decision-making, and imposes significant public health and economic costs (Pérez-Escamilla et al., 2023; Rollins et al., 2016, p. 2020; WHO, 2022a). Without robust regulation, marketing tactics by the CMF industry will continue to impede national public health efforts to promote breastfeeding and protect population health.

We urge Coimisiún na Meán to leverage the legal authority granted under the Online Safety and Media Regulation Act (2022) and Ireland's commitments to fully implement the UNCRC and adopt stricter Media Service Codes, ensuring protection for breastfeeding and formula feeding families from exploitative marketing practices in both traditional and digital media.

Leading experts in The Lancet 2023 Breastfeeding Series (The Lancet, 2023) use the term commercial milk formula (CMF) instead of breastmilk substitute to highlight the artificial nature of formula products. We refer to 'CMF' throughout this submission to capture all forms of breastmilk substitutes, including infant and follow-on milks, and all formulas up to the age of 36 months as per the WHO guidelines (World Health Assembly, 2016).

EXECUTIVE SUMMARY

The Online Safety and Media Regulation Act (2022) contains two clauses related to milk formula marketing with regard to the public health interests of children:

Media Service Codes - 46n

“(7) Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit or restrict, in accordance with law, the inclusion in programmes of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars.”

Online Safety Codes - 139K

“(5) Without prejudice to subsection (2) or (4), an online safety code may prohibit or restrict, in accordance with law, the inclusion in programmes or user-generated content of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or foods or beverages which contain fat, trans-fatty acids, salts or sugars”

Despite arguments and submissions by child health advocates to the public consultations in developing Ireland’s recently published Online Safety Codes, restrictions on the commercial communications of infant and follow-on formula were not included.

Therefore, new restrictions within the revised Media Service Codes must cover traditional and digital media as digital marketing is the predominant form of CMF marketing (WHO, 2022b).

Regulations that protect families from exploitative marketing of infant and follow-on milks are overdue. The principles of the CRC and Ireland’s public health commitments demand immediate action. Every year of inaction exacerbates the cost of poor breastfeeding rates. Our proposed amendments to the current General Communications and Children’s Codes are the most straightforward and practicable means of restricting CMF commercial communications in Ireland.

Core Arguments

Coimisiún na Meán must revise the Media Service Codes to restrict broadcast and digital marketing of infant and follow-on formula for these key reasons:

- **Public health interests**

Breastfeeding significantly reduces healthcare costs by preventing common illnesses like diarrhoea and respiratory infections and lowering the risk of obesity and certain cancers. The economic and healthcare costs of low breastfeeding rates are considerable. Globally, not breastfeeding, according to WHO recommendations, results in more than US\$507 billion in economic losses each year (Alive & Thrive, 2022). Ireland's investment in breastfeeding promotion directly supports its obesity and chronic disease strategies. The Global Breastfeeding Scorecard (2023) demonstrates that countries with strong restrictions on CMF advertising have achieved higher breastfeeding rates (Global Breastfeeding Collective, 2023).

- **Children's rights**

Under the United Nations Convention on the Rights of the Child (CRC), Ireland is obligated to ensure every child's right to the highest attainable standard of health. Article 24 of the CRC explicitly requires measures to promote breastfeeding (UNICEF, 1990). Marketing of commercial milk formula (CMF) often distorts breastfeeding norms, violating the principle of acting in the best interest of the child. At the 2023 review of the Irish government's progress on upholding the rights of the Child (Committee on the Rights of the Child, 2020), the government was instructed by the CRC Committee to "Continue to implement the International Code of Marketing of Breastmilk Substitutes" under the Health area of concern (Committee on the Rights of the Child, 2023).

- **Best interests of child**

A multitude of studies demonstrate that breastfeeding protects against obesity and chronic diseases later in life. CMF marketing exploits parental concerns, makes unsubstantiated health claims and misrepresents formulas as a comparable alternative (Cheung et al., 2023; Pérez-Escamilla et al., 2023). Ireland must prioritise children's long-term health and implement regulations that protect children,

through their caregivers, from CMF marketing and align with global IYCF best practices.

- **No legal impediment**

The Online Safety and Media Regulation Act (2022) explicitly empowers CnaM to develop robust Media Service Codes protecting children from harmful commercial communications.

EU law, specifically the Audiovisual Media Services Directive, **permits member states to implement stricter advertising rules than EU minimum standards.**

CnaM can create new codes restricting infant and follow-on milk advertising in broadcast and digital spaces (European Parliament, 2018).

Also, Ireland's Statutory Instrument No. 490 of 2023 (European Union (Food Intended for Infants and Young Children, Food for Special Medical Purposes, and Total Diet Replacement for Weight Control) (Amendment) Regulations 2023, 2023) Section 18L "Requirements on information relating to infant and young child feeding" prevents dissemination of information that is "not objective". Paid for promotions, sponsored content and commercial communications are, by their very nature, biased.

CMF manufacturers may argue against stricter marketing regulations, citing economic harm and proportionality, but the evidence linking formula advertising to lower breastfeeding rates is incontrovertible (UNICEF, 2024; WHO, 2022a). Strict regulation is necessary to achieve Ireland's public health objective and is not more trade-restrictive than required.

- **No technological impediment**

Greater regulation of CMF marketing is technologically feasible. Existing monitoring protocols such as NetCode (World Health Organization, 2017) and advanced AI tools like Virtual Violations Detector (VIVID) (Alive & Thrive, 2023) can help monitor digital platforms for violations of advertising codes, ensuring compliance with minimal administrative burden. Incorporating such tools into regulatory frameworks ensures scalable enforcement of updated codes.

Key recommendations

- 1) Amend the General Commercial Communications Codes, Children's Code, Media Service Code for Audiovisual On-demand Media Service Providers.**

General Commercial Communications Code - Section: 13.2 Prohibited Commercial Communications.

A broadcaster shall ensure that it does not broadcast commercial communications that:

Proposed Addition:

"13.2(j) are promoting milk formulas intended for infants and young children up to the age of 36 months. These commercial communications are prohibited across all media platforms, including but not limited to broadcast, digital, and any future communication technologies."

General Commercial Communications Code - Section: 21.10 Follow-on Formula Milk

Proposed Amendment

Replace Sections 21.10, 21.11, 21.12 and 21.13 with an encompassing clause that prohibits the commercial communications promoting milk formulas intended for infants and young children up to the age of 36 months on all media platforms.

Children's Commercial Communications Code - Section 17 Diet and Nutrition

Proposed Addition:

"17.3 (a) No commercial communication directly or indirectly promoting milk formulas intended for infants and young children up to the age of 36 months shall be broadcast, made available on video-sharing platform services, or disseminated through any current or future media technologies, including digital, social, and emerging communication platforms."

Media Service Code - Section 13 Audiovisual Commercial Communications

Proposed Addition:

“13.3 viii. Audiovisual commercial communications shall not promote or advertise:

- Infant formulas, follow-on formulas, and toddler milk formulas intended for children up to 36 months of age.

2) Ensure that updated restrictions include broadcast and digital media

The updated restrictions on CMF commercial communications must apply to all audiovisual media services, including but not limited to:

- Broadcast television and radio services;
- On-demand audiovisual media services;
- Digital and interactive platforms offering audiovisual content under the jurisdiction of Coimisiún na Meán.

3) Establish a Monitoring System

CnaM, in collaboration with the Food Safety Authority of Ireland and the Department of Health must develop a robust system to oversee CMF digital marketing activities, ensuring compliance with regulations. This involves regular surveillance of various digital platforms to detect violations and ensuring sufficient funding and trained personnel are available to effectively monitor and enforce regulations. Appropriate sanctions to entities that breach marketing restrictions must be included to serve as a deterrent against non-compliance. Clear penalties will reinforce the seriousness of adhering to regulations.

BACKGROUND & EVIDENCE

Public Health Implications of CMF Advertising

There is a large body of empirical research demonstrating the importance of breastmilk over any other form of nutrition to the mother and the infant. The WHO and HSE recommend that a child is exclusively breastfed for their first six months and then fed breastmilk until the age of two, or longer if preferred, along with appropriate solid food. However, **exclusive breastfeeding rates in Ireland rank among the lowest in Europe and the world** (WBTi Steering and Core Groups, 2023).

Babies who are not breastfed should be fed infant formula from birth to six months. They should be fed either infant formula or full fat animal milk from six to eleven months and from twelve to twenty-three months, young children should be fed animal milk. **CMFs in the form of follow-up formulas from 6 months are not recommended** (WHO, 2023), **yet are the predominantly advertised CMF products.**

There are substantial public health efforts underway to boost Irish breastfeeding rates but there is recognition that CMF marketing undermines these efforts.

The National Standards for Infant Feeding in Maternity Services (HSE, 2022) states:

*“The promotion of breastfeeding is a collective responsibility and requires action and support for breastfeeding practices across government departments, HSE services, community agencies and employers. **The breast milk substitute industry is large and growing, and its marketing undermines efforts to improve breastfeeding rates**”.*

The HSE Policy on the Marketing of Breast Milk Substitutes (HSE, 2021) outlines how the HSE can eliminate the advertising of breast milk substitutes within the HSE. It states: *“Aggressive marketing of breast milk substitutes remains a major structural factor threatening the enabling environment of breastfeeding. Clear evidence of a negative effect on infant and maternal health and rates of breastfeeding is found when breast milk substitutes are marketed inappropriately”*

The International Code of Marketing of Breastmilk Substitutes (the “Code”) is the authoritative international public health guidance that sets the marketing standards for CMF products to protect the public, mothers, parents, and health professionals from the harmful marketing practices of the baby food industry that have been shown to impact breastfeeding practices negatively and manipulate vulnerabilities and concerns of formula-feeding parents, creating unnecessary stress and financial strain (Pérez-Escamilla et al., 2023).

It is not the objective of “the Code” to prevent mothers or families from choosing to formula-feed infants. It is to ensure everyone has objective and unbiased information on infant and young child feeding (IYCF). **To achieve the safest and optimal IYCF environment, the Code prohibits the marketing of all CMF.** As stated implementation of the Code is strongly associated with higher rates of breastfeeding

CMF marketing restrictions not only protect breastfeeding but also protect formula feeding families from marketing that encourages them to pay a premium for branded formula. There are several brands of first formula milk available on the market and they are regulated to make sure they all have the essential ingredients babies need. There is no nutritional difference between infant formulas so brands compete for customers by deploying various, emotive marketing tactics.

High formula prices are an acute issue for some parents. 2024 Research by the UK’s Competition and Markets Authority (CMA) (UK Competition & Markets Authority, 2024) into increasing formula prices found *“Parents make decisions, frequently in vulnerable situations, and often in the absence of timely, clear, accurate and impartial information. Understandably, they want to do the best for their babies, and are highly responsive to brand reputation, which is built in different ways, including through marketing of adjacent products such as follow-on formula, and messaging on packs....Price is often used as a proxy for quality despite NHS advice that ‘It does not matter which brand you choose, they’ll all meet your baby’s nutritional needs, regardless of price’. Once parents have found a brand that works for their baby, they are unlikely to switch, remaining loyal to their chosen brand.”*

The CMA report also found *“that the desire to purchase a premium brand is ‘felt particularly strongly amongst mothers who had hoped to exclusively breastfeed. They have heard “breast is best” and therefore feel even more guilt if they make a rational budgeting decision in their choice of formula brand. More generally, parents often use price as a proxy for quality and so would actively choose a higher priced product.”*

Restricting digital CMF marketing would stop public health messaging about infant feeding being drowned and allow formula feeding families and breastfeeding families make unbiased and objective decisions about their infant feeding choices.

Evidence of Digital Marketing

The CMF industry designs sophisticated marketing campaigns that encompass broadcast and online media. From pop-up advertisements that appear on social media platforms, websites using algorithms that match advertisements to the user's interests or persuasive paid promotion by social media influencers, ads use emotive language and imagery to connect with pregnant mothers and new and expectant parents (WBTi Steering and Core Groups, 2023) in an attempt to get parents to choose a particular formula brand. New mothers are the “holy grail” as first time mothers are likely to use the same infant formula for subsequent children (Hastings et al., 2020).

Digital marketing amplifies the reach and power of advertising and other forms of promotion in online environments, and exposure to digital marketing increases the purchase and use of CMF products (Hastings et al., 2020).

At the same time, health and nutrition claims for infant formula are poorly substantiated and potentially harmful. A major study published in the British Medical Journal in 2023 found the majority of claims on infant formula have little or no scientific substantiation and the authors called ‘for a revised regulatory framework for breast milk substitutes to better protect consumers and avoid the harms associated with aggressive marketing of such products’ (Cheung et al., 2023).²²

A Changing Markets Foundation report found that CMF companies gather data by encouraging mothers to engage with online surveys, take part in competitions for free baby products, receive discount vouchers, sign up to receive alerts regarding the development of the baby in utero, participate in live chats with health care professionals, sign up for newsletters and pregnancy advice, and take part in communities where mothers chat to each other (but some of the mothers present are BMS company employees) (Changing Markets Foundation, 2017).

The report observes:

'[w]hat most don't realise is that every keystroke, interaction and piece of personal information is being collected, analysed and used to shape not only their online experience but also their perceptions of motherhood as a whole. In the marketing world, this is known as social listening'.

Before the internet, CMF marketers relied on postal sign-ups from expectant parents through the use of marketing companies presenting as 'parenting clubs'. In the digital era "the demographic information that once would have taken [CMF companies] months to collect is available instantaneously. Companies actively mine this data to tweak their online presence to increase reach, engagement, and ultimately sales'

Digital CMF marketing gives companies unparalleled access to pregnant women, new mothers, and parents, allows the cross-promotion of products, as well as undermining public health efforts and investment to support and protect breastfeeding (Changing Markets Foundation, 2017). Consequently, **regulating the digital marketing of CMFs is critical and increasingly recognised as an urgent global public health action.**

Irish examples

Even the briefest survey of the online commercial communications of the three leading CMF brands in Ireland highlights marketing practices currently permissible by Irish legislation but prohibited by the International Code of Marketing of Breastmilk Substitutes.



C&G Babyclub Ireland

Sponsored ·

Choosing a baby name can be a tricky decisi... See more



babynamenerator.candgbabyclub.ie

Babynamenerator

Learn more

19

1 comment 20 views

Examples of pop-up social media ads



aptamil_ireland

Sponsored





and cowandgateireland
Paid partnership
Deuxhyun • Slow It Down (Instrumental)

mallymally_ #AD I love that Cow & Gate Follow on Milk 800g Powder format is made right here in Ireland. My sister was the one to introduce us and I love seeing how settled he seems after he has been fed. I'm just so happy we've found a product he seems to love.
@cowandgateireland #cowandgatefollowonmilk

Breastfeeding is best. Follow-on milk should only be used as part of a mixed diet from 6 months. Talk to your healthcare professional.

Always follow preparation instructions and storage advice.

47w

♥️ 💬 📌

Liked by **cloie_shart** and others
January 11

😊 Add a comment... Post

Example of paid promotion with style influencer (Cow and Gate Ireland, 2024)



lauraburkefitness and aptamil_ireland
Paid partnership with **aptamil_ireland**
Jumbo • Good Mornin'

lauraburkefitness 🐦 AD Preparation is key...

And since becoming a Mum this is something I have realised even more. This is why I love the convenience of the Aptamil Follow On Milk ready to drink bottles. They are so handy for on-the-go and having as back up too!

@aptamil_ireland have very kindly given me two pairs of tickets to giveaway to the upcoming Baby Fair in the RDS in Dublin on 5th & 6th of October. Aptamil Follow on Milk will be there with a team of experts on hand, that will include nutritionists and baby feeding advisors, to answer any questions parents may have. The winners can choose their preferred date of attendance too!

To be in with a chance to win - tag who you would like to bring

♥️ 💬 📌

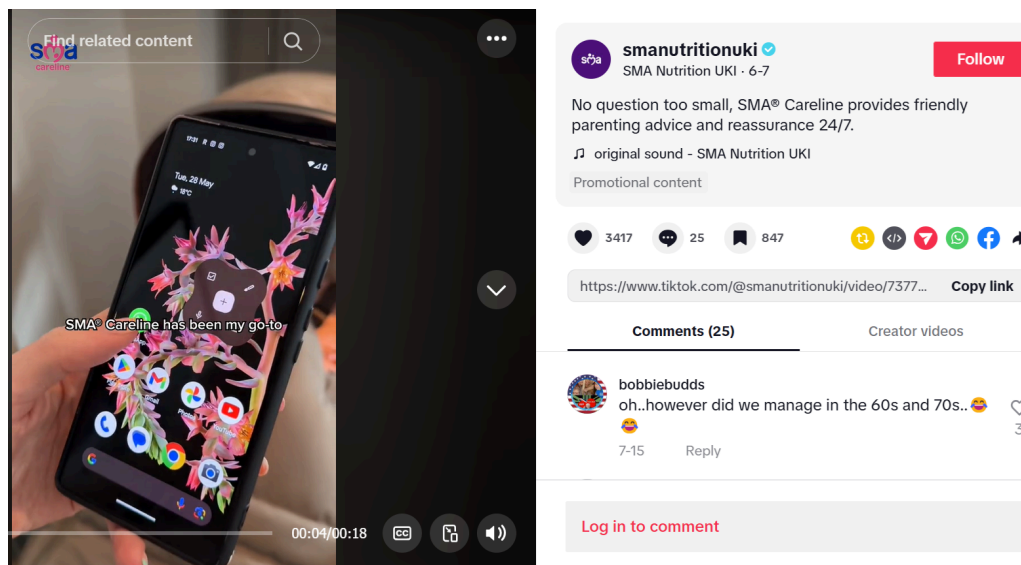
Liked by **empowered_movement.ie** and others
September 30

😊 Add a comment... Post

Example of paid partnership with fitness influencer (Aptamil Ireland, 2024)



Example of Instagram marketing promotion of baby club (SMA Nutrition UK & Ireland, 2024)



Example of TikTok marketing promotion of careline (SMA UK & Ireland, 2024)

Cross-promotion loopholes

The HSE and Department of Health advise that babies who are not breastfed should be fed infant formula until they are 12 months old. Complementary solid food should be introduced at six months and infants can consume full fat animal milk from 12 months onwards. Follow-on milks and toddler milks are not necessary.



(Examples of cross-promotion of Stage 1 and Follow-On products (WBTi Steering and Core Groups, 2023))

In fact, in an Irish study that modelled multiple dietary intake patterns, children aged 1-3 years within the “Follow-up Formula + Fortified drink” milk-feeding scenario were **exceeding the recommended free sugar intake**, compared with those in the other milk-feeding scenarios (human and cow and combinations thereof) (Lyons et al., 2022).

Follow-on milks circumvent the prohibition of advertising of infant formula. By marketing follow-on milks companies are able to cross-promote their brand to parents. Studies show that parents don’t discern the difference between first infant milk and follow-on milk. Looking at the examples of packaging above it is understandable why parents perceive ads for follow-on milk to be ads for all milks of that formula brand (Brown et al., 2020). Cross-promotion of follow-on and toddler milks reinforces brand loyalty, indirectly promoting infant formula despite legal restrictions.

Even though ‘the Code’ prohibits the cross-promotion of CMF, digital marketing is one of the most effective ways this practice is carried out (Pérez-Escamilla et al., 2023).

Prohibiting the commercial communications for all infant and follow-on formula up to 36 months would close the legal loopholes that allow companies to advertise their products despite the ban on infant formula advertising up to 6 months.

WHO Regulatory Guidance on Digital Marketing

The WHO has taken action to address the severity of CMF digital marketing as a public health concern. In November 2023, it issued guidance for WHO member states on regulating the digital marketing of CMF. The Guidance has eleven detailed recommendations, including that Members States should:

- Ensure that regulatory measures effectively prohibit the promotion of products within the scope of the Code, including brand promotion, across all channels and media, including digital media.
- Confer legal duties of compliance to monitor and take immediate action to prevent or remedy prohibited marketing on entities along the digital marketing value chain.
- Strengthen monitoring systems for detecting prohibited marketing in the digital environment and
- All entities along the digital marketing value chain and in health care systems should ensure that their marketing practices conform to the Code in digital environments, irrespective of any regulatory measures implemented at national and subnational levels.

Given the increasing focus on this issue, it is fortuitous and timely that Ireland is in the process of revising Media Codes that can enact these recommendations.

Existing regulatory frameworks prohibit commercial communications for infant formula and largely pertain to products for infants 0-6 months. Current laws have failed to protect the public from commercial communications for products aimed at children older than 6 months (i.e. follow-on and toddler formulae). Existing regulations are insufficient, which is why the Online Safety and Media Regulation Act detailed the need for greater regulation of infant and follow-on formulae.

International Legal Obligations

Perhaps the strongest argument as to why CnaM needs to revise the Media Codes to align with the International Code of Marketing of Breastmilk Substitutes is because of our obligation under the Convention on the Rights of the Child (CRC) (UNICEF, 1990). Ireland is a state party to the CRC which places legal obligations on the state to comply with the convention and incorporate the CRC into domestic legislation.

During the most recent review of Ireland's compliance with the CRC (2023), Ireland was asked (in the List of Issues) by the Committee to describe the measures take to:

- (a) fully incorporate the Convention into national legislation;
- (b) Conduct an assessment on the extent to which national legislation and practices comply with the Convention; and
- (c) Implement specific legislation...to ensure that the Convention is respected in administrative proceedings, decision-making processes and other relevant areas.

In **Ireland's state party report to the Committee** (Government of Ireland, 2022) (its reply) these issues were addressed as follows:

The "UNCRC does not form part of the domestic law of the state. However, the substance of rights it contains are protected by the Constitution and legislation"...Furthermore, the constitutional rights of individuals are not limited to the rights expressly referred to therein. In interpreting the provision of the Constitution, the courts have identified additional rights (unenumerated personal rights), which fall within the 'personal rights of the citizen' as referred to in Article 40.3.1 of the Constitution and determined by the superior courts."...

"The government has committed to undertaking a comprehensive assessment of national legislation in terms of its compliance with the Convention..."

A second relevant issue was raised by the Committee and Ireland was asked for information on the measures taken to develop a national strategy on breastfeeding and implement the International Code of Marketing of Breast-milk Substitutes.

In its Concluding Observations, the CRC Committee recommends that Ireland ***‘fully incorporate the Convention into national legislation, conduct a comprehensive review of all its legislation to align it with the Convention and address any inconsistencies, and develop systematic child-rights impact assessment procedures for national and subnational legislation and policies relevant to children.’*** The Committee further recommended that Ireland ***‘implement the International Code of Marketing of Breastmilk Substitutes ...’***.(Committee on the Rights of the Child, 2023)

Finally, the Committee recommends that Ireland ***‘[f]urther develop regulations and safeguarding policies to protect the rights and safety of children in the digital environment, and ensure that the Online Safety Commissioner pays particular attention to the protection of children who fall under its mandate, including the individual complaints mechanism, in line with children’s rights standards ... Ensure that laws on access to information and the digital environment protect children from harmful content and materials and online risks, including by instituting effective regulations for Internet service providers and ensuring the effective implementation of the Online Safety and Media Regulation Act, including the complaint mechanisms under the Act’*** (Committee on the Rights of the Child, 2023).

Ireland has a legal obligation to assess legislation to ensure it complies with the CRC and implement specific legislation to ensure the CRC is respected in various law and policy settings This includes Article 24, which protects the child’s right to health and requires states to ensure that society (especially parents and children) is educated and supported in child health and nutrition and the benefits of breastfeeding. Ireland also has a responsibility to implement the International Code of Marketing of Breast-milk Substitutes.

The best interests of the child

The best interests of the child must always take precedence over economic or industry arguments, particularly in matters affecting their health and development.

Breastfeeding is a proven safeguard against obesity, with research across twenty-two European countries showing significantly higher odds of obesity among children who were never breastfed or who were breastfed for shorter durations (Rito et al., 2019).

In Ireland, where obesity prevention is a cornerstone of public health strategy, breastfeeding plays a vital role in achieving national health objectives. However, the pervasive marketing of commercial milk formula (CMF) distorts parental decision-making and undermines breastfeeding norms, violating the principle of prioritising children's welfare.

UNICEF's guidance on industry stakeholder engagement emphasizes the inherent conflicts of interest when industries shape public health policies, advocating for independent, rights-based approaches that protect children (UNICEF, 2024; UNICEF/WHO, 2023).

While some argue that stricter advertising regulations could face challenges under WTO trade laws, such claims often lack merit. Robust regulations targeting CMF marketing are justifiable under international trade law, as they are necessary for protecting public health, non-discriminatory, and proportional. By enacting such measures, Ireland can confidently assert its commitment to upholding the best interests of children while meeting both legal and moral obligations.

Ireland's Leadership in Public Health

Ireland has a proud legacy of pioneering public health initiatives, exemplified by its groundbreaking smoking ban and progressive alcohol labeling regulations, which have set international benchmarks. These bold measures underscore Ireland's commitment to protecting public health and promoting societal well-being.

Restricting commercial milk formula (CMF) advertising presents another opportunity to lead by addressing a critical public health challenge. By implementing stricter

regulations, Ireland not only strengthens its alignment with the Sustainable Development Goals (SDGs) but also advances its national obesity prevention strategy, reaffirming its role as a global leader in creating healthier futures.

Conclusion

Restricting the marketing of commercial milk formula across traditional and digital platforms is a critical step toward safeguarding public health, fulfilling Ireland's obligations under international conventions, and protecting the rights and health of children.

Implementing these regulations aligns with best practices globally and reinforces Ireland's commitment to the CRC, WHO guidelines, and Sustainable Development Goals.

We urge Coimisiún na Meán to adopt our proposed amendments to the Media Service Codes to ensure meaningful, enforceable protections for families across Ireland. The health of future generations depends on decisive action today.

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Consultation response form
Codes Stage 2 - Deadline 20th
December 2024 – submitted by Bauer Media Audio
Ireland

We note we do not have to respond to all questions in your submission to the consultation.

We have referred to the full text of the draft Codes and clearly addressed the issues in a concise way.

Confidentiality: We note that it is Coimisiún na Meán's intention to publish submissions received in response to this consultation and we have no difficulty in our submission being published.

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 20th December 2024
Full name	
Contact phone number	
Representing	Bauer Media Audio Ireland
Organisation name	Bauer Media Audio Ireland
Email address	

Response: We have inserted our response under each of the respective questions below.

Introduction

Bauer Media Audio Ireland welcomes the opportunity to input into Coimisiún na Meán's review of the Broadcasting Codes and Rules.

The work that Coimisiún na Meán has been doing on updating codes and frameworks is important to ensure that regulation keeps pace with the changes in the sector, and the ever-shifting media landscape in Ireland, online and internationally.

It is notable that a significant number of the questions being asked in this phase appear to indicate that Coimisiún na Meán is inclined to add additional codes or regulation, to what is already a tightly regulated sector in Ireland.

Some of the issues raised appear to be already covered by legislation and ASAI codes, and further regulation in this area, appears to be an additional burden for stations, without necessarily having an immediate or positive impact in terms of output.

We also note the question in terms of sponsorship and would be happy to engage in a wider discussion on commercial communications and sponsorships which would reflect the very different media landscape that radio is now operating in.

It has been suggested at IBI level that it might be beneficial for Coimisiún na Meán to carry out economic impact assessments in advance of the addition of any new editorial or commercial regulation, to fully understand the burden placed on the radio sector by regulation, when compared to other forms of media and online operators. That is a view that BMAI would be happy to support.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

BMAI does not believe that there is any need for additions or amendments to the existing Broadcasting Codes to address environmental sustainability, and that our current approach provides a measured and balanced approach across both news and current affairs reporting and across commercial operations.

The Broadcast sector has freedom of editorial decision making, as enshrined in the EU Media Freedom Act and under national and international law, and our dedicated teams in BMAI ensure compliance with all existing standards and requirements.

In terms of commercial operations, BMAI has made commitments on sustainability as part of the process of licence renewal across our stations and intends to fully honour those commitments.

In addition, our news and current affairs teams maintain a rigorous approach to fact checking and content verification to ensure that all our output on this issue is clear and accurate.

Additional regulation does not appear to be required or desired.



Question 2: Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science, and health?

In terms of objectivity, accuracy, and factual reporting, BMAI is proud of our dedicated news and current affairs teams across the business, who consistently deliver first class news and current affairs content for a range of audiences.

We do not see any need for additional regulation around the area of climate change, science, or health, as each of those areas is already covered in terms of Editorial and Factual standards.

Our teams delivered accurate and factual coverage throughout the pandemic, and continue to cover issues like Climate Change, Science and Health in current affairs programming and across our news bulletin output, with no need for additional regulation above existing broadcast rules.

We would suggest that on matters such as Climate Change, where scientific facts are clearly established around Global Warming, that the Coimisiún na Meán take a robust approach to complaints which depend on conspiracy theories or suspect science to make a case.

However, we understand that the new Complaints procedure is clearer and offers more checkpoints on complaints which are spurious or vexatious, which is to be welcomed.

Question 3: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?

Broadly BMAI is happy with the current requirements around the requirements for News and Current Affairs during elections and referenda, and the most recent General Election provided a good example of the scale and diligence that BMAI brings to bear on noteworthy events like this.

Across the campaign and the election count, the BMAI services provided comprehensive coverage and analysis for each of our disparate audiences and regions and delivered high quality content for each of the stations and brands.

While the Moratorium has been the subject of a separate review, it should be noted that the new “period of additional care” was difficult to enforce in practice during the recent election.

After internal editorial discussion, BMAI operated a voluntary moratorium across the music and entertainment stations, from an abundance of care. Newstalk and Today FM did engage in more detailed coverage, but there was a legitimate concern that the “additional period of care” and the implications of any kind of breach during that period were not made fully clear.

As radio and broadcast are the only media impacted by a moratorium, it can create confusion for guests and political parties, along with the audience.

We would request that greater clarity is provided on the “additional period of care” or that the moratorium is removed entirely, apart from polling day itself.

Question 4: Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?

The area of financial products and services are tightly regulated already, in terms of Coimisiún na Meán, the Central Bank of Ireland and the ASA.

The impact of the regulations can lead to lengthy terms and conditions, which research has shown to be ineffective and makes for awkward sounding radio ads, which may deter financial businesses from advertising on radio.

The IBI has proposed at an industry level that a better solution would be to create a website which contains clear information and is promoted across all stations.

We would respectfully suggest that any cryptocurrency products should be covered by existing legislation and not require any additional codes.

We are aware this is a rapidly evolving segment but have not seen any significant spend from cryptocurrency brands across radio so far.

Question 5: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

The area of High Fat, Salt and Sugar products appears to be already tightly regulated, in the Broadcasting Codes and in the Children's Commercial Communications Code.

We would respectfully suggest that there is no need for any additional codes or amendments for these products.

Question 6: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

There are already strict restrictions on the advertising of alcohol, including new restrictions in the updated Commercial Code and under the ASAI code.

We would respectfully suggest that there is no need for any additional codes or amendments to cover 0.0% alcohol or non-alcoholic products.



Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

There are already strict restrictions on the advertising of infant and follow on formula, we would respectfully suggest that there is no need for any additional codes or amendments to cover these products.

Question 8: Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.

Radio tends to afford participants a greater opportunity for anonymity or protection of their identity than other broadcast or visual media.

Equally, BMAI stations and their editorial teams are fully aware and trained in terms of their legal obligations and requirements for participants in programmes and the appropriate duty of care required.

We also fully comply with the Data Protection Act and other relevant codes and legal requirements to ensure that privacy requirements are met for participants, while also balancing the protection of media freedoms.

We would suggest that it might be useful for Broadcasters to display their policies and procedures around these topics on their websites, or in a publicly accessible way to provide comfort to potential participants, while also being a mandatory part of staff training.

Question 9: Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

Regular consultations and support from Coimisiún na Meán are helpful, particularly for new staff members, and it is useful to be able to provide a clear understanding to the intention which drives codes or practices.

The recent Webinar provided on the new Complaints procedure which was attended by BMAI Programming teams was a good example of a really positive and useful way to update on the new procedure and provide practical examples of how it is intended to operate.

Additional documentation, or FAQs on Codes would also be helpful when new staff are being trained in compliance.

It would also be helpful from an industry point of view if we had clarity on the process of evaluating any codes, and whether there is a test of the impact additional regulation might have on stations from a regulatory and compliance point of view.



Question 10: Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

BMAI considers that the distinctions between advertising and sponsorship are clear but would welcome the opportunity to have a wider discussion about the nature of Sponsorships and the approach taken in Commercial Codes.

A more modern and proportionate approach to commercial messaging and sponsorship would allow for development of a more integrated approach for commercial partners and offer radio greater flexibility in terms of revenue from commercial activity.

Radio as an industry faces increasing competition from digital and social media, and often find ourselves competing on an uneven pitch, partly because of the level of regulation and requirements around sponsorship.

Ofcom, in the UK Market have simplified the commercial code around sponsorship and messaging and there may well be some useful learnings that could be applied here, and which would help the radio industry to unlock revenue that is otherwise diverted to competing media, including online and social platforms.

BMAI would encourage Coimisiún na Meán to specifically review the rules around sponsorship, and product placement with a view to modernising and updating the current approach.

This is another area where proactive support from Coimisiún na Meán would be helpful, particularly

Question 11: Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?

BMAI doesn't believe that any additions or amendments are required, and that the new Complaints procedure will address some of the outstanding issues around vexatious complaints or the pursuit of false equivalence around subjects such as Climate Change.

It is still important that presenters be entitled to use "forceful questioning" as part of the process to provide a wide range of views, and that presenters can pose questions from alternate viewpoints to help stimulate debate.

On matters such as climate change, or health, it should be permitted for presenters to offer clear and unambiguous facts, where required to combat misinformation or disinformation, or an attempt to create a false equivalence.



Question 12: Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?

While the Consultation process is useful and provides an opportunity for a wide range of opinions to be canvassed, BMAI would stress that the areas discussed above are largely already tightly regulated, in some cases by more than one representative body.

It is also the case that broadcast media, operating under a licence, maintains higher editorial and commercial compliance standards than many of the online platforms and external broadcasters who are available via the world wide web.

While keen to maintain high standards, the ecosystem in which radio operates is increasingly competitive and any additional burden in terms of regulation will add additional strain to operators, and present further opportunities for external providers, or social media and web-based platforms to chip away at radio's audience.

From:
Sent: 20 December 2024 12:34
To: Codes
Subject: Stage 2 broadcasting codes consultation response.

Dear Colleagues,

I am writing in response to your stage two consultation on the revision of broadcasting codes and tools, and in particular in response to Question 7: **"Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?"**

Yes.

I urge Coimisiún na Meán to take leading action to implement strong regulation of the marketing commercial milk formula (CMF) to protect the health of the most vulnerable members of our society, our babies and young children. Babies are a unique consumer group because they have no control over what is purchased for them, at the same time their health is profoundly impacted by marketing aimed at their families.

Ireland has already taken world leading action to curb the damage done by companies profiting at the expense of public health in the case of smoking bans, alcohol labelling and more recent action to limit the damage to children's health done by targeted advertising of vaping. The Online Safety and Media Regulation Act (2022) provides the opportunity for Ireland to take another world leading step to protect public health by closing gaps in regulation that have been exploited by commercial milk formula (CMF) companies with the invention of "follow-on" formula and toddler milks. EU law, specifically the Audiovisual Media Services Directive, permits member states to implement stricter advertising rules than EU minimum standards.

Ireland should extend the current restrictions applied to the marketing of infant-formula (from birth to 6 months) to include all marketing of follow-on formula and toddler milks (up to 36 months of age at a minimum) and take action to monitor and enforce regulation in broadcast and online spaces. This is in line with the spirit of the Code of Marketing of Breastmilk Substitutes, the only internationally agreed marketing code because the marketing of CMF is so damaging public health. Irish families deserve to be able to make decision on how to feed their babies free from the influence of aggressive marketing of infant-formula and the cross-marketing of unhealthy, ultra-processed, unnecessary follow-on and toddler milks (Richet et al, 2024).

There are no valid reasons not to take this step.

Restricting marketing is not a judgement of families who decide not to breastfeed, or those who want to but were unable to meet their own breastfeeding goals. Restricting marketing is about prioritising the health of our infants over company profits. The main focus of CMF marketing is not competition between brands. Once a family choose a brand of formula milk they tend to be reluctant to switch brands^[1], with families often remaining loyal to a brand through generations. The biggest threat to CMF profits in Ireland is the fact that most women want to breastfeed. CMF companies create customers by undermining breastfeeding. Deep pockets and a very lucrative product mean that the marketing of CMF has become ever more aggressive with huge growth in online marketing. This needs to be curbed and you have the legal authority to do this.

CMF marketing increases the number of families who must rely on formula. Families who use formula milk, through choice or necessity, are already paying too much because companies invest large sums in marketing to create customers and protect profit. Price of infant formula is currently subject to competition and markets inquiry in the

UK due^[ii] to the large unjustified price increases observed in the past four years^[iii]. A similar price increase has been observed in Ireland but no investigation has been launched and no action taken to protect babies and their families from CMF company profiteering in a cost of living crisis. Evidence suggests the unnecessarily high prices risk families being unable to afford formula with obvious and significant risks to babies lives^[iv].

A move to significantly restrict the marketing of CMF is well aligned with existing government strategies for child health and wellbeing and long term public health improvement. There is a current commitment from the Department of Health to undertake an infant feeding survey in 2025. This offers a unique opportunity to capture data to track the impact of enacting strong policy to remove CMF marketing from broadcast media and online spaces and provide a world leading case study on taking brave action to protect all babies and their families.

Please take this opportunity.

Sincerely,

Dr Jennifer Hanratty

On behalf of Breastival, a member organisation of baby feeding law group Ireland, baby feeding law group UK.

^[ii] <https://www.gov.uk/government/publications/infant-formula-and-follow-on-formula-market-study-interim-report>

^[iii] <https://www.gov.uk/government/news/infant-formula-cma-sets-out-concerns-and-potential-solutions>

^[iii] <https://www.babymilkaction.org/archives/43840>

^[iv] <https://www.irishexaminer.com/opinion/ourview/arid-41340437.html>



Conradh na Gaeilge's Submission

to

Coimisiún na Meán's Consultation

regarding the

Media Service Codes and Rules

January 2025

INTRODUCTION

Conradh na Gaeilge welcomes this opportunity to put forward a submission to Coimisiún na Meán's Consultation regarding the Media Service Codes and Rules. This consultation is an opportunity to achieve parity between the Irish and English languages, and to normalise the Irish language.

Conradh na Gaeilge is the democratic forum for the Irish-language community and the organisation works for the language all over Ireland and around the world. The organisation's principal aim is to reinstate Irish as the common language of Ireland. Since it was formed on 31 July 1893, members of Conradh na Gaeilge have been active in promoting the Irish language in every aspect of the country's life, from law and education to the development of Irish-language media and services.

Foras na Gaeilge, the all-island body working for the two Governments, north and south, to promote the Irish language, has chosen Conradh na Gaeilge as one of the six lead organisations it funds to develop the Irish language on the island of Ireland. Conradh na Gaeilge has been chosen primarily to take on protecting, representing and raising awareness of the Irish language. Conradh na Gaeilge has over 200 branches and many individual members, and all its members work tirelessly to promote the use of the Irish language in their own areas. Additional information on the work of Conradh na Gaeilge is available on www.cnag.ie.

13.1 COMMERCIAL COMMUNICATIONS AND THE OFFICIAL LANGUAGES ACT

Paragraph 13.1 regarding prohibited commercial communications states:

All commercial communications shall comply with relevant Irish and European legislation and with the rules, regulations and codes of practice issued from time to time by any relevant competent authority.

If a public body undertakes commercial communication, it must be ensured that that body adheres to Section 6 of *Official Languages (Amendment) Act 2021*¹ which states

'at least 20 per cent of any advertising placed by the body in any year shall be in the Irish language' and 'at least 5 per cent of any money expended by the body on advertising in any year shall be used to place advertising in the Irish language through Irish language media'.

'Advertising' is defined in the Act (2021) as:

(a) any form of commercial communication with the aim or direct or indirect effect of promoting a product or service of the public body concerned, and

(b) any form of communication, to the public, in respect of—

- (i) the recruitment of staff,*
- (ii) legislative or policy initiatives,*
- (iii) the purchase or sale of land or assets,*
- (iv) the provision of services, or*
- (v) public consultation;*

¹ <https://www.irishstatutebook.ie/eli/2021/act/49/enacted/en/print#sec6>

“Irish language media” means any media where 50 per cent or more of the content of that media is through the Irish language.’

13.2 COMMERCIAL COMMUNICATION AND ARTICLE 21 OF THE EUCFR

Conradh na Gaeilge praises the provisions mentioned in paragraph 13.2 that are recognised by the EU Charter of Fundamental Rights:

13.2 A broadcaster shall ensure that it does not broadcast commercial communications that:

*m) contain anything which may reasonably be regarded as likely to incite to violence or hatred directed against a group of persons, or a member of a group, based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union, namely sex, race, colour, ethnic or social origin, genetic features, **language**, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation. Nationality constitutes such a ground without prejudice to the special provisions of the Treaty establishing the European Community and of the Treaty on European Union.*

Conradh na Gaeilge strongly agrees with the approach taken in the EU Charter of Fundamental Rights that identifies ‘language’ as a ground which must be protected from discrimination and incitement to violence or hatred. Language is an important attribute which is an integral part of identity, and it should have special protection in media.

HANDLING OF COMPLAINTS

The same complaints handling process should be available to all members of the public, whether it be in English or Irish they decide to make a complaint.

It should be noted that it is explicitly prohibited in Article 21 of the European Union Chart for Fundamental Rights and in Article 14 of the European Convention on Human Rights to discriminate on the basis of language.

CONCLUSION

It is essential that this Code should be in adherence to Irish and EU legislation with regard to language obligations and the protection of rights, and that protection be applied to the complaints handling process.

The following obligations under legislation must be central to the work of Coimisiún na Meán:

- Article 21 of the European Union Chart for Fundamental Rights
- Article 14 of the European Convention on Human Rights.
- Official Languages (Amendment) Act 2021

Conradh na Gaeilge is available if there are any questions on any aspect of this submission.

Consultation response form

Revision Broadcasting Codes and Rules: Stage 2

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation)
Full name	Dr. Miriam Ryan
Contact phone number	
Representing	Organisation
Organisation name	Dairy Industry Ireland Ibec
Email address	

Response:

Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

Dairy Industry Ireland, the representative body for Irish primary and secondary dairy processors within Ibec, including the infant nutrition sector, welcomes invitation by Coimisiún na Meán to input to stage 2 of the consultation on the Revised Broadcasting Codes and Rules for radio and television broadcasters. Advertising of infant and follow-on formula are specified in the 'General Commercial Communications Code' and are the focus of this input.

As stated in section 13.2(j) 'Prohibited Commercial Communications' within the Media Service General Communications Code there shall be no broadcast commercial communications that are for infant formula for use by infants during the first 6 months of life. Further to this total prohibition of commercial communications relating to infant formula, the restrictions and requirements for commercial communications for follow-on formula are also laid down in section 21.11(a,b,c,d) 'Follow-on Formula'.

Dairy Industry Ireland members fully adhere to and comply with these provisions. Compliance with these provisions, as currently set in primary EU legislation, provides a clear, robust and effective basis to ensure that breastfeeding is protected, not discouraged, and that product advertised does not state in any way, directly or by implication, that the product is otherwise equal to or superior to breastfeeding.

EU member states support the same advertising regulations; however, there are varying rates of breastfeeding initiation across these countries, as exemplified by Sweden ([Cato et al, 2020](#)). This difference between Ireland and Sweden persists in the following months, despite the same regulations regarding infant and follow-on formula in place within both countries, as well as across other EU member states. This suggests that there may be other factors influencing the initiation and continuation of breastfeeding.

While the [HSE Breastfeeding in a Healthy Ireland Implementation progress report](#) recorded increased breastfeeding uptake rates from 2015 to 2023, it is clear that these rates need to further increase with all supports in place to do so. Reasons for choosing to breastfeed, to stop breastfeeding or to supplement feeding with baby formula are widely shown to be multi-faceted. Influencing factors such as family and friends, workplace factors including the mother's need to return to work, the support of lactation consultants and whether a pro-breastfeeding community network support is present are clearly described ([UNICEF and WHO, 2023](#)).

Dairy Industry Ireland members are committed to ensuring breastfeeding is protected and supported. Dairy Industry Ireland members support the WHO recommendation of exclusive breastfeeding for the first 6 months of life, followed by sustained breastfeeding alongside complementary foods by providing information and content on the benefits of breastfeeding on brand websites, as well as directly manufacturing products which help support the continuation of breastfeeding, amongst other actions.

In cases where a parent or caregiver is unable to or chooses not to breastfeed exclusively, baby formula is the only safe and valid alternative during a baby's first year, as recognised by external authorities and medical societies. Dairy Industry Ireland members support independent research into exploring the composition of breastmilk and the outcomes associated with breastfeeding to inform the continued innovation of formula products. Dairy Industry Ireland member companies, which manufacture, and also export these products, further support regulatory compliance through own company internal rigorous advertising compliance policies, demonstrating leadership globally.

For these reasons, we do not consider that further additions or amendments that go beyond the current strong primary legislation* already set down at EU level and overseen by Irish public health and regulatory bodies are necessary.

DII remains committed to engaging with Coimisiún na Meán in this area.

Legislation: Commission Delegated Regulation (EU) 2016/127 regarding the specific compositional and information requirements for infant formula and follow-on formula and regarding the requirements on information relating to infant and young child feeding | Regulation (EU) No. 1169/2011 on Food Information to Consumers | Regulation (EC) no 1924/2006 of the European Parliament and of the Council on Nutrition and Health Claims made on Foods | Regulation (EU) No 609/2013 of the European Parliament and the Council on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control.



**Coimisiún na Meán Revised
Media Service Code & Rules –
General Commercial Communications Code
Stage 2 Consultation**

Response from Danone Ireland
17 December 2024

Introduction

Danone is a leading food and beverage company, with the mission to bring health through food to as many people as possible. With over 700 employees in Ireland, our portfolio - essential dairy and plant-based products, waters, early life nutrition and medical nutrition - supports people at all stages of life. Ireland is home to two of Danone's supply points - in Macroom, Co. Cork and in Wexford, where we produce baby formula for export to more than fifty markets globally.

Danone Ireland welcomes the opportunity to respond to this Coimisiún na Meán Stage 2 consultation on the Media Service Code: General Commercial Communications Code (Radio and Television Broadcasters).

We particularly focus our response on:

Question 7 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

Should you wish to discuss any aspect of this consultation response further, please don't hesitate to contact

Relevant aspects of the Code

The Media Service Code: General Commercial Communications Code (Radio and Television Broadcasters), references infant and follow-on formula as follows:

13.2 A broadcaster shall ensure that it does not broadcast commercial communications that:

j) are for infant formula for use by infants during the first 6 months of life.

Follow-on Formula

21.10 Broadcasters shall take appropriate measures to ensure that commercial communications for follow-on formula comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.

21.11 Commercial communications for follow-on formula shall comply with the following requirements:

- a) they shall provide the necessary information about the appropriate use of the products, so as not to discourage breastfeeding and shall not suggest, either directly or by implication, the superiority of this product to breastfeeding.
- b) they shall clearly indicate the unsuitability of this product for infants under six months.
- c) they shall not use the terms 'humanised', 'maternalised', 'adapted', or terms similar to them.
- d) they shall be designed in such a way that it avoids any risk of confusion between infant formula and follow-on formula and enables consumers to make a clear distinction between them, in particular as to the text, images and colours used.

Sections 13.2, 21.10 and 21.11 are wholly adequate and reflective of existing requirements. Commercial communications of baby formula are already governed by stringent and extensive Irish

and European regulatory frameworks which set out strict rules in relation to marketing and communication of infant and follow-on formula as follows:

- 1) Regulation (EU) No 609/2013 of the European Parliament and the Council on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control
- 2) Commission Delegated Regulation (EU) 2016/127 regarding the specific compositional and information requirements for infant formula and follow-on formula and regarding the requirements on information relating to infant and young child feeding
- 3) Regulation (EU) No. 1169/2011 on Food Information to Consumers
- 4) Regulation (EC) no 1924/2006 of the European Parliament and of the Council on Nutrition and Health Claims made on Foods

This is overseen by a range of national bodies and include written, verbal, and electronic communication. Danone Ireland is fully compliant with the above laws.¹²³⁴

Additional Voluntary Industry Guidelines

Furthermore, we, alongside other Dairy Industry Ireland (DII) members, have demonstrated willingness to engage with relevant authorities and ensure strict compliance with the law as it relates to product communication. One example is [The Guidance for Compliance with Food Law When Communicating with Health Professionals about Infant Formula \(2021\)](#), developed by DII and its members in partnership with the Food Safety Authority of Ireland (FSAI).

Danone's responsible marketing of baby formula

When it comes to infant nutrition, Danone Ireland is consistently clear in communications to parents and caregivers that breastmilk is the best source of nutrition for babies. We are driven to positively impact maternal and infant health. We do so by promoting and protecting breastfeeding as well as supporting the healthcare ecosystem.

We lead the industry in responsible marketing of baby formula⁵ and were the first company not to advertise or promote infant formula for children aged 0-6 months in all countries globally, even if permitted by local legislation. In higher risk countries⁶, we take this one step further, and additionally do not advertise or promote follow-on formula (for infants aged 6-12 months) or complementary food and drinks (for infants below 6 months), to help encourage breastfeeding. We have seen other companies unilaterally joining this movement to adopt global standards for formula marketing.

Recognising the great responsibility that we have towards parents and caregivers, Danone provides regulatory training on the marketing and promotion of breastmilk substitutes. New employees involved in the marketing, distribution, selling, education, or governance of formula milks are trained within their first three months and have a clause in their contract pertaining specifically to the application of Danone's Baby Formula Marketing Standards Policy. Any influencers or external agencies that we partner with are offered regulatory training, are thoroughly vetted, and have to sign a statement of compliance. Once engaged, all their materials

¹ Regulation (EU) No 609/2013 of the European Parliament and the Council on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control

² Commission Delegated Regulation (EU) 2016/127 regarding the specific compositional and information requirements for infant formula and follow-on formula and regarding the requirements on information relating to infant and young child feeding

³ Regulation (EU) No. 1169/2011 on Food Information to consumers

⁴ Regulation (EC) no 1924/2006 of the European Parliament and of the Council on Nutrition and Health Claims made on Foods

⁵ [Danone Baby Formula Marketing Standards 2024](#)

⁶ As per the FTSE-Russell definition, cf. appendix 1 of Danone's Baby Formula Marketing Standards

are reviewed and audited by a cross-functional compliance process. This includes regulatory affairs, medical affairs, communications, compliance, and legal. Our compliance teams provide ongoing refresher training with colleagues and partners throughout the year and undertake category specific training if there are changes to legislation.

Consumer and HCP communications audits

In addition to Danone's own company codes and policies, our communication to healthcare professionals (HCPs) is audited annually and, to consumers, on a frequent basis, by the Food Safety Authority of Ireland (FSAI). For HCPs, this includes an audit of all communications materials including, but not limited to, data cards, detail aids and presentations, as well as our websites, such as the (Danone) Nutricia website. For consumer communications, this includes on-pack label and claims verification. Label and claims changes occur for a multitude of reasons including, but not limited to, new product launches, recipe reformulation, change of address or label re-design, nutritional information or change in the country of manufacture. All consumer and HCP communication must also adhere to Food Safety Authority of Ireland (FSAI) and Advertising Standards Authority of Ireland (ASAI) regulation and guidelines.

Legitimacy of baby formula

We know breastfeeding is the best source of nutrition for babies and agree that it should be promoted and protected.

Section 21.1 of the Revised Code, and the existing regulatory framework mentioned earlier in this response, set out strict rules in relation to the commercial communication of follow-on formula (for infants aged 6-12 months). These rules serve to protect the importance of breastfeeding particularly during the first six months of life, avoid confusion between infant and follow-on formula and ensure parents and caregivers are in receipt of accurate information to inform their feeding choices.

When breastfeeding is not feasible or chosen, formula milks are, the only safe, legitimate alternative during a baby's first year, recognised by leading medical societies and guidelines, including, in Ireland, by the Food Safety Authority of Ireland (FSAI)⁷ and the Paediatric Dietitians' Interest Group (PDIG)⁸ of the Irish Nutrition and Dietetic Institute (INDI).

Danone respects that there is not one right approach to parenting, as personal circumstances and needs differ from one family to another. Parents and caregivers want, and deserve, to be educated and empowered to make decisions that work best for them and their families. Some parents cannot breastfeed; some make the personal choice to feed their children partially or fully with formula milks, for a multitude of reasons - whether returning to work; lack of support or personal preference, among others.

Supporting and promoting breastfeeding as the optimal feeding option for newborns is crucial. Offering safe, high-quality, scientifically developed baby formula, as well as unbiased information and support is also essential so that all parents feel empowered in making confident feeding decisions for their babies.

As such, the Revised Code as written, as well as the existing regulatory framework which governs commercial communications in relation to infant and follow-on formula, allow parents and caregivers to access and receive information about all feeding options, as well as protecting the

⁷ Food Safety Authority of Ireland (FSAI), Scientific Recommendations for a National Infant Feeding Policy, 2nd Edition, 2011, pg. 59 https://www.fsai.ie/getmedia/833e2b90-1bd3-41a4-8c19-c9273c815ad5/scientific_rec_national_infant_feeding_policy.pdf?ext=.pdf

⁸ Paediatric Dietitians' Interest Group (PDIG) of the Irish Nutrition and Dietetic Institute (INDI) November 2015 <https://www.indi.ie/childrens-health/359-drinks-for-babies-from-birth-to-12-months.html?highlight=WyJpbmZhbnQiXQ==>

importance of breastfeeding as the best source of nutrition, particularly in the first six months of life.

Conclusion

In conclusion, in our view the extensive and strict existing Irish and European regulatory framework as reflected in the Revised Code, as well as the voluntary guidance developed by industry to govern communications to HCPs, adequately address the importance of promoting and protecting breastfeeding, as well as ensuring families and caregivers have access to information about infant and follow-on formula, to inform their feeding choice. There is no further addition or amendment required.

ENDS

**Submission by the Department of Health on Phase Two of the Coimisiun na Meán
consultation on Broadcast and Media Codes**

December 2024

<u>Consultation title</u>	<u>Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 30th November 2024</u>
<u>Full name</u>	Catherine Curran, Assistant Principal Officer, Department of Health
<u>Contact phone number</u>	
<u>Representing</u>	<u>Organisation (Delete as appropriate)</u>
<u>Organisation name</u>	Department of Health
<u>Email address</u>	

Introduction

The Healthy Ireland vision is for a “*Healthy Ireland, where everyone can enjoy physical and mental health and wellbeing to their full potential, where wellbeing is valued and supported at every level of society and is everyone’s responsibility*”. The Healthy Ireland Strategic Action Plan was published in May 2021 and sets out the priorities up until 2025 for delivering on the healthy Ireland vision.

Robust commercial communications codes are an effective mechanism to limit or restrict the adverse impact that marketing of food and beverages, both alcoholic and non-alcoholic can have on the health of both children and adults across Ireland.

The Department of Health welcomes the opportunity to respond to phase two of this consultation from Coimisiún na Meán seeking views of stakeholders on possible changes to existing broadcast and media codes. In this submission, the Department has set out contributions relating to three questions from the consultation document and have also taken the opportunity, where relevant, to go beyond broadcast media codes and to reflect on the development of online safety codes in particular in relation to HFSS foods to protect children’s health.

Please find set out below responses from the Department of Health to Questions 5, 6 and 7.

Question 5 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

Context:

The Department of Health has responsibility for overseeing and delivering on the Obesity Policy and Action Plan (OPAP) 2016-2025. The WHO European Regional Obesity Report published in 2022, found that just under 59% of adults and 8% of children under 5 in the WHO European area were living with overweight and obesity. Ireland ranked 11th out of 51 countries with obesity and overweight rates that were slightly above the European region average.

Over one quarter of adults live with obesity. This figure is based on international data from 2016. We know from more recent studies, such as our Healthy Ireland Survey 2024, that these rates remain reasonably stable, but worryingly high. Almost one in five primary-school children is living with overweight or obesity according to the WHO Childhood Obesity Surveillance (COSI) Initiative sixth round data published earlier this year.

This figure is concerning, particularly given the negative mental and physical impact that living with overweight and obesity can have on a child and the long-term negative health impacts if this persists into adulthood.

Recent literature setting out policy options for addressing obesity stresses the need for a multi-sectoral approach, given the many factors, including commercial determinants, that contribute to overweight and obesity. These factors range from genetic predisposition, unhealthy diet from an early age, level of education and low physical activity levels through to access to low cost, high fat, sugar and salty processed foods which are marketed across many platforms, targeting children in particular.

The Department of Health notes that the WHO has stated that obesity is complex, with multifaceted determinants and health consequences, which means that no single intervention can halt the rise of the growing epidemic. The health consequences of living with obesity include increased risk of cardiovascular diseases, cancer, diabetes and reduced mobility to name but a few.

From 2021 to 2023 the Department of Health worked with other European Member States on the Europe-wide Joint Action programme Best-ReMaP. BestReMaP aimed to develop and implement policy proposals in three major nutrition areas with significant impact on shaping healthier food choices for children- food reformulation, marketing to children and public food procurement.

As part of work under Best-ReMaP, Ireland co-led for part of the time on a work package called 'Best practices in reducing marketing of unhealthy food products to children and adolescents.' Best ReMaP concluded in September 2023 and the work package relating to marketing best practices developed a number of resources and guides that are aimed at addressing the issue of marketing of unhealthy foods to children going forward (see Appendix for information on BestreMaP). A National Intersectoral Working Group, chaired by the Department of Health, was established as a result of the work done under this work package, with the aim to work on addressing this issue in Ireland and use the tools developed by BestReMaP, with similar groups being established in other participating countries.

The marketing of High Fat, Salt and Sugar (HFSS) food and beverages products pose significant public health concerns, particularly in relation to children. As dietary habits are shaped early on in children's lives, exposure to persuasive marketing of unhealthy foods can have long-lasting negative effects on children's health and nutrition. The Department

of Health is of the view that broadcasting codes and rules need to be strengthened to protect children from the harmful effects of such advertising and welcome the opportunity to respond to this consultation. While we recognise that this consultation is focused on broadcast media codes, we have included evidence relating to digital marketing of HFSS foods to children in this submission and recommendations for restrictions through online safety codes in addition to broadcast media codes.

Evidence of the impact of HFSS Marketing and rationale for defining such marketing as harmful to Children

“Globally, food and non-alcoholic beverage (hereafter, food) marketing is pervasive across multiple media and formats and predominantly promotes products high in fat, sugar, and/or salt (HFSS) and their associated brands. Food marketing influences children's eating and related behaviours such as purchase requests, purchases, and preferences. Evidence for a relationship between food marketing exposure and obesity meets epidemiological criteria for causality. It is thought to be the combination of salient food cues and creative content (e.g., branding, promotional characters, emotional appeals, and animation) in food marketing that produces such compelling commercial messages so as to influence children's behaviour and health outcomes. In other words, the impact of food marketing is a function of both exposure to the marketing message and its persuasive power.”¹

In addition to broadcast advertising, exposure to digital marketing of unhealthy foods to children and adolescents is a major concern as food and beverage companies can target advertisements to specific children or adolescents based on their online profiles, personal characteristics, and previous browsing history. The WHO European Office for the Prevention and Control of Noncommunicable Diseases (NCD Office) developed the CLICK monitoring framework to support Member States to objectively monitor digital marketing as well as to enable them taking action in regard to marketing related regulations and policies, and to support their implementation. The CLICK framework² address several important aspects of marketing that countries should consider when evaluating the national digital ecosystem. Safefood recently commissioned research to monitor digital marketing to children and adolescents on the island of Ireland using the CLICK framework – the CLICKBITE study. This research found that

- Adolescents on the island of Ireland are exposed to huge volumes of unhealthy food marketing – they see 15-19 ads per hour of unhealthy, clear-cut marketing.
- Children of all ages understand advertiser persuasive intent well, but they do not interpret influencer, and some brand, content as advertising as they feel positively about it when it is ‘relatable’.

¹ As cited in Boyland, Emma, Lauren McGale, Michelle Maden, Juliet Hounscome, Angela Boland, and Andrew Jones. 2022. ‘Systematic Review of the Effect of Policies to Restrict the Marketing of Foods and Non-alcoholic Beverages to Which Children Are Exposed’. *Obesity Reviews* 23(8):e13447. doi: 10.1111/obr.13447.

² World Health Organization. Regional Office for Europe. 2019. *Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents: Report Based on the Expert Meeting on Monitoring of Digital Marketing of Unhealthy Products to Children and Adolescents: Moscow, Russian Federation, June 2018*. WHO/EURO:2019-3592-43351-60815. World Health Organization. Regional Office for Europe.

- Children of all ages respond to digital food marketing with hunger/thirst and often with pleasure and enjoyment.

The scale of unhealthy food messages to children demonstrated by the CLICKBITE study shows that upstream policy measures are urgently needed to protect children.

Given this evidence of impact, and with diet-related noncommunicable disease (NCD) risk and obesity prevention in children being public health priorities in many countries internationally, best-practice recommendations have been issued by the World Health Organization (WHO) and other authoritative bodies for governments and industry to restrict HFSS food marketing to children.

In May 2010, the World Health Assembly unanimously adopted the WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children through resolution WHA63.14³. The primary purpose of these recommendations was to guide Member States in the optimal design of new policies, or in strengthening existing policies, to maximize the achievement of public health goals. Also in response to the mandate of that resolution, the WHO published a framework for policymakers to support the implementation of recommendations in individual territories⁴, and the WHO has led on the development of region-specific nutrient-profiling models to support policymakers in identifying products that should be restricted in marketing to children⁵.

The World Health Organization (WHO) has emphasized that marketing of unhealthy food to children contributes to the growing epidemic of childhood obesity. The WHO published a guideline in 2023 entitled 'Policies to protect children from the harmful impact of food marketing'. These guidelines recognise that food marketing is increasingly becoming a children's rights issue and states that "Marketing of foods high in saturated fatty acids, trans-fatty acids, free sugars and/or salt negatively impacts several of the rights enshrined in the Convention on the Rights of the Child, including the rights to health, adequate and nutritious food, privacy, and freedom from exploitation"⁶.

Given this evidence, and the need to protect children and to support them through enabling a healthier food environment, the Department of Health is of the view that the marketing of HFSS products be recognized as harmful to children, to align with the World Health Organization and as a first step in introducing robust codes to limit exposure and that existing codes be strengthened and new online safety codes be introduced to reduce the harmful impact of HFSS marketing on children.

General & Children's Commercial Communications Codes: proposed changes for consideration

³ World Health Organization. Set of recommendations for the marketing of food and non-alcoholic beverages to children. http://whqlibdoc.who.int/publications/2010/9789241500210_eng.pdf, 2010.

⁴ World Health Organization. *A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children*. World Health Organization; 2012. <https://apps.who.int/iris/handle/10665/80148>

⁵ Raaijmakers VI, Rincón GPS, Sacks G. An accountability evaluation for the International Food & Beverage Alliance's Global Policy on Marketing Communications to Children to reduce obesity: A narrative review to inform policy. *Obes Rev*. 2019; **20**(S2): 90-106. doi:10.1111/obr.12859

⁶ [Policies to protect children from the harmful impact of food marketing](#)

The Department of Health is of the view that the current codes in both the General Commercial Communications Code (GCCC) and the Children's Commercial Communications Code (CCCC) are not strong enough to protect children from the harmful effects of marketing of HFSS foods.

The Children's Commercial Communications Code defines children's commercial communications as "a commercial communication that promotes products, services, or activities that are deemed to be of direct or indirect interest to children and/or is broadcast in or around children's programmes." This does not prevent commercial communications of HFSS products being aimed at children, only the manner in which they can be targeted at children. The codes still allow for HFSS marketing which is viewed by children outside of the parameters of children's programming.

The Department of Health proposes that consideration be given to amend section 17 of the CCCC to restrict the marketing of HFSS foods to children, beyond the current restrictions. As children's programming is determined by the percentage of the audience that is made up of children, consideration needs to be given to the actual number of children that are watching programmes as opposed to just the percentage.

The Department is of the view that no advertisements containing HFSS food products should be permissible at any point during times and programmes where children could potentially be subjected to them.

The Department would encourage the Coimisiun na Meán to examine the regulations introduced in the UK, due to be commenced in October 2025 and assess whether broadcast media and online safety codes in Ireland should and could replicate these restrictions. The UK regulations will ban all commercial communications deemed as HFSS across broadcast and on-demand media from 5:30am to 9:00pm. Included is also a total ban on paid for advertising of these products online. This comprehensive approach represents a significant step forward in reducing children's exposure to unhealthy food marketing. By creating a protected time window and restricting online advertising, the UK regulations address multiple channels through which children are exposed to HFSS marketing.

Any proposed changes in Ireland would need to be accompanied by strong monitoring and compliance systems and the work done under Best-ReMaP would be able to be used to facilitate such changes (see Appendix). Furthermore, consideration will need to be given to the continued use of the UK/ROI Nutrient Profile Model or to move to the WHO Nutrient Profile Model. The General Commercial Communications Code should be amended to reflect any such changes to the CCCC.

The Coimisiún has the authority to introduce such codes through both Section 46(7) (for media service codes) and section 139K (5) (for online safety codes) of the Online Safety and Media Regulation Act 2022 (OSMR), and to consult with public health authorities in doing so.

Given the mandate of the Department of Health in developing public health policy, the Department will work with the Coimisiun to examine how the existing Codes can be strengthened and new online safety codes developed in order to reduce the impact of broadcast and digital media marketing of HFSS products to children.

Question 6 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / nonalcoholic?

Under Chapter 18 of the Draft Media Service Code General Commercial Communications Code (Radio and Television Broadcasters), the Department notes that the General Code references that commercial communications for alcoholic beverages shall comply with all relevant Irish and European legislation, including the Public Health Alcohol Act 2018 and that upon the entry into force of any provisions of the Act 2018, those provisions will take precedence over anything in this section.

There are 2 references to encouraging immoderate consumption also in the Draft Media Service Code General Commercial Communications Code (Radio and Television Broadcasters), under 13.2 and 18.2 E. As confirmed by the World Health Organisation, there is no safe level of alcohol consumption. On that basis, the Department would prefer the deletion of the word “immoderate”.

Question 7 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

Breastfeeding is the biologically normal feeding method and is the ideal nutrition for infants and young children and ensures optimum growth and development. It forms a unique biological and emotional basis for the health of both mother and child and the immunological properties of breast milk help to protect infants against disease.

The World Health Organization (WHO), Department of Health and the HSE recommends that infants are exclusively breastfed for the first six months with continued breastfeeding up to 2 years or beyond. Despite 64% of babies starting to breastfeed in hospital, by the time the baby is 3 months old, formula feeding is the prevailing cultural norm in Ireland with under one third of babies being exclusively breastfed at three months.

The Department of Health is the policy lead on Foods for Specific Groups. This includes provisions for the advertising of infant and follow-on formula which have been harmonised at EU level. Regulation (EC) No 609/2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control sets out the requirements for the labelling, presentation and advertising of infant formula and follow-on formula. This is supplemented by Commission Delegated Regulation (EU) 2016/127 which sets out the requirements for promotional and commercial practices for infant formula. This Regulation prohibits advertising of infant formula, except in publications specialising in baby care and scientific publications.

The Department of Health looks forward to engagement with the Coimisiun na Meán on revising existing and developing new media and online codes in respect of the advertising of infant formula, including follow-on formula.

Appendix **EU Joint Action Best ReMaP**

Childhood obesity has emerged as a pressing health concern in Europe, with a staggering 20% of children and adolescents being overweight or obese. Projections suggested that by 2035, these numbers could rise by 61% for boys and 75% for girls, imposing significant economic and health burdens on society.

The Best-ReMaP project recognized the complexity of this issue, driven by factors like genetics, family, communities, and socio-economic status. To combat this problem, the project focused on three key areas:

1. **Food Reformulation for Healthier Diets:** By improving the nutritional content of commonly consumed food products, the project aimed to make healthier choices more accessible and appealing to children. This approach, involving the reduction of harmful ingredients such as sugar, salt, and saturated fat, has the potential to significantly improve the nutritional quality of foods.
2. **Combating Unhealthy Food Marketing:** Unhealthy food marketing significantly influences children's dietary choices. The project delved into methods to limit the exposure of children to these promotions, aiming to create healthier nutritional environments for them.
3. **Best Practices in Public Food Procurement:** Public food procurement, particularly in schools and kindergartens, was recognized as a powerful tool for shaping children's dietary habits. The project sought to enhance the quality of food served in these settings through transparent procurement practices.

The three-year Best-ReMaP project, funded by the European Commission, concluded on the 30th of September 2023, leaving behind a trail of impactful policies and practices aimed at addressing childhood obesity in Europe.

As part of work under Best-ReMaP, Ireland co-led for part of the time on a work package called 'Best practices in reducing marketing of unhealthy food products to children and adolescents.' This work package developed a number of resources and guides that are aimed at addressing the issue of marketing of unhealthy foods to children going forward. Please see links to these resources and guides below.

[→ Policy Brief](#)

[→ Leaflet](#)

[→ An EU harmonised approach using the WHO nutrient profile model for the identification of foods not permitted for marketing to children – D6.1](#)

[→ Technical Guidance for codes of practice to reduce unhealthy food marketing to children – D6.2](#)

[→ Piloting the EU-wide monitoring protocol for unhealthy food marketing – report from the Best-ReMaP Joint Action studies – D6.3](#)

→ A coordinated EU Framework for Action on reducing unhealthy food marketing to children, within the scope of HLG-N&PA – D6.4

→ Establishment of the EU Expert Group and national intersectoral working group – M6.1

→ A workshop on how to use adapt and implement the EU harmonised nutrient profile model – M6.2

→ Regulation and legislation mapping report – M6.3

→ Workshop on how to implement Codes of Practice to reduce unhealthy food marketing to children – M6.4

→ Monitoring marketing of unhealthy foods to children: Comparison and evaluation of existing protocols, with stakeholder consultation



Drinks Ireland response to Coimisiún na Meán Stage 2 Review of the Broadcasting Codes and Rules.

13 December 2024

Question 6 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

Introduction

Drinks Ireland is the Ibec sector that represents alcohol drinks manufacturers and suppliers on the island of Ireland. Drinks Ireland represents all categories of alcohol products in one umbrella organisation through its various group.

Drinks Ireland | Beer
Drinks Ireland | Cider
Drinks Ireland | Spirits
Drinks Ireland | Wine
Irish Whiskey Association

We welcome the opportunity to respond to Coimisiún na Meán's (CnaM) stage 2 review of the broadcasting codes and rules, and in particular, question 6 on the Broadcasting Code provisions in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcohol.

As an industry, we are committed to the effective implementation and compliance with advertising regulations and codes and have proudly adhered to some of the strictest advertising codes in the world for content, placement and volume of alcohol advertising. We strongly believe that the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcohol do not require further addition or amendment beyond aligning with the Public Health (Alcohol) Act 2018 (PHAA) provisions.

Alcohol Consumption in Ireland

Ireland's per capita consumption has fallen by 30 percent over the last twenty years according to Revenue data. Moreover, a 2023 OCED report shows alcohol consumption levels in Ireland are behind that of the UK, Spain, France and Germany and that we drink less than 14 other EU member states. Per capita alcohol consumption has fallen from 14.3 litres in 2001 to 9.9 litres in 2023 and the latest Healthy Ireland Report outlines that the number of non-drinkers in the adult population has increased from 25 percent in 2018 to 30 percent in 2023.

Alcohol Marketing & Advertising Regulation & Codes in Ireland

1. Drinks manufacturers and suppliers abide by a comprehensive suite of rules, prohibitions and restrictions on advertising, marketing and sponsorship already legislated for under the PHAA, many of which are yet to be fully implemented. The existing restrictions on advertising in the Act include the following.
 - Section 14: Advertising in certain places. Advertising of alcohol products are prohibited in parks and public open spaces, on public transport (vehicles and stations), within 200 metres of the perimeter of a school, playground or a child services location.
 - Section 15: Advertising during events. A person shall not advertise, or cause to be advertised, an alcohol product in or on a sports area. Or at an event aimed particularly at children or an event which the majority of individuals are children.
 - Section 20: Cinema Advertising. Alcohol products are only permitted to be advertised at screenings of movies with an over 18 certification in cinemas.
 - Section 19: Advertising watershed restrictions. This will see a ban on alcohol advertising on television between the hours of 3am and 9pm with radio alcohol advertising banned between midnight and 10am or 3pm and midnight on a weekday. This will enter into force on the 10 January 2025.

Further restrictions in relation to advertising are due to be introduced as part of Section 13 of the PHAA, which restricts the content in all forms of alcohol advertising. This will include the mandatory inclusion of adverts featuring cancer health warnings. The Act also contains restrictions on advertising in print media in Section 18 which is yet to be introduced.

2. The Advertising Standards Authority for Ireland (ASAI) have a Code of Standards for Advertising and Marketing Communications that applies to all commercial marketing communications, including the alcohol-specific rules in section 9 of the Code. This section also contains rules protecting children from advertising and marketing communications for alcohol in section 9.7. The industry has shown very high compliance with these detailed code requirements.
3. The Alcohol Marketing Communications Monitoring Body (AMCMB) monitors adherence to voluntary codes aimed to limit exposure of young people to alcohol advertising and marketing. These codes are based on the principle of audience profiling across all media and sponsorships whereby alcohol advertising/marketing is not permitted unless there is an adult audience profile of 75 percent or greater. The AMCMB has called out the industry's good compliance levels with advertising measures.
4. CopyClear, find their website [here](#), is an independent service (since 2024) responsible for vetting advertising and promotion of alcohol advertising in Ireland. It was established in 2013, and was an initiative proposed by the ASAI, the Institute of Advertising Practitioners in Ireland and the main alcohol-producing and marketing companies at the time. While it is funded by Drinks Industry Ireland (DII), it operates independently of DII. Its board is made up

of nine members, four each of whom are nominated by the AAI and IAPI respectively, plus an independent Chairperson. None of the nominees come from the alcohol industry.

CopyClear's remit is to ensure all consumer advertising and marketing communications, online, outdoor, print, broadcast and below-the-line, comply with the letter and the spirit of the ASAI code. In effect, CopyClear pre-clearance is mandatory for the Irish market. This pre-clearance has been acknowledged as making a positive difference to advertising content and, consequently, has a positive effect on ensuring compliance with the relevant content Codes. This is evident by the fact that there have been no consumer complaints upheld for any alcohol brand in the ASAI over the last two years, 2022 and 2023.

Non-Alcohol Variants

As regards non-alcohol alternatives, we must be clear that this is a separate and distinct category to alcohol products. Since 2019, the ASAI has provided separate guidelines in relation to the marketing and advertising of these new innovative products.

The current guidance stipulates that non-alcohol products should clearly be aimed at those aged 18+ and must not appeal to minors in placement or content; that anyone in marketing for non-alcohol products should be, and appear to be, over 25; and that marketing communications for non-alcohol products should clearly be for non-alcohol products. The industry has fully adhered to these guidelines. They are also currently subject to review, which the industry has fully engaged with, and the results of the review and updated guidance are expected very shortly.

Drinks Ireland strongly believes in the need for a practical regulatory environment that supports the right to build and grow the zero-alcohol sector through responsible promotion and advertising, to inform the consumer of the availability of these products. The increased availability of non-alcohol alternatives is accelerating the trend towards moderation, an important goal for both the government and industry. Coimisiún na Meán should avoid the creation of new and potentially contradictory requirements that might hinder this progress.

Non-alcohol alternatives are a fast-growing category in Ireland, and an increasing number of companies have been innovating and investing in growing the non-alcohol alternative category to meet increasing consumer demand for these products, to provide consumers with choice, a choice that supports moderation. While this market in Ireland is at a very early stage of its development, it is primed for significant growth if supported by business and government and a practical regulatory environment.

This growth is helped by offering non-alcohol versions of familiar brands to consumers. A recent study from the European Commission found that brand loyalty was "very important" in the low and non-alcohol market, "consistent with what happens in its alcoholic counterpart" where nearly three



quarters of respondents recognised the importance of the brand in choosing low and no alcohol products.¹

The most recent Drinks Ireland Beer Market report showed that, while overall beer sales were down marginally in 2023, non-alcohol beer grew by 18 percent in 2023. Non-alcohol beer accounts for almost 2.5 percent of the Irish beer market. Starting from a low base, it has grown its market share by over 100 percent in recent years.

All indicators are that Ireland is at the early point of growth of non-alcohol variants and is set to reach consumption levels of more mature markets. Ireland is still significantly below the EU average of 7 percent of overall beer market share for non-alcohol drinks, with more advanced markets reporting a market share of as much as 14 percent of all beers sold.

But this does not mean that demand and interest in these products are low in Ireland. The recent report from the European Commission showed Irish consumers are among the most positive in Europe to non-alcohol beverages and that Ireland is the “country where an increase” in consumption of low and no alcohol products is “most probable”.

Consumer research shows that the vast majority of those who consume these products are drinkers, therefore underlining the role of these products in supporting moderation². In addition to expanding the offering for non-alcohol alternatives, companies are also investing in augmenting availability and building consumer awareness for these choices.

To conclude, we do not believe that there is a need or that it is appropriate to introduce further additions or amendments to the existing Broadcasting Code. In any event, the Code will in time align with the new PHAA provisions.

¹ Study on low/no alcohol beverages, DG AGRI, December 2022

² Opinions Tracker Research 2024 (Online nationally representative survey of 1000 adults 18+ in ROI)



FDI response to Coimisiún na Meán consultation: 'Stage 2 Review' on revised Broadcasting Codes and Rules for radio and television broadcasters

December 2024

Introduction

Food Drink Ireland (FDI) is the business association within Ibec representing homegrown and international manufacturers and suppliers across the food and drink sector. We proudly represent a vibrant community of over 150 companies.

As leading food and beverage companies, FDI members have a key role to play in connecting people with the food ecosystem through their brands, in a responsible way. FDI members are committed to marketing their products responsibly, as part of a balanced diet. On behalf of FDI and our member companies, we welcome the opportunity to respond to the 'Stage 2 Review' stage of Coimisiún na Meán's consultation on revised Broadcasting Codes and Rules for radio and television broadcasters. This submission will primarily focus on question 5 of the consultation. In terms of codes, the submission mainly draws on the Children's Commercial Communications Code and associated Statutory Report, with some reference to the General Commercial Communications Code also.

FDI is committed to working with government and other stakeholders to ensure widespread adherence to existing rules and codes, timely identification of any gaps that need to be addressed and profiling of the Irish approach among EU member states.

Industry commitment

Our sector recognises that overweight and obesity are major public health challenges, especially in children. Addressing public health issues such as obesity requires a comprehensive and multifaceted approach. While advertising restrictions play a role in reducing children's exposure to food marketing, they are only one part of the solution. Effective obesity prevention and management strategies must also include industry progress on reformulation and labelling, and a wide array of policy measures such as promoting physical activity, implementing nutritional education programs, and supporting community-based health initiatives. The Irish food and drink industry is committed to being part of the solution by providing consumers with a variety of options that fit into a balanced diet and to advertise our products responsibly, to help consumers make informed choices for themselves and for their families.

- Responsible marketing

Many FDI members operate rigorous internal marketing codes, demonstrating leadership within Ireland, and even globally, when it comes to setting standards for responsible marketing. These company-specific initiatives sit alongside a comprehensive set of codes and pledges at international, national and sectoral level, including the Broadcasting Codes (General Commercial Communications Code and Children's Commercial Communications Code), ASA Code, Voluntary Codes of Practice (VCoP) and the EU Pledge.

The **Advertising Standards Authority (ASA) Code** has been in place for over 30 years and has kept pace with best practice through its seven editions. The ASA Code

contains a specific section for food and non-alcoholic beverages. The ASA conducts a rigorous and transparent monitoring process and provides a robust system for dealing with complaints. In 2023, of the 1,402 complaints received, only 109 were raised in relation to food and beverage advertising. The Complaints Committee further investigated 10 food and beverage advertisements finding eight in breach. This number is relatively small compared to the overall number considered (70) and found in breach (59) by the Committee, giving testament to the commitment of the food and beverage industry to responsible advertising as well as the effectiveness of the monitoring and complaint process to step in when needed.

FDI wishes to acknowledge the new Article 4a (1) to the revised Audiovisual Media Services Directive (AVMSD), which states that “Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems”. FDI notes that this revision both recognises and respects the role and approach of Ireland’s ASA and its codes at a national level while reinforcing the importance of harmonisation of approaches, at the EU level.

The development of the **Voluntary Codes of Practice (VCoP)** for Non-Broadcast Media Advertising and Marketing of Food and Non-Alcoholic Beverages, including Sponsorship and Retail Product Placement, arose from action 3.2 of the Government’s Obesity Policy and Action Plan 2016-2025. The purpose of these codes is to ensure HFSS foods are marketed and advertised in a responsible way, in particular via digital and other non-broadcast media. FDI has long called on the Department of Health to progress the requirements in section 10.1.4 and 10.1.5 of the VCoP, which are crucial to ensure the work that has been done on the VCoP to date can be brought to completion. Most of the provisions of the VCoP have now been incorporated into the ASA Code.

Many of the leading food brands selling into the Irish market are also engaged with initiatives at a European level including the **EU Pledge**. The EU Pledge, launched in 2007, is a voluntary initiative by leading food and beverage companies to change the way they advertise to children. EU Pledge member companies account for over 80% of food and beverage advertising spend in the EU. The EU Pledge restricts advertising to children based on common nutrition criteria, which were last renewed in 2021. Independent, third-party compliance monitoring is conducted every year in a representative sample of EU member states. Compliance with the Pledge is very high. In 2023, compliance rates for TV advertising were over 98%. In addition, between 2022 and 2023, the quantity of all food and beverage spots and spots for non-compliant products for child audiences decreased by 39% and 43% respectively. As a result, the daily spot average exposure for ads of non-compliant products for child audiences fell below 1.

- **Reformulation and other initiatives**

Food and drink companies are constantly innovating in response to changing consumer lifestyles, tastes and demands. The Irish food and drink industry has shown its commitment over many years to investing in the research and development of innovative products which meet consumers’ needs, without compromising taste or product safety.

This innovation includes reformulation – the process by which food companies change product recipes to reduce fat, salt and sugar. Reformulation has been ongoing in the food and drink industry for decades, with companies working to reduce the levels of calories, sugar, saturated fat and salt in their products without compromising on safety or taste. In recent years, the Irish Government's Roadmap for Food Product Reformulation in Ireland set ambitious targets for industry to meet by the end of 2025 through a voluntary scheme. The FRTF's monitoring programme found that *“excellent progress has been made in some food categories, such as breakfast cereal and yoghurt, likely due to the early engagement and commitment to reformulation shown by these manufacturers”*. The yoghurt category demonstrates a big success for food product reformulation by manufacturers. Reformulation targets for sugar and saturated fat were exceeded by 2023 – two years ahead of the target date. For processed cheese, (excluding plant-based alternatives) overall this category has seen a 9.06% reduction in mean sodium content between 2014 and 2023.

Some other health and nutrition initiatives undertaken by food and drink companies include labelling, recommended portion sizes, new product development and sponsorship of physical activity initiatives and events.

Effective, respected and understood – Ireland's existing Broadcasting Codes

We believe that both the current Children's Commercial Communications Code (CCCC) and General Commercial Communications Code (GCCC) are robust and effective in protecting children and adults from harmful advertising practices. The existing scope, age groupings, and nutrient profiling model are well-suited to the Irish broadcasting context and are effective in reducing children's exposure to HFSS ads. If the Code is to be further revised, we advocate for ongoing dialogue between Coimisiún na Meán and industry stakeholders on the details of any proposed changes. This collaborative approach ensures that any amendments are well-informed, balanced, and avoid any unintended consequences.

The comprehensive CCCC Statutory Review identified the Code as an example of international best practice, finding that it is “a regulatory leader” and “one of the most comprehensive in terms of themes addressed and products that are prohibited or restricted”. Furthermore, the current regulatory framework has proven effective in monitoring and enforcing compliance. It ensures that any breaches are promptly addressed, maintaining the integrity of children's programming.

The CCCC Statutory Review outlined that, in respect of complaints, between 2014 and 2018, four complaints were adjudicated upon by the Compliance Committee or the Executive Complaints Forum. This low level of complaints is in line with the very low level received and considered since the Code was initially introduced in 2005. In the context of monitoring, no issues of apparent non-compliance arose over the 2014-2018 period and no compliance or warning notices issued. These findings demonstrate the high level of understanding of the Code among advertisers and media organisations and the high level of compliance.

Similarly, the key findings from general stakeholder engagement on the CCCC indicated that the code was understood to be broadly effective, is achieving its objectives, and is generally supported by stakeholders.

From the advertising trends report as part of the CCCC Statutory Report, FDI notes the decline in food advertising spend overall in Ireland, fall in weight for HFSS food products and drop in the percentage of children watching Irish channels and television channels as a whole across all parts of the day. Given these trends, coupled with the strength of the current codes and the widespread adherence across the food and drink advertising industry, FDI believes that there is insufficient evidence to support the need for additions or amendments to the Codes in relation to HFSS food and drink products. Therefore, FDI's position is that this should not be prioritised by Coimisiún na Meán.

Definitions and use of age groupings

FDI supports the retention of the current definitions in the CCCC. One of the key objectives of the Code is to provide unambiguous guidelines. The current definitions are clear and well understood by staff in broadcasters, advertisers and media agencies.

As responsible marketing practices are only a small part of the puzzle to tackle childhood obesity, its measures should be targeted with the aim of protecting the most vulnerable. The age groupings under the code – children under 6, under 13, under 15 and under 18 – are appropriately categorised to address the varying needs of different age groups. These groupings ensure that younger children receive the highest level of protection, while older children are still adequately safeguarded. In this, Ireland is already going much further than many other EU countries which are defining children as under age 12 or 13.

FDI urges Coimisiún na Meán incorporate impact assessment into any potential changes to the definitions and use of age groupings. FDI believes that any potential changes should be robustly justified, including by considering the current status of exposure to HFSS advertising for the particular age grouping and how any potential changes would impact current level of exposure of the grouping, as well as scientific evidence on children's ability by age to distinguish advertising from actual programming.

Nutrient Profile Model

The current nutrient profiling model as adopted for use by the BAI, based on the UK Food Standards Agency's Nutrient Profiling Model, has been effective in regulating the advertisement of high fat, salt, and sugar (HFSS) foods.

The NPM was developed specifically for broadcast/advertising and was subject to rigorous scientific scrutiny, extensive consultation and review and is supported by the independent Scientific Advisory Committee on Nutrition (SACN) and a wide range of nutrition experts. It has proven its efficacy through almost twenty years of being used in the context of responsible advertising and continues to evolve to stay relevant with the latest nutrition science.

The UK HFSS NPM has the additional benefit of being used by Irish producers for reformulation, in their efforts to continue to improve the nutritional offering for consumers in Ireland and the UK.

Adopting a new model, such as the 2023 WHO Europe Nutrient Profile Model, is unnecessary and could lead to confusion and increased regulatory burden without providing significant additional benefits. In addition, it would be counterproductive to ongoing reformulation commitments as the nutrition criteria are so extreme that it would not incentivise reformulation and would leave companies who have already invested significant resource for reformulation of products at a disadvantage.

Any potential changes to the rules and codes relating to advertising of HFSS food and drink should closely align with other policies and initiatives across other relevant organisations, i.e. taxation for soft drinks, the Roadmap for Product Reformulation, ASA's codes. There should be also due consideration given to reformulation policies in the UK, as many products sold and advertised in Ireland would come from the UK or the rest of the EU, where reformulation efforts are made to meet the targets in the main market – in the case of UK, based on HFSS status based on the UK NPM.

Implementation timeline

Should any substantial changes be introduced in relation to the advertising of HFSS food and drink should be granted sufficient time to incorporate these changes into their advertising planning and ongoing campaigns as well as budgets. As marketers buy media ahead for the year to come, advertisers would require 12-18 months transition time for changes to be made to media plans and to be integrated into contracts.

Conclusion

In conclusion, FDI believes that both the current Children's Commercial Communications Code and General Communications Code are robust and effective in protecting children and adults from harmful advertising practices. Any potential changes to the rules and codes re. advertising of HFSS food and drink on TV and radio, should not undermine these channel's competitiveness for advertisement compared to other channels where these rules and codes do not apply. Any potential changes should consider advertising across the food supply chain, ease of understanding and implementation by not only manufacturers but also out of home (OOH) operators and retailers.

Food Drink Ireland is committed to engaging with Coimisiún na Meán on any future work in this area.

END

Consultation response form – Stage 2 Deadline 30th November 2024

This form lists the questions that Coimisiún na Meán is seeking submissions on in response to the stage 2 public consultation on draft revised Media Service Codes and Rules.

Please complete any or all sections of this form and return by email, by post or by hand to:

Post: Coimisiún na Meán, One Shelbourne Building, Shelbourne Road, Dublin 4, D04 NP20.

You do not have to respond to all questions in your submission to the consultation.

When preparing your response, please:

- refer to the full text of the Draft Codes and Rules and not the summaries provided in the consultation document, which are intended to be indicative only;
- clearly identify the specific section(s) or proposal(s) of the Draft Codes and Rules that are being addressed in the response;
- give reasons for your answer; and
- be concise.

Please note that this form is provided for your convenience only. Coimisiún na Meán accepts submissions in other formats or means should you prefer.

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It is Coimisiún na Meán's intention to publish submissions received in response to this consultation. If you wish to make all or any part of your submission on a confidential basis, please indicate this clearly at the start of your response to each relevant question.

Coimisiún na Meán will treat confidential information in accordance with its Consultation Guidelines.

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 30th November 2024
Full name	Ann Marie Gallagher
Contact phone number	
Representing	Organisation
Organisation name	Friends of Breastfeeding Registered Charity Number: 20074197
Email address	

Your response:

Please insert your response under each of the respective questions below.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

Question 2: Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science, and health?

Question 3: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?

Question 4: Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?

Question 5: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

Question 6: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula? **Yes,**

Dear Coimisiún na Meán,

I am writing in response to your stage two consultation on the revision of broadcasting codes and tools, and in response to Question 7: "Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?" Yes

I urge Coimisiún na Meán to take leading action to implement strong regulation of the marketing commercial milk formula protect the health of the most vulnerable members of our society, our babies and young children.

Babies are a unique consumer group because they have no control over what is purchased for them, at the same time their health is profoundly impacted by marketing aimed at their families and can ultimately impact on breastfeeding misinformation that negatively impact breastfeeding rates in Ireland and is a concern for public health.

Friends of breastfeeding are asking the Coimisiún na Meán to consider the following recommendations:

1. Stricter Prohibition of Advertising Infant Formula for Babies Under 12 Months

Current regulations largely restrict advertising infant formula for babies under six months, but extending this prohibition to formula for all infants under 12 months would better reflect the recommendation that breastfeeding is ideal for the first year of life. Advertising should avoid promoting formula as an equivalent alternative to breastfeeding. New restrictions within the revised Media Service Codes must cover traditional and digital media as digital marketing is the predominant form

2. Regulation of Follow-On Formula Marketing

Follow-on formula (for infants older than six months) is often marketed in a manner that indirectly promotes infant formula, creating confusion among consumers. Advertisements should explicitly state that follow-on formula is unnecessary for most babies and breastfeeding remains beneficial beyond six months.

3. Clearer Labelling and Disclaimers in Advertisements

Broadcasting codes should mandate clear disclaimers in all formula advertisements, stating that breastfeeding is the recommended method of feeding for infants, alongside guidance to consult healthcare professionals before switching to formula.

4. Restrictions on Emotional and Aspirational Marketing

Advertisements often appeal to emotions or societal aspirations, depicting formula as a solution to challenges like sleep problems or bonding. This can undermine breastfeeding efforts. Codes should prevent the use of such tactics, ensuring advertisements are factual and non-manipulative.

5. Increased Transparency About Risks

Formula advertisements should be required to transparently disclose potential risks associated with formula feeding, including the absence of protective antibodies, the higher risk of infections, and potential long-term health impacts compared to breastfeeding.

6. Limiting Digital Marketing and Influencer Promotions

The codes should be expanded to regulate online and influencer advertising, which can bypass traditional broadcasting restrictions. Social media influencers often subtly promote formula use without adhering to strict advertising codes. Monitoring and enforcement of these practices are essential.

7. Prohibition of Comparisons to Breastfeeding

All direct or implied comparisons between formula and breastfeeding in advertisements should be banned. Claims of being "closer to breast milk" are misleading and undermine public health messaging.

8. Promoting Support for Breastfeeding

Advertising revenues from formula companies could be redirected to public health campaigns promoting breastfeeding. This creates a balanced platform where families receive accurate and unbiased information about feeding options.

9. Stronger Enforcement Mechanisms

Stronger penalties for breaches of the codes, alongside regular reviews, are necessary to ensure compliance. This includes monitoring all forms of media, including streaming platforms, podcasts, and cross-border advertising and international content available in Ireland. Ensuring sufficient funding and trained personnel are available to effectively monitor and enforce regulations and have a complaints mechanism so that evidence can be submitted when members of the public identify breaches to ensure robust systems are in place and to serve as a deterrent against non-compliance.

Conclusion

Amendments to the Broadcasting Codes in Ireland are required. There is a wealth of evidence that marketing from milk formula generally undermines breastfeeding, misleads and distorts parental decision-making, and imposes significant public health and economic costs. Without robust regulation, marketing tactics to address these changes needed will impact on public health with negative outcomes in the future.

All online information should prioritize safeguarding breastfeeding where possible as the norm while providing clear and unbiased information to parents. When reviewing we ask you to consider the above measures. Introducing these measures will ensure a balanced approach, promoting informed choices without undermining public health efforts to support breastfeeding in Ireland.

Should you require any further information or if we can be of assistance please do not hesitate to contact
Email:

Address:

Yours sincerely,

Ann Marie Gallagher

Question 8: Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.

Question 9: Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

Question 10: Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

Question 11: Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?

Question 12: Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?



FRIENDS OF BREASTFEEDING IRELAND
SUBMISSION
STAGE 2 REVIEW OF MEDIA SERVICE CODE

20TH DECEMBER 2024

Background to friends of breastfeeding.

“Friends of Breastfeeding (FoBF) is a registered charity in Ireland that exists to support women and families to have the breastfeeding journey they desire by providing peer support, signposting information, and raising awareness about breastfeeding support options. FoBF’s flagship services are the peer-led Breastfeeding Buddy System and the Mum2Mum Groups. The Buddy system connects mothers with one of 70+ trained Buddies, who provide them with highly personalised support for the first months of their new baby’s life. Mum2Mum groups are a social space where parents can meet, share information and support each other. FoBF also organises the annual Friends of Breastfeeding Awards to promote and recognise best practice in breastfeeding support from a range of actors involved in creating an enabling environment for breastfeeding. FoBF as an organisation is committed to being compliant with the WHO Code on the Marketing of Breast Milk Substitutes. FoBF’s mission statement is: “Friends of Breastfeeding is a community that provides excellence in breastfeeding support, and which advocates for a society that values and supports breastfeeding.”

Aims of friends of breastfeeding

1. To protect and support the practice of breastfeeding in Ireland
2. To highlight/raise awareness about breastfeeding support options for mothers, mothers-to-be, and families
3. To raise awareness about how families/communities in Ireland can be supportive of the breastfeeding woman and her baby, and foster appreciation for breastfeeding in our community
4. To promote all affiliated online resources for information and support for the breastfeeding mother and for health professionals
5. To raise our profile and thus the profile of breastfeeding
6. To raise public awareness about breastfeeding
7. To liaise with other breastfeeding-related organisations, in Ireland and abroad.

Breastfeeding and online information

Breastfeeding is universally recognised as the optimal form of infant and young child feeding offering unparalleled health, economic, and environmental benefits. Yet, Ireland's breastfeeding rates remain among the lowest globally. 63.1% of babies born in 2021 breastfed at first feed following birth (National Women and Infants Health Programme 2021) The pervasive and exploitative marketing of commercial milk formula is a pressing public health issue and must be factored into these statistics.

A online report published online by RTE on 28th November 2023 'Mediocre' scores for Ireland in breastfeeding report ([News Article](#))

'The report found just 63% of babies in Ireland receive breast milk at birth and less than 5% are exclusively breastfeeding at six months, far below the World Health Organization target of 50% at the six-month mark.'

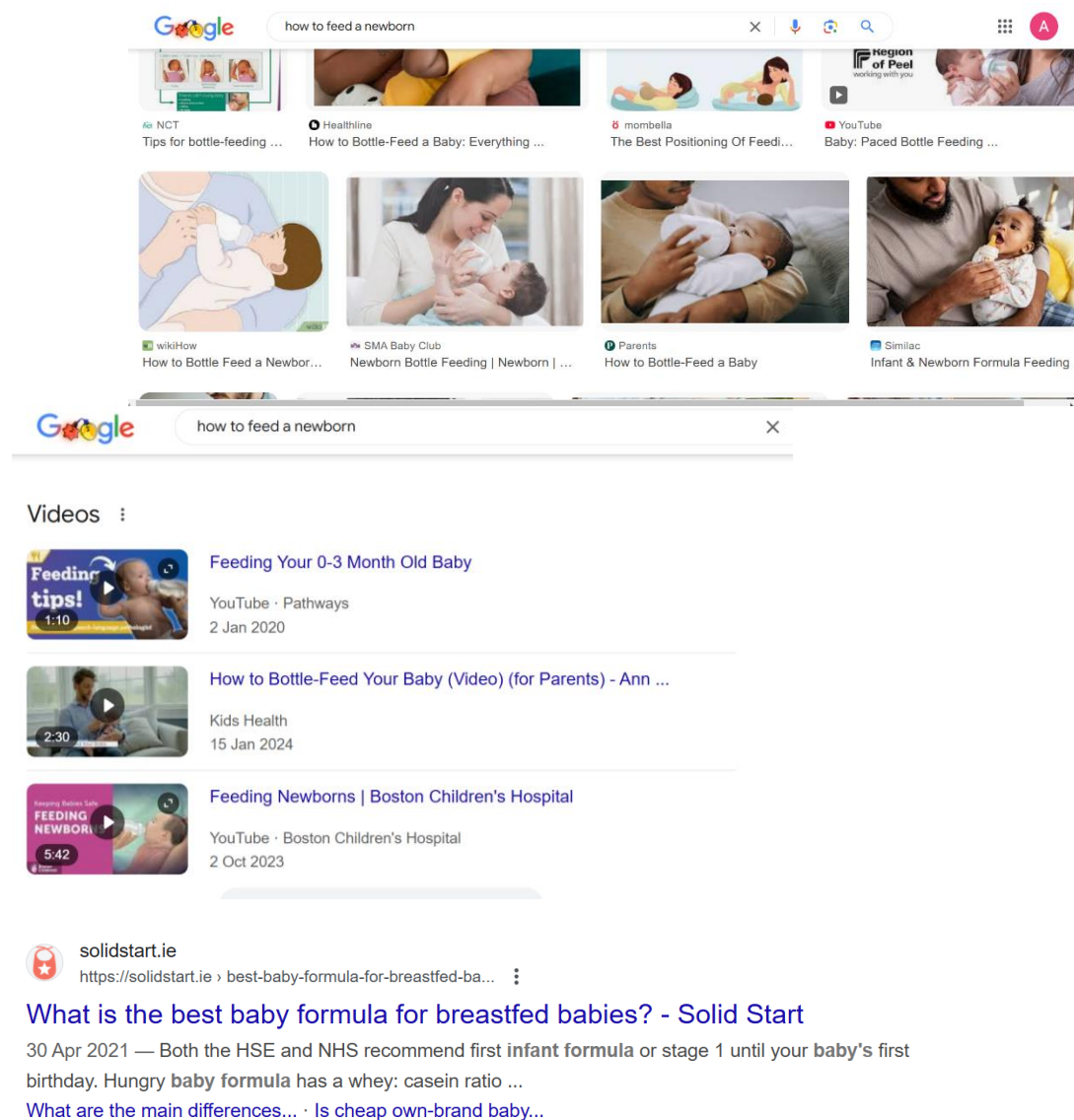
Commenting on the report doctor Liz O'Sullivan 'Unfortunately, we have got a lot of marketing and promotion of formula products as well, so it is that constant visibility of that one way of feeding that can be really hard to kind of counteract and we do not see the same level of marketing and promotion of breastfeeding, mostly because it is incredibly expensive.'

"So, then families are getting infant feeding information from companies that stand to make a profit from what they do and how they feed."

Friends of breast feeding would also agree with this statement while we try and support mums in our mum 2 mum groups, it is regularly communicated that new mums have being directed towards formula on many occasions, early weaning products that are unnecessary and formula information predominates what is most readily available in comparison to fact based breastfeeding information.

When mums search on the internet doing simple research in preparation for their new arrival, they will very likely be met with sponsored ads, images and videos all related to bottle feeding. To reiterate this, we conducted a simple query 'how to feed a newborn' putting ourselves in the position of the new mum who we advocate for with the ultimate aim to support their breastfeeding journey for as long as possible.

Screenshot internet search examples taken on the 20th of December 2024. Validate the importance of online information available must be regulated further this is crucial to the success of breastfeeding and public health outcomes in Ireland. These pictures demonstrate the importance of taking on our recommendations outlined in our submission letter when reviewing the code and must be considered.



Article 10 of [Commission Delegated Regulation \(EU\) 2016/127](#) sets out the rules in relation to the advertising of infant formula. The advertising and promotion of **infant formula** is strictly regulated. Advertising of infant formulae is restricted to publications specialising in baby care and scientific publications.

This needs to be updated to also encompass internet search engines and platforms such as social media for instance applications such as Facebook, Instagram and TikTok. These applications can provide new mums with information on breastfeeding, and while we do rely also on getting our message out. However, these applications are also abundant with misinformation and all fall within advertising and promotion and require stricter regulation. Leading friends of breastfeeding to submit a response to the open consultation of the broadcasting codes.

Date: December 20, 2024

Dear Coimisiún na Meán,

I am writing in response to your stage two consultation on the revision of broadcasting codes and tools, and in response to Question 7: "Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?" Yes

I urge Coimisiún na Meán to take leading action to implement strong regulation of the marketing commercial milk formula protect the health of the most vulnerable members of our society, our babies and young children.

Babies are a unique consumer group because they have no control over what is purchased for them, at the same time their health is profoundly impacted by marketing aimed at their families and can ultimately impact on breastfeeding misinformation that negatively impact breastfeeding rates in Ireland and is a concern for public health.

Friends of breastfeeding are asking the Coimisiún na Meán to consider the following recommendations:

1. Stricter Prohibition of Advertising Infant Formula for Babies Under 12 Months

Current regulations largely restrict advertising infant formula for babies under six months, but extending this prohibition to formula for all infants under 12 months would better reflect the recommendation that breastfeeding is ideal for the first year of life. Advertising should avoid promoting formula as an equivalent alternative to breastfeeding. New restrictions within the revised Media Service Codes must cover traditional and digital media as digital marketing is the predominant form

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8. Promoting Support for Breastfeeding

Advertising revenues from formula companies could be redirected to public health campaigns promoting breastfeeding. This creates a balanced platform where families receive accurate and unbiased information about feeding options.

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Stronger penalties for breaches of the codes, alongside regular reviews, are necessary to ensure compliance. This includes monitoring all forms of media, including streaming platforms, podcasts, and cross-border advertising and international content available in Ireland. Ensuring sufficient funding and trained personnel are available to effectively monitor and enforce regulations and have a complaints mechanism so that evidence can be submitted when members of the public identify breaches to ensure robust systems are in place and to serve as a deterrent against non-compliance.

Conclusion

Amendments to the Broadcasting Codes in Ireland are required. There is a wealth of evidence that marketing from milk formula generally undermines breastfeeding, misleads and distorts parental decision-making, and imposes significant public health and economic costs. Without robust regulation, marketing tactics to address these changes needed will impact on public health with negative outcomes in the future.

All online information should prioritize safeguarding breastfeeding where possible as the norm while providing clear and unbiased information to parents. When reviewing we ask you to consider the above measures. Introducing these measures will ensure a balanced approach, promoting informed choices without undermining public health efforts to support breastfeeding in Ireland.

Should you require any further information or if we can be of assistance please do not hesitate to contact Email:

Address:

Yours sincerely,

Ann Marie Gallagher

Consultation response form – Stage 2 Deadline 30th November 2024

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Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 30th November 2024
Full name	Mary McFeely
Contact phone number	
Representing	Organisation (Delete as appropriate)
Organisation name	HSE
Email address	

Your response:

Please insert your response under each of the respective questions below.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

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Question 5: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

I think some facts about childhood obesity should be broadcast and the effects that processed foods has on overall health, Bloodpressure, heart function and mental health etc. The positive effect that exercise has on mental health needs to be highlighted

Question 6: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

The advertising of ALL artificial infant formula needs to STOP. These products do not need to be seen on television. Follow on milk is actually completely unnecessary. Infants only need a good varied diet and cows milk and water after 1 year of age. Advertising follow on milk is damaging and is directly responsible for poor infant diet and poor eating habits (if a child is full and bloated from formula, they will not eat healthy food choices that have positive health effects)

More money and resources need to be directed at promoting breastfeeding. Why is there no advertisement on the benefits of breastfeeding??

Question 8: Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.



Question 9: Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

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Question 12: Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?

Child Health Public Health Response to Consultation on Coimisiún na Meán's Revised Broadcasting Codes and Rules

20th December 2024

HSE Child Health Public Health Team

- Dr Abigail Collins, Clinical Lead Child Health Public Health
- Dr Teresa O'Dowd, Specialist Registrar, Child Health Public Health
- Laura McHugh, National Breastfeeding Coordinator
- Dr Katharine Harkin, Consultant in Public Health Medicine, Child Health Public Health
- Dr Heather Burns, Consultant in Public Health Medicine, Child Health Public Health
- Anne Pardy, Programme Manager NHCP



Introduction

The Child Health Public Health team aims to inform public policy to support a healthier environment for Irish children. Some of our key priorities include promoting health and well-being, improving health equity, and reducing health inequalities through evidence, policy, and partnership. The Child Health Public Health team are deeply concerned about the rising challenges to child health posed by the pervasive advertising of infant breastmilk substitutes (IBS) and high-fat, salt, and sugar (HFSS) products. The commercial promotion of these products not only undermines national health objectives but also exacerbates key public health crises, including childhood obesity and declining breastfeeding rates. The HSE National Child Health Public Health team believes broadcasting codes and rules need to be strengthened to protect infants and young children from the harmful effects of such advertising and welcomes the opportunity to respond to this consultation.

Our response aims to address the following questions:

- Question 5 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

High Fat Salt and Sugar (HFSS) Food and Beverages Code:

- 21.12 Broadcasters shall ensure that a maximum of 25% of sold advertising time and only one in four advertisements for HFSS food and beverage products and/or services products are permissible across the broadcast day.
 - 21.13 Consistent with the further requirements set out in the Children's Commercial Communications Code, broadcasters should aim to effectively reduce the exposure of children to commercial communications for HFSS food and beverage products and/or services. In this respect, commercial communications for such foods and beverages shall not be broadcast or made available in or around children's programmes.
- Question 7 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

Follow-on Formula Code:

- 21.10 Broadcasters shall ensure that commercial communications for follow-on infant formula comply with all relevant Irish and European legislation and with rules, regulations and codes of practice issued from time to time by a relevant competent authority.
- 21.11 Commercial communications for follow-on infant formula shall comply with the following requirements:
 - a) They shall provide the necessary information about the appropriate use of the products, so as not to discourage breastfeeding and shall not suggest, either directly or by implication, the superiority of this product to breastfeeding.
 - b) They shall clearly indicate the unsuitability of this product for infants under six months.
 - c) they shall not use the terms ‘humanised’, ‘maternalised’, ‘adapted’, or terms similar to them.

Background

Ireland has the highest proportion of children and young people among EU-27 countries, at 23.9% compared to the EU-27 average of 18.2%¹. According to the 2022 census, there were 1,201,618 children living in Ireland, representing 23.6% of the total population².

Ireland, like many other countries, is facing an obesity epidemic. The 2022/23 Childhood Obesity Surveillance Initiative (COSI) Report reveals that around one in five children in Ireland are living with overweight or obesity³. Given that we know overweight or obese children tend to grow in to overweight or obese adults⁴, and that Ireland has a much younger population than the EU-27 countries, this current trend places a significant burden on our current healthcare system and will our future healthcare system. More importantly, it also threatens the future health of our young population. This population-level BMI shift is

¹ <https://assets.gov.ie/217089/c81cc2ed-a2c9-48d9-baa3-6c6a93488a80.pdf>

² <https://assets.gov.ie/280278/8bfc8fb2-444c-43a6-8764-bfd736b406cf.pdf>

³ <https://www.hse.ie/eng/about/who/healthwellbeing/our-priority-programmes/health/childhood-obesity-surveillance-initiative-cosi/the-childhood-obesity-surveillance-initiative-report-round-6.pdf>

⁴ <https://pubmed.ncbi.nlm.nih.gov/26696565/>

heavily influenced and shaped by changes in the environment we are born into, live, work, play and age in⁵.

Simultaneously, breastfeeding rates in Ireland remain among the lowest in Europe, with only 64% of mothers initiating breastfeeding after birth and rates falling dramatically in the weeks that follow⁶. By the time the baby is 3 months old, formula feeding is the prevailing cultural norm in Ireland, with approximately 65% of babies receiving some formula at 3 months old⁷. Low breastfeeding rates and high prevalence of childhood obesity are not unrelated. Research suggests that infants introduced to formula or solids at or before 4 months of age have significantly higher odds of becoming overweight or obese compared to those introduced after 4 months⁸.

The marketing of IBS and HFSS are ubiquitous and children of lower SES are exposed to more food marketing than children of higher SES⁹. The COSI study reported a greater prevalence of obesity in schools that participate in the Delivering Equality of Opportunity in Schools (DEIS) programme (25.4%) versus schools that do not (16.1%)¹⁰. The unequal effects of these changes mean that our children, young people and adults who experience disadvantage are more likely to live with poorer health for longer and to die prematurely than their peers in more advantaged areas.

This submission focuses on the urgent need for Coimisiún na Meán (CNM) to implement stricter controls on IBS and HFSS advertising within the Draft Media Service Codes and Rules. By aligning with global best practices, including the **WHO International Code of Marketing of Breastmilk Substitutes**¹¹ and the **WHO Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children**¹², Ireland can protect its children from harmful commercial influences and create a healthier environment for future generations.

⁵ <https://www.hse.ie/eng/about/who/healthwellbeing/our-priority-programmes/heal/the-healthy-eating-active-living-implementation-plan-2023-2027.pdf>

⁶ <https://www.hse.ie/eng/services/news/media/pressrel/national-breastfeeding-week-2024-1-to-7-of-october-being-marked-across-the-south-east.html#:~:text=According%20to%20its%202023%20HSE,to%20protect%20and%20promote%20breastfeeding.>

⁷ <https://www.worldbreastfeedingtrends.org/uploads/country-data/country-report/WBTi-Ireland-2023.pdf>

⁸ <https://pmc.ncbi.nlm.nih.gov/articles/PMC6121544/>

⁹ <https://iris.who.int/bitstream/handle/10665/370113/9789240075412-eng.pdf>

¹⁰ <https://www.hse.ie/eng/about/who/healthwellbeing/our-priority-programmes/heal/childhood-obesity-surveillance-initiativecosi/the-childhood-obesity-surveillance-initiative-report-round-6.pdf>

¹¹ <https://apps.who.int/iris/bitstream/handle/10665/254911/WHO-NMH-NHD-17.1-eng.pdf>

¹² <https://iris.who.int/bitstream/handle/10665/370113/9789240075412-eng.pdf?sequence=1>

Q.5: Why is regulating commercial communication of high-fat, sugar, and salt foods so important?

Childhood obesity is one of Ireland's most pressing public health challenges, directly affecting children's health and well-being. Being overweight affects children's and adolescents' immediate health and is associated with greater risk and earlier onset of various non-communicable diseases (NCDs), such as type 2 diabetes and cardiovascular disease. Childhood and adolescent obesity have adverse psychosocial consequences; it affects school performance and quality of life, compounded by stigma, discrimination and bullying. Children with obesity are five times more likely to have obesity in adulthood than children without obesity¹³ and are also at a higher risk of developing NCDs in adulthood¹⁴. The lifetime cost of childhood obesity, which includes direct health care and societal costs, is €4.6 billion in Ireland¹⁵.

Advertising plays a significant role in shaping children's dietary preferences and behaviours. Studies show that children watching one extra HFSS advert a week is associated with an average increase of 18,000 calories to a child's diet per year¹⁶. Shockingly, children see three ads every 10 minutes online¹⁷. In 2016, the World Health Organisation's (WHO) Commission on Ending Childhood Obesity said that 'there is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened beverages is related to childhood obesity'¹⁸.

The WHO recommends restricting television advertising to children for products high in saturated fat, trans fatty acids, free sugar, or salt¹⁹. Children and adolescents are the target of intense and specialised food marketing and advertising efforts. Food marketers are interested in youth as consumers because of their spending power, their purchasing influence, and as future adult consumers²⁰. Multiple techniques and channels are used to reach youth, beginning when they are toddlers, to foster brand building and influence food product

¹³ <https://www.ncbi.nlm.nih.gov/books/NBK476330/>

¹⁴ <https://www.who.int/news-room/fact-sheets/detail/obesity-and-overweight>

¹⁶ https://www.cancerresearchuk.org/sites/default/files/under_pressure_-_a_study_of_junk_food_marketing_and_young_peoples_diets.pdf

¹⁷ <https://irishheart.ie/campaigns/stop-targeting-kids-2022/>

¹⁸ [https://www.sciencedirect.com/science/article/pii/S2211912420300778#:~:text=In%202016%2C%20the%20World%20Health,18\).](https://www.sciencedirect.com/science/article/pii/S2211912420300778#:~:text=In%202016%2C%20the%20World%20Health,18).)

¹⁹ [https://www.who.int/news/item/03-07-2023-who-recommends-stronger-policies-to-protect-children-from-the-harmful-impact-of-food-marketing#:~:text=The%20guideline%20recommends%20countries%20implement,%20For%20salt%20\(HFSS\).](https://www.who.int/news/item/03-07-2023-who-recommends-stronger-policies-to-protect-children-from-the-harmful-impact-of-food-marketing#:~:text=The%20guideline%20recommends%20countries%20implement,%20For%20salt%20(HFSS).)

²⁰ <https://ijbnpa.biomedcentral.com/articles/10.1186/1479-5868-1-3>

purchase behaviour²¹. Advertising for HFSS foods often uses techniques such as animated characters, bright colours, and celebrity endorsements²². HFSS foods are marketed via many channels include television advertising, in-school marketing, product placements, kids clubs, the Internet, toys and products with brand logos, and youth-targeted promotions²³. Foods marketed to children are predominantly high in sugar and fat, and as such are inconsistent with national dietary recommendations²⁴.

Marketing of HFSS foods to children on the internet is even more complex since the boundaries between content and pure advertising are often less clear than on television. Only a minority of advertisers include reminders distinguishing content from pure advertising²⁵. More than half (57%) of teens say that online media is the most influential factor dictating their food preferences, a new study has shown²⁶. Social media influencers, gamified content, and personalised ads based on algorithms all contribute to the normalisation of HFSS consumption. The Irish Heart Foundation reports that social media (64%) is where most teens are exposed to HFSS foods, particularly on TikTok, Snapchat, YouTube and Instagram – platforms teens access, on average, 38 times daily²⁷. The continual branding through these sites reinforces and amplifies the product message to children, who have a remarkable ability to recall content from ads to which they are exposed²⁸.

Q.5 Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High-Fat, Salt, and Sugar products?

- 1. Extend the broadcast watershed for HFSS food ads to 9 pm:** To significantly reduce children's exposure to HFSS advertising, CNM should extend the watershed ban, prohibiting such advertisements during key viewing hours (e.g., 5:30 a.m. to 9 p.m.). This would mirror legislation being introduced in the UK on October 1st 2025²⁹. The UK legislation will ban all commercial communications deemed as HFSS

²¹ <https://pubmed.ncbi.nlm.nih.gov/15171786/>

²² <https://pmc.ncbi.nlm.nih.gov/articles/PMC6520952/>

²³ <https://pmc.ncbi.nlm.nih.gov/articles/PMC416565/>

²⁴ <https://esource.dbs.ie/server/api/core/bitstreams/35d2229c-decf-417c-8ac4-5af0f4438bf7/content>

²⁵ <https://www.apa.org/topics/obesity/food-advertising-children>

²⁶ <https://irishheart.ie/news/junk-food-marketing-impacting-kids-food-choices/>

²⁷ <https://irishheart.ie/news/junk-food-marketing-impacting-kids-food-choices/>

²⁸ <https://www.apa.org/topics/obesity/food-advertising-children>

²⁹ <https://www.osborneclarke.com/insights/uk-government-confirms-hfss-advertising-restrictions-october-2025#:~:text=From%201%20October%202025%2C%20there,21%3A00%20in%20the%20UK.>

across broadcast and on-demand media from 5:30 am to 9:00 pm³⁰. Under current regulations, “The Irish Heart Foundation cited research showing young children in Ireland are still likely to see over 1,000 unhealthy food ads on television a year (Tatlow-Golden et al.,2016), and older children who watch more TV later in the day probably view substantially more³¹.

2. **Introduce a Nutrient Profiling System:** The WHO has developed a nutrient profile model³² and we would propose its adoption to determine what products are classified as HFSS, to ensure consistent application of advertising restrictions and eliminate loopholes exploited by manufacturers.
3. **Digital Advertising Loopholes:** Increasingly, children are consuming content on digital platforms where targeted advertising remains largely unregulated. It is critical that CNM ban all online marketing of HFSS foods - this would mirror legislation that is being introduced in the UK from the 1st of October 2025³³. This is legislated for in the recently published Online Safety and Media Regulation Act 2022, *‘Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit or restrict, in accordance with law, the inclusion in programmes of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars’*.

Regulating algorithmic targeting and mandating clear disclosures for influencer-promoted products are alternative considerations if a full ban is not implemented.

4. **Monitor the content of HFSS advertisements to ensure they are not appealing to children:** as per the WHO “Restricting the power of food marketing to persuade’ is also impactful, which involves limiting the use of cartoons or techniques that appeal

³⁰ [Introducing further advertising restrictions on TV and online for less healthy food and drink: consultation on internet protocol television \(IPTV\) - GOV.UK](#)

³¹ https://irishheart.ie/wp-content/uploads/2016/12/web__whos_feeding_the_kids_online_report_2016.compressed.pdf

³² <https://www.who.int/europe/publications/i/item/WHO-EURO-2022-6201-45966-66383>

³³ <https://www.osborneclarke.com/insights/uk-government-confirms-hfss-advertising-restrictions-october-2025#:~:text=From%201%20October%202025%2C%20there,21%3A00%20in%20the%20UK.>

to children, such as including toys with products, advertising with songs, and celebrity endorsements”³⁴. Although outside of the watershed time, HFSS advertisements during family-friendly programmes such as The Late Late Toy Show should be banned.

5. **Protect children of all ages:** All human beings should be protected from the harmful effects of HFSS advertising below the age of 18, as advised by WHO guidelines³⁵.
6. **Mandatory codes** – the WHO guideline titled ‘Policies to protect children from the harmful impact of food marketing’ states that mandatory policies were more likely to reduce exposure to and power of television advertising relative to voluntary policies³⁶.

Q.7: Why is the regulation of advertising of infant formula, including follow-on formula so important?

Marketing is part of everyday life, experienced by virtually everyone. However, marketing of breastmilk substitutes is different because feeding practices in the first 3 years of life profoundly affect the survival, health and development of children both immediately and throughout their lives. Deciding how we feed our infants and children should therefore be based on the very best information and evidence, influenced only by what is best for the child and parents and certainly not commercial interests³⁷.

Breastfeeding is the biologically normal feeding method for infants and young children and ensures optimum growth and development³⁸. The WHO, Department of Health and the HSE recommends that infants are exclusively breastfed for the first six months with continued breastfeeding up to 2 years or beyond³⁹. Despite widespread recognition of the benefits of breastfeeding, Ireland has some of the lowest breastfeeding rates in Europe. Although 64% of babies start breastfeeding in the hospital, formula feeding rapidly becomes the cultural norm

³⁴ [https://www.who.int/news/item/03-07-2023-who-recommends-stronger-policies-to-protect-children-from-the-harmful-impact-of-food-marketing#:~:text=The%20guideline%20recommends%20countries%20implement,%20For%20salt%20\(HFSS\).](https://www.who.int/news/item/03-07-2023-who-recommends-stronger-policies-to-protect-children-from-the-harmful-impact-of-food-marketing#:~:text=The%20guideline%20recommends%20countries%20implement,%20For%20salt%20(HFSS).)

³⁵ <https://iris.who.int/bitstream/handle/10665/370113/9789240075412-eng.pdf?sequence=1>

³⁶ <https://iris.who.int/bitstream/handle/10665/370113/9789240075412-eng.pdf?sequence=1>

³⁷ <https://www.unicef.org/media/115916/file/Multi-country%20study%20examining%20the%20impact%20of%20BMS%20marketing%20on%20infant%20feeding%20decisions%20and%20practices,UNICEF,WHO2022.pdf>

³⁸ <https://www.hse.ie/file-library/evidence-for-breastfeeding.pdf>

³⁹ <https://www.hse.ie/eng/about/who/acute-hospitals-division/woman-infants/national-reports-on-womens-health/national-standards-for-infant-feeding-in-maternity-services.pdf>

in Ireland, with only 36.8% exclusively breastfeeding at the time of hospital discharge. This means that over half of infants had received infant formula, or were combination fed or fully formula fed by day 3 of life⁴⁰.

Aggressive marketing of IBS undermines breastfeeding efforts by promoting formula as a convenient or superior alternative, often using emotional appeals and misleading claims⁴¹. This not only erodes public confidence in breastfeeding but also increases the health risks for both mothers (breastfeeding reduces mothers risk of breast and ovarian cancer, diabetes and hypertension⁴²) and infants, including higher rates of infection, obesity, sudden infant death syndrome (SIDS) and chronic diseases in children⁴³. Given the special vulnerability of infants and young children and the risks involved in inappropriate feeding practices, usual marketing practices are unsuitable for these products.

IBS advertisements idealise formula feeding through emotional appeals and claims of added benefits for growth and development. These claims, while appealing to parents, create misconceptions about the necessity of formula feeding⁴⁴. While direct advertising of infant formulas is restricted under Irish law, follow-on formulas and toddler milk remain heavily marketed. Many feel follow-on formula was created to get around advertising laws⁴⁵. This allows the companies to advertise the same brand name, logos, colour of packaging and style of infant formula on TV, online, in magazines and elsewhere. When people see adverts for follow-on formula, some think they are seeing adverts for infant formula⁴⁶. The WHO International Code of Marketing of Breastmilk Substitutes emphasises that such products are unnecessary and should not be promoted⁴⁷.

More recently, highly personalised and sophisticated digital marketing has emerged as a new tactic. This has become an effective way for companies to reach mothers directly and remain inconspicuous to those trying to monitor compliance with the WHO Code⁴⁸. Digital

⁴⁰ <https://www.worldbreastfeedingtrends.org/uploads/country-data/country-report/WBTi-Ireland-2023.pdf>

⁴¹ <https://www.unicef.org/media/115916/file/Multi-country%20study%20examining%20the%20impact%20of%20BMS%20marketing%20on%20infant%20feeding%20decisions%20and%20practices,UNICEF,WHO2022.pdf>

⁴² <https://www.cdc.gov/breastfeeding/features/breastfeeding-benefits.html>

⁴³ <https://pmc.ncbi.nlm.nih.gov/articles/PMC2812877/>

⁴⁴ <https://www.unicef.org/media/115916/file/Multi-country%20study%20examining%20the%20impact%20of%20BMS%20marketing%20on%20infant%20feeding%20decisions%20and%20practices,UNICEF,WHO2022.pdf>

⁴⁵ <https://www.babymilkaction.org/archives/704>

⁴⁶ https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/5f93548ed1d6ae350aa8050c/1603490967170/Marketing_of_infant_milk_in_the_UK-what_do_parents_see_and_believe_finala.pdf

⁴⁷ <https://iris.who.int/bitstream/handle/10665/254911/WHO-NMH-NHD-17.1-eng.pdf>

⁴⁸ https://epha.org/wp-content/uploads/2017/10/Final-report_CM.pdf

marketing includes targeted YouTube videos; social outreach on Facebook, Instagram and Twitter; sponsored posts on parenting blogs; online marketing through social media influencers; personalised emails, apps and online communities. Mobile devices and widespread use of social media enable IBS companies to reach women early in their pregnancy and continuously target them throughout their pregnancy and beyond. Furthermore, sophisticated digital marketing strategies assist companies in aligning with parents' hopes and dreams for their children, emphasising positive values such as 'freedom from judgement' and cleverly tapping into the emotional and psychological aspects of parenting⁴⁹.

Q.7. Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

1. Strengthen Advertising Restrictions for Infant Breastmilk Substitutes (IBS): The WHO International Code of Marketing of Breastmilk Substitutes provides a comprehensive framework for protecting breastfeeding by regulating the promotion of formula products. CNM should:

- **Prohibit Advertising for All Breastmilk Substitutes:** Extend the ban to include follow-on formulas, toddler milk, and complementary foods marketed for use before six months. These products are explicitly covered under the WHO Code and are often marketed in ways that undermine breastfeeding.
- **Ban Indirect Marketing Practices:** Prohibit the use of company logos, sponsorships of health events, and partnerships with healthcare facilities, which can create subliminal associations with formula feeding.
- **Enforce Labelling Standards:** Ensure that labels for formula products include clear warnings about the risks of formula feeding and the benefits of breastfeeding, as outlined in the WHO Code.
- The scope of section 21.11 D should:

⁴⁹ https://epha.org/wp-content/uploads/2017/10/Final-report_CM.pdf

- Fully take into account the evidence that cross promotion between infant formula, follow-on formula and toddler milks is taking place currently within the scope of the current laws and adopt measures to stop this practice.
- Restrictions on marketing communications should also be expanded to include the multiple channels used by companies to indirectly promote their infant and follow on formula branding, e.g. through care lines and baby clubs.
- Prohibit the advertising of formula feeding products that relevant competent authorities (e.g. FSAI, Saferood and the HSE) deem inappropriate/unsafe for the physical development of the child, e.g. formula preparation machines, UV sterilisers and bottle warmers.
- Prohibit incentives, rewards or provision of free samples within all forms of advertisements (online and broadcasting), which are used to attract the user to sign up for the website/product with logos/branding/similarities to any formula milk or toddler milk product.

2. Expand Regulations to Cover Digital Media: Parents in Ireland increasingly consume content on social media and video-on-demand platforms, where targeted advertising is pervasive. We are taking the opportunity of the consultation on broadcast and radio codes to make suggestions regarding the introduction of similar codes in the online space to safeguard children from the harmful effects of infant formula and follow-on formula marketing across all media channels. This is legislated for in the recently published Online Safety and Media Regulation Act 2022, *‘Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit or restrict, in accordance with law, the inclusion in programmes of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars’*.

CNM should:

- Ensure the same rules governing advertisement of IBS on mainstream media are enforced online.
- Prohibit algorithmic targeting with IBS advertisements.
- Ban influencers and content creators promoting IBS products.

3. Introduce mandatory codes: We are of the view that significantly stronger, mandatory codes are needed in order to be able to properly address this issue, as self-regulatory codes have already proven insufficient. There is evidence that supports the idea that self-regulation is not a feasible monitoring tool. A 2013 systematic review found significant divergence between the reported impacts of marketing regulation (including self-regulation by industry) provided in peer-reviewed journals, or industry-sponsored reports, showing the need for external monitoring⁵⁰.

Conclusion

Childhood obesity and low breastfeeding rates are urgent public health challenges in Ireland, with long-term implications for individuals, families, and the healthcare system. The media plays a powerful role in shaping attitudes, beliefs, and behaviours. For children, who are especially impressionable, exposure to advertising for HFSS products and IBS can have lasting impacts on their health and well-being. By strengthening restrictions on IBS and HFSS advertising, Coimisiún na Meán has an opportunity to protect children from harmful commercial influences and create a healthier future for the nation, and allow for a more sustainable health service.

This submission calls on Coimisiún na Meán to:

1. Extend the ban on IBS advertising to include follow-on formulas and toddler milk.
2. Implement a watershed ban for HFSS advertising and adopt a robust nutrient profiling system.
3. Regulate digital marketing practices targeting children with HFSS foods and parents with IBS.
4. Introduce mandatory codes; voluntary self-regulation is not sufficient.

Ireland's children deserve a media environment that prioritises their health and well-being and the health services of Ireland require a healthier population – we cannot 'treat' our way out of bad health. Coimisiún na Meán's leadership in this area will not only address current public health concerns but also set a global example for protecting children from harmful advertising and build a healthier, more resilient future for generations to come.

⁵⁰ Galbraith-Emami, S. and Lobstein, T. (2013) 'The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review'. Obesity Reviews.



HSE Health & Wellbeing Consultation Response Coimisiún na Meán Revised Broadcasting Codes and Rules

12th December 2024

Please find enclosed the HSE Health & Wellbeing response to the Coimisiún na Meán revised broadcasting codes and rules

Introduction

It is recognised nationally and internationally that healthcare systems must prioritise primary prevention, early intervention and improving health and wellbeing to reduce the growing levels of chronic disease and to ensure more sustainable approaches to the provision of health and social care services are developed into the future. Primary prevention aims to prevent harm and disease before it ever occurs by reducing exposure to factors that contribute to causing harm and disease, including environmental, social and commercial, as well as lifestyle factors.

HSE Health & Wellbeing, leads and coordinate a health system wide, evidence-based approach to the implementation of the Healthy Ireland Framework and priority national health policies such as Healthy Weight for Ireland: Obesity Policy and Action Plan, Tobacco Free Ireland, and First Five. HSE Health & Wellbeing collaborate with a range of public health agencies.

Over the last 30 years, similar to other countries in Europe and across the world, the levels of overweight and obesity in Ireland have increased significantly across all age groups, social class and genders. This shift in population level BMI is heavily influenced and shaped by changes in the environment that we are born into, live, work, play and age in. The marketing and promotion of unhealthy foods, infant formula and follow-on formula, and alcohol products including zero alcohol products are ubiquitous. Furthermore, children of lower SES are more exposed to food marketing than children of higher SES. The unequal effects of these changes mean that our children, young people and adults who experience disadvantage are more likely to live with poorer health for longer and to die prematurely than their peers in more advantaged areas.

Food marketing and marketing of infant formula and follow-on formula and zero alcohol products are not only a health concern, they are a children's rights concern. Marketing of foods high in saturated fatty acids, trans-fatty acids, free sugars and/or salt is in contradiction of several of the rights enshrined in the Convention on the Rights of the Child, including the rights to health, adequate and nutritious food, privacy, and freedom from exploitation. The UN Committee on the Rights of the Child has stated that the marketing of such foods should be regulated.

HSE Health & Wellbeing sees the revision of the broadcasting codes and rules by Coimisiún na Meán as a timely opportunity to fulfil Ireland's legal obligation to protect these rights. HSE Health & Wellbeing sees an important role for the regulation of the marketing and promotion of health harming products across multiple channels in creating a healthier environments and reducing exposure to risk factors for chronic disease.

This response will answer questions 5, 6, 7, and 10 of the stage 2 review that covers advertising of HFSS food and beverage products, zero alcohol products, infant formula, including follow-on formula, and advertising, sponsorship, and product placement. This response will also include general recommendations for the General Commercial Communications Code (GCCC) and the Children's Commercial Communications Code (CCCC) that apply to all questions.

Question 5 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

Question 6 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / nonalcoholic?

Question 7 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

Question 10 - Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

The Coimisiún na Meán consultation document deals with a range of topics. Many of these issues are outside the scope and expertise of HSE Health & Wellbeing. Therefore, questions relevant to the work of the HSE Health & Wellbeing are addressed in this response.

General recommendations for General Commercial Communications Code (GCCC) and the Children's Commercial Communications Code (CCCC) changes

HSE Health & Wellbeing is of the view that the current codes in both the General Commercial Communications Code (GCCC) and the Children's Commercial Communications Code (CCCC) are not strong enough to protect children from the harmful effects of marketing HFSS foods, alcohol/zero alcohol products, or the disbenefits of advertising infant formula including follow-on formula. The Children's Commercial Communications Code defines children's commercial communications as "a commercial communication that promotes products, services, or activities that are deemed to be of direct or indirect interest to children and/or is broadcast in or around children's programmes." Section 17 of the CCCC refers to diet and nutrition, mostly regarding children's commercial communications that contain references to food. The view of HSE Health & Wellbeing is that this section is unfit for its purpose of protecting children from marketing of HFSS food and beverage products. This section does not prevent commercial communications of HFSS food and beverage products being aimed at children or their parents, only the way they can be targeted at children. The separation of codes for fast food/confectionary and HFSS food and beverage products is also unnecessary as fast food and confectionary products will in most instances fall under the auspices of HFSS food and beverage products, and so should be subjected to the same marketing rules as HFSS food and beverage products.

In the GCCC, under Section 14 titled 'Provisions applying to all Commercial Communications', in the subsection titled 'Children' it is stated that "Broadcasters shall take appropriate measures to ensure that material contained in commercial communications that would be likely to impair the physical, mental or moral development of children is only made available in a way that children will not normally hear or see it".

Food marketing influences children's eating and related behaviours such as purchase requests, purchases, and preferences. Evidence for a relationship between food marketing exposure and obesity meets epidemiological criteria for causality. It is thought to be the combination of salient food cues and creative content (e.g., branding, promotional characters, emotional appeals, and animation) in food marketing that produces such compelling commercial messages to influence children's

behaviour and health outcomes. In other words, the impact of food marketing is a function of both exposure to the marketing message and its persuasive power.”¹

In addition to broadcast advertising exposure to digital marketing of unhealthy foods to children and adolescents is a major concern as food and beverage companies can target advertisements to specific children or adolescents based on their online profiles, personal characteristics, and previous browsing history. The WHO European Office for the Prevention and Control of Noncommunicable Diseases (NCD Office) developed the CLICK monitoring framework to support Member States to objectively monitor digital marketing as well as to enable them acting regarding marketing related regulations and policies, and to support their implementation. The CLICK framework² address several important aspects of marketing that countries should consider when evaluating the national digital ecosystem. Safefood recently commissioned research to monitor digital marketing to children and adolescents on the island of Ireland using the CLICK framework – the CLICKBITE study. This research found that:

- Adolescents on the island of Ireland are exposed to huge volumes of unhealthy food marketing – they see 15-19 ads per hour of unhealthy, clear-cut marketing
- Children of all ages understand advertiser persuasive intent well, but they do not interpret influencer, and some brand, content as advertising as they feel positively about it when it is ‘relatable’
- Children of all ages respond to digital food marketing with hunger/thirst and often with pleasure and enjoyment

The scale of unhealthy food messages to children demonstrated by the CLICKBITE study shows that upstream policy measures are urgently needed to protect children.

Given this evidence of impact, and with diet-related noncommunicable disease (NCD) risk and obesity prevention in children being public health priorities in many countries internationally, best-practice recommendations have been issued by the World Health Organization (WHO) and other authoritative bodies for governments and industry to restrict HFSS food marketing to children. In May 2010, the World Health Assembly unanimously adopted the WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children through resolution WHA63.14³. The primary purpose of these recommendations was to guide Member States in the optimal design of new policies, or in strengthening existing policies, to maximise the achievement of public health goals. Also, in response to the mandate of that resolution, the WHO published a framework for policymakers to support the implementation of recommendations in individual territories⁴, and the WHO has led on the

¹ As cited in Boyland, Emma, Lauren McGale, Michelle Maden, Juliet Hounsome, Angela Boland, and Andrew Jones. 2022. ‘Systematic Review of the Effect of Policies to Restrict the Marketing of Foods and Non-alcoholic Beverages to Which Children Are Exposed’. *Obesity Reviews* 23(8):e13447. doi: 10.1111/obr.13447.

² World Health Organization. Regional Office for Europe. 2019. Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents: Report Based on the Expert Meeting on Monitoring of Digital Marketing of Unhealthy Products to Children and Adolescents: Moscow, Russian Federation, June 2018. WHO/EURO:2019-3592-43351-60815. World Health Organization. Regional Office for Europe.

³ World Health Organization. Set of recommendations for the marketing of food and non-alcoholic beverages to children. http://whqlibdoc.who.int/publications/2010/9789241500210_eng.pdf, 2010.

⁴ World Health Organization. *A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children*. World Health Organization; 2012. <https://apps.who.int/iris/handle/10665/80148>

development of region-specific nutrient-profiling models to support policymakers in identifying products that should be restricted in marketing to children⁵.

Given the evidence above, under the current codes set out in the GCCC under section 14 in the children's subsection, HSE Health & Wellbeing is of the view that this area should be used to term the marketing of HFSS food and beverage products to children across broadcast media as harmful.

The General Commercial Communications Code should be amended to reflect any such changes to the CCCC.

Legal basis for introducing changes to the existing media codes and introducing new online safety codes in relation to HFSS products

The Coimisiún has the authority to introduce such codes through both Section 46(7) (for media service codes) and section 139K (5) (for online safety codes) of the OSMR, and to consult with public health authorities in doing so.

Section 46 (7) of the Online Safety and Media Regulation Act 2022 (OSMR) states that "Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit or restrict, in accordance with law, the inclusion in programmes of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars."

HSE Health & Wellbeing proposes that this section should be the basis for introducing greater restrictions into the General Broadcast Codes and the Children's Commercial Communications Codes.

Furthermore, Section 139K (5) of the OSMR Act, in relation to online safety codes, states "Without prejudice to subsection (2) or (4), an online safety code may prohibit or restrict, in accordance with law, the inclusion in programmes or user-generated content of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or foods or beverages which contain fat, trans-fatty acids, salts or sugars."

HSE Health & Wellbeing proposes that this section should be the basis for introducing online safety codes that restrict commercial communications of HFSS food and beverage products and infant formula and follow-on formula in digital settings, like the legislation being commenced in 2025 in the UK. We are of the view that significantly stronger, mandatory codes are needed to be able to properly address this issue, as self-regulatory codes have already proven to not be strong enough.

Furthermore, there is evidence that supports the idea that self-regulation is not a feasible monitoring tool. A 2013 systematic review ^[2] found significant divergence between the reported impact of marketing regulation (including self-regulation by industry) provided in peer-reviewed journals, or industry-sponsored reports, showing the need for external monitoring. Moreover, of studies evaluating voluntary policies, significantly more studies showed undesirable effects than desirable

⁵ raak VI, Rincón GPS, Sacks G. An accountability evaluation for the International Food & Beverage Alliance's Global Policy on Marketing Communications to Children to reduce obesity: A narrative review to inform policy. *Obes Rev.* 2019; **20**(S2): 90-106. doi:[10.1111/obr.12859](https://doi.org/10.1111/obr.12859)

effects on exposure to, and power of, food marketing. This was not the case for studies evaluating mandatory policies ^[3].

Most importantly we are taking this opportunity on the consultation on broadcast and radio codes to make suggestions regarding the introduction of similar codes in the online space to safeguard children from the harmful effects of HFSS and infant formula and follow-on formula marketing across all media channels.

Question 5 Response

Why is the regulation of commercial communication of high fat, sugar, and salt (HFSS) foods so important?

Food-related ill health is now the biggest cause of preventable illness and premature death in the developed world.

Among 5-year-olds in Ireland, 37% of children in fluoridated areas and 55% in non-fluoridated areas have experienced dental decay. More than one-fifth of 8-year-olds, half of all 12-year-olds and three-quarters of all 15-year-olds have experienced decay in their permanent teeth. Dental carries cause pain, disturb eating and sleep patterns and can have long term impacts on self-esteem and aesthetics. The cost of managing decay related tooth extraction in children in the UK was estimated to be €40.7m in 2022. Prevalence of dental carries in children in the UK is lower than in Ireland.

Obesity is a progressive, chronic and complex disease that affects children's physical and mental health in a multitude of ways such as asthma, musculoskeletal problems, type 2 diabetes, high blood pressure, anxiety, depression, bullying. Currently, at least one in every five children in Ireland – from toddlers to teenagers – live with overweight and obesity. Research by safefood estimates that 55,056 children currently living in the Republic of Ireland and 85,688 on the whole island will die prematurely due to the health impacts of overweight and obesity.⁶

Numerous studies have shown that advertising HFSS food and beverage products directly influences children's food preferences and consumption patterns. The World Health Organization (WHO) emphasises that marketing of unhealthy food to children contributes to the growing epidemic of childhood obesity. The WHO published a guideline in 2023 entitled 'Policies to protect children from the harmful impact of food marketing'. These guidelines recognise that food marketing is increasingly becoming a children's rights issue and states that "Marketing of foods high in saturated fatty acids, trans-fatty acids, free sugars and/or salt negatively impacts several of the rights enshrined in the Convention on the Rights of the Child, including the rights to health, adequate and nutritious food, privacy, and freedom from exploitation"⁷.

Studies in Ireland and elsewhere show that children are particularly vulnerable to HFSS advertising because they lack the cognitive ability to understand persuasive intent, which, combined with collaborations with celebrities and influencers in the online space, make them an easy target for

^[3] Galbraith-Emami, S. and Lobstein, T. (2013) 'The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review'. *Obesity Reviews*.

^[3] Boyland, E, McGale, L, Maden, M, Hounscome, J, Boland, A, Jones, A. Systematic review of the effect of policies to restrict the marketing of foods and non-alcoholic beverages to which children are exposed. *Obesity Reviews*. 2022; 23(8):e13447. doi:10.1111/obr.13447

⁶ <https://www.safefood.net/getmedia/73152a66-def2-4dd8-8c28-6184bdde438b/safefood-2017-cost-of-childhood-obesity-Report.pdf>

⁷ [Policies to protect children from the harmful impact of food marketing](#)

marketers. As a result of this, exposure to HFSS advertisements can lead to the development of unhealthy dietary habits that can persist into adulthood, increasing the risk of chronic diseases such as heart disease, type 2 diabetes, some cancers and obesity.

Given this evidence, and the need to protect children and to support them through enabling a healthier food environment, HSE Health & Wellbeing is of the view that the marketing of HFSS food and beverage products be recognised as harmful to children, to align with the World Health Organization and as a first step in introducing robust codes to limit exposure. Presently in the General Commercial Communications Code, HFSS foods are defined as “those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the Commission”. We would recommend using the WHO Nutrient Profile Model to determine what products are classified as HFSS. We are conscious that the WHO has developed a nutrient profile model, and we would propose that consideration be given to using the WHO model in the context of reviewing the General and Children’s Commercial Communications Codes and would be happy to discuss this further.

International Examples

The UK is set to implement legislation from October 1st, 2025, that will ban all commercial communications for food and beverage products deemed as HFSS across broadcast and on-demand media from 5:30am to 9:00pm. Included in this legislation is also a total ban on paid for advertising of these products online. This comprehensive approach represents a significant step forward in reducing children’s exposure to unhealthy food marketing. By creating a protected time window and restricting online advertising, the UK legislation addresses multiple channels through which children are exposed to HFSS marketing.

Portugal introduced legislation in 2019 and is seen as an early mover in introducing legislation in unhealthy food marketing to children. The legislation introduced is aimed at restricting the advertising of HFSS foods to children aged 16 and under. The law covers advertisements broadcasted in the 30 min before and after programmes targeted at children or for which a minimum of 25% of the audience includes children under 16 years old, and extends across television programs and services, on-demand audio-visual communication services, and radio, including advertising in the respective breaks of these programs, as well as digital marketing restrictions.

A study carried out in Portugal to assess the potential exposure and power of food advertisements aimed at children, broadcasted on Portuguese TV channels found that there is still a high percentage of food advertisements with potentially child-directed content on television. This can be attributed to limitations of the legislation introduced, including enforcement and age verification across platforms. The study found that among all food and beverage advertisements, 78.3% did not meet the nutritional profile outlined by the Portuguese Directorate-General of Health, and while advertising aimed at children had decreased since the introduction of legislation, most HFSS food/beverage advertisements were targeted at families, which means that children and adolescents are likely exposed to large numbers of unhealthy food advertisements on television.

The legislation set to be enacted in the UK is a more comprehensive approach that ensures children are not targeted during peak advertising hours. These stricter standards provide a more robust and enforceable model that better protects children’s health. HSE Health & Wellbeing is advocating for similar restrictions to be implemented in Ireland. While we recognise that this consultation is solely focused on broadcasting codes & rules for TV and radio, we would strongly encourage that the UK

legislation be considered both presently in relation to the codes for TV and radio, and for future codes and rules relating to other broadcasting and on-demand media, including social media.

Question 5 HFSS food and beverage products recommendation

Proposal: HSE Health & Wellbeing proposes that section 17 of the CCCC be amended to introduce codes like the legislation that is being introduced in the UK from the 1st of October 2025. The UK legislation will ban all commercial communications deemed as HFSS across broadcast and on-demand media from 5:30am to 9:00pm. Included in this legislation is also a total ban on paid for advertising of these products online. This comprehensive approach represents a significant step forward in reducing children's exposure to unhealthy food marketing. By creating a protected time window and restricting online advertising, the UK legislation addresses multiple channels through which children are exposed to HFSS marketing. The UK legislation is set to be introduced across multiple platforms in the UK. HSE Health & Wellbeing supports not only such changes to the broadcasting codes across TV and radio but supports similar codes to be introduced for online platforms. All proposed changes would need to be accompanied by strong monitoring and compliance systems and the work done under Best-ReMaP would be able to be used to facilitate such changes (see Appendix). Furthermore, consideration will need to be given to the continued use of the UK/ROI Nutrient Profile Model or to move to the WHO Nutrient Profile Model.

Question 6 Response

Why is the regulation of advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic so important?

Alcohol is responsible for some of the greatest health and societal challenges in Ireland. Alcohol causes more than 200 disease and injury conditions, including cancer, diabetes, liver disease, self-harm and suicide. Young people are at greater risk of alcohol-related harm than adults. Exposure to alcohol while the brain is still developing into the mid-twenties can lead to long-term emotional problems and difficulty with learning, planning and memory. Alcohol use, especially at a young age, increases the risk of experiencing mental health issues, including depression and anxiety.

There is extensive and robust evidence that children who are exposed to alcohol marketing are more likely to start drinking as children and if already drinking, to consume more⁸. Big alcohol companies spend millions on alcohol advertising to influence when we start to drink, how much we drink, and how often we drink. Children are being exposed to this same advertising.

The Public Health (Alcohol) Act (2018) (PHAA) is a foundational piece of legislation which aims to reduce the direct or indirect promotion of alcohol products through a range of measure in order to reduce alcohol-related harm and early initiation of alcohol by children. This includes prohibiting the advertising of alcohol products in a range of spaces, particularly where children are concentrated (e.g. near schools or early years services), prohibiting the advertising of an alcohol product in or on a sports area when a sports event is taking place, and a broadcasting watershed on television and radio.

⁸ Jernigan, D., Noel, J., Landon, J., Thornton, N., Lobstein, T. (2016). Alcohol marketing and youth alcohol consumption: a systematic review of longitudinal studies published since 2008. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1111/add.13591>

Many leading alcohol producers now have alcohol-free and low-alcohol variants. These beverages mimic the appearance and taste of alcoholic beverages, but contain very low amounts of alcohol. These products are often produced by established alcohol companies under a parent alcohol brand. Definitions of zero alcohol beverages vary from country to country, with a threshold of <0.05% ethanol in use in Ireland. Research on zero alcohol products is emerging and suggests that they can act as a gateway to alcohol use amongst young people⁹.

Researchers and public health experts are increasingly raising concerns that zero alcohol products may further normalise a culture of alcohol consumption and increase exposure to alcohol brands, leading to greater alcohol use and associated harms. In a recent brief by the World Health Organisation (WHO)¹⁰, concerns were raised about the potential for zero alcohol beverages to serve as alibi marketing by evading restrictions on the sale and promotion of alcoholic beverages. Given that the products contain up to 0.5% ethanol, concerns were also raised about the potential for these products to mislead minors, pregnant women, abstainers or those seeking to stop drinking about their actual ethanol content. This WHO publication calls for the extension of existing marketing bans to include zero alcohol products.

In Ireland, advertising for zero alcohol beverages has been located in prominent places where alcohol advertising is banned. These advertisements use the same logos and branding of full-strength products, and often have a strong visual resemblance to the parent alcohol brand's alcoholic product promotions.¹¹ This includes on public transport and close to child-oriented facilities such as schools and public parks, thereby exposing children to alcohol brand marketing. In 2022, zero alcohol advertisements in the outdoor spaces where most of the PHAA restrictions are in place made up 25% of the spend of alcohol brand advertising in 2022, up 31% from 2021, even though these products only make up around 2% of the market¹². In addition, alcohol companies are heavily promoting their alcohol brands during sporting events, with sometimes barely visible 0.0 added to their product names and branding. Research from the University of Stirling found that alcohol brand references being shown at a rate of up to one every 8 seconds on the field of play during some high profile rugby matches after the PHAA restrictions came into place¹³.

It is clear that alcohol industry is using zero alcohol products to circumvent the regulatory protections in relation to alcohol advertising, which specifically defines features such as the logo or other branding features of alcohol producers as advertising.

⁹ Booth, L., Keric, D., Bowden, J. et al. (2024). Zero alcohol products and adolescents: A tool for harm reduction or a trojan horse? *Appetite*, 107582, <https://doi.org/10.1016/j.appet.2024.107582>.

¹⁰ World Health Organization. (2023). A Public Health Perspective on Zero- and Low-Alcohol Beverages. Snapshot Series on Alcohol Control Policies and Practice. <https://www.who.int/publications/i/item/9789240072152>.

¹¹ Critchlow, N., Moodie, C. & Houghton, F. Brand sharing between alcoholic drinks and non-alcoholic offerings: a challenge to Ireland's restrictions on alcohol advertising. *Ir J Med Sci* **192**, 1975–1977 (2023). <https://doi.org/10.1007/s11845-022-03161-0>

¹² Core (2023). Outlook 23 – Media Market Forecasts for Ireland. Available at: <https://www.onecore.ie/intel/outlook-23-media-market-forecasts>.

¹³ Critchlow, N., Purves, R. (2023). Alcohol branding during rugby union matches in Ireland after commencement of Sect. 15 from the Public Health (Alcohol) Act: a frequency analysis of highlights from the European Rugby Champions Cup and Six Nations Championship. Available at: https://www.researchgate.net/publication/369383940_Alcohol_branding_during_rugby_union_matches_in_Ireland_after_commencement_of_Sect_15_from_the_Public_Health_Alcohol_Act_a_frequency_analysis_of_highlights_from_the_European_Rugby_Champions_Cup_and_Six

It is the view of HSE Health and Wellbeing that section 18, subsection 2, points (a), (b), and (c) and section 18, subsection 5 of the GCCC are being contravened. Section 18.2. (a) of the code states that broadcasters shall ensure that commercial communications for alcoholic beverages are cast towards brand selling and identification and do not encourage children or non-drinkers to begin drinking. However, brand sharing, advertising zero alcohol products using the same parent branding, by its very nature is encouraging consumption of the brand advertised. Similarly, advertising alcohol during sporting events, through broadcasters showing events where alcohol brands have their logos imprinted on the playing field, would appear to be a contravention of S.18.2.(b) as it links sports stars to alcohol and thereby creates a linkage between alcohol and enhanced physical performance. Furthermore, this would also appear to be a contravention of S.18.3.(c) as broadcasting successful sports stars playing rugby or football on a field emblazoned with alcohol brands creates the impression that the consumption of alcohol contributes towards success or social success. More broadly, these situations could all be considered to breach S.18.5 of the code “Broadcasters shall ensure that sports programmes and sports bulletins, including competitions within sports programmes produced or commissioned by the broadcaster, do not promote alcohol brands”.

HSE Health and Wellbeing also have concerns regarding S.18.7.(b), that alcohol beverages shall be broadcast only in or around programmes with an adult audience profile of 75 percent or greater. Children make up 23 percent of the population¹⁴ and it is likely, where it comes to important GAA, rugby, and football events, that they are watching in the same proportion. For example, large sporting events, such as Ireland football and rugby internationals, can attract anywhere between 500,000 and 1,000,000 viewers. This means that a significant number of children could be seeing alcohol advertisements during popular sporting events, and we know from previous figures from the Broadcasting Authority of Ireland that seven out of 10 of the top programmes watched by children are big sporting events. This situation is further compounded by the fact that in 2021 the Broadcasting Authority of Ireland Statutory Report on the Effect of the BAI Children’s Commercial Communications Code found that Diageo, the multinational alcoholic beverage company, was the number four advertiser to children in Ireland¹⁵. This demonstrates the weakness of the previous code and the need for much more effective practices in relation to alcohol brand marketing.

Question 6 Recommendations

Zero alcohol advertising needs to be regulated to protect children, pregnant women and those seeking to stop drinking. Zero alcohol product advertisements which use the branding of alcohol producers should be subject to the same restrictions as alcohol advertisements. This approach is in use in Norway.

There is a clear contradiction between S.13.2.(h) of the code which forbids advertisements for alcoholic beverages that are aimed specifically at minors, and yet children are clearly being highly exposed to alcohol advertising. We recommend that this section of the code should be replaced with a statement that children should not be exposed to alcohol advertising

HSE Health and Wellbeing also recommends that alcohol product placement in televised programmes should be explicitly banned. A study of reality TV programmes which were broadcast in the UK between August 2019 and 1st August 2020 found that alcohol content was seen in 5,167 intervals

¹⁴ <https://www.gov.ie/en/publication/79897-state-of-the-nations-children-key-findings/>

¹⁵ Broadcasting Authority of Ireland. (2020). Statutory Report on the Effect of the BAI Children’s Commercial Communications Code. Available at: https://www.bai.ie/en/media/sites/2/2021/02/2020_StatutoryReport_CCCC_vFinal_JC.pdf

(39%) across 258 episodes (98%). Using viewing figures and census data, it was estimated that alcohol content was seen 3.5 billion times by the UK population, including 197.3 million times by children aged under 16¹⁶.

Coimisiún na Meán must make clear that alcohol advertising during sporting events e.g. on pitches and hoardings cannot be broadcast prior to the broadcast watershed for alcohol advertising which comes into effect from January 2025.

HSE Health and Wellbeing also recommends that regular monitoring of children's exposure to alcohol advertising should be carried out and published.

It is our strong view that monitoring and adjudicating of advertising should be carried out directly by Coimisiún na Meán and not outsourced to self-regulatory bodies.

Question 7 Response

Why is the regulation of commercial communication of infant formula including follow-on formula so important?

The scale of the challenge to support more parents to make evidence-based decisions about infant feeding free from commercial influences has been documented in Ireland and by the WHO in the last year.

The recently published [World Breastfeeding Trends Initiative report](#) in October 2023 for Ireland outlines, that despite modest increases in breastfeeding rates, there is considerable progress to be made to reach the global target of at least 50% of babies exclusively breastfed at 6 months. The predominant culture for infant feeding in Ireland is that of formula feeding, and the report outlines recommendations to protect parents from marketing which is significantly influencing infant feeding behaviours in Ireland.

The Lancet series¹⁷, the most seminal recent international research on infant feeding was published in Feb 2023. This three-part series emphasises that multifaceted policy and societal responses are needed to increase breastfeeding rates and the need to mitigate negative undermining commercial influences. The series also illustrated how normal infant behaviours can be misinterpreted as hunger or reframed as abnormal to promote artificial solutions by the formula feeding industry.

In a Briefing by the WHO in Jun 2023 titled *Countries Discuss Measures to Combat Industry Erosion of Exclusive Breastfeeding*, (<https://healthpolicy-watch.news/measures-to-combat-industry-erosion-of-exclusive-breastfeeding/>) the following points were noted:

- Rates of exclusive breastfeeding are 20% higher in countries that have legislation substantially aligned with the code
- Continuation of breastfeeding in the first two years of life is more than twice as high when the legislation is substantially aligned with the code. "Let's put a stop to the commercialisation of our children's health. It's time to end exploitative marketing," said the WHO Director General

¹⁶ Barker, A.B., Bal, J., Ruff, L., Murray, R.L. ("022). Exposure to tobacco, alcohol and 'Junk food' content in reality TV programmes broadcast in the UK between August 2019–2020. Available at: <https://academic.oup.com/jpubhealth/article/45/2/287/6580637>

¹⁷ <https://www.thelancet.com/series/Breastfeeding-2023>

- Little progress (in increasing breastfeeding rates) has been achieved in high-income countries where the code was not enshrined in legislation and, as a result, exclusive breastfeeding rates are stagnating
- Manufacturers of breast milk substitutes are using increasingly sophisticated marketing tactics, including targeted ads on pregnant mothers' mobile phones, clandestine participation in online baby clips, or coaxing mothers to market formula to one another
- High-income countries have the lowest rates of exclusive breastfeeding in children under six months
- Only 32 countries are fully compliant with the code and many others need to update their legislation to address the "new forms of marketing", including digital outreach and donations to professional societies.

Despite laws governing cross-promotion of labelling and advertising of products in Ireland, there is confusion with regards the labelling of products with lots of similarities between infant formula and follow-on formula. In a recent multi country study, the WHO and UNICEF found it commonplace for mothers to recall seeing adverts for infant formula, which included the UK (78%), a country like Ireland which has restrictions on the advertising of infant formula. Parents likely recalled advertisements for follow-on formula or other products e.g. careline/baby club but recognised the brand as infant formula, so recalled the advertisements as such <https://www.who.int/publications/i/item/9789240044609>. The intended audience for products is parents and they should be included in the decisions around what is permitted/not permitted under this definition and it's monitoring, so to ensure that the codes are implemented, as intended.

Question 7 Recommendations

The updating of the broadcasting codes represents a significant opportunity to drive policy objectives of Healthy Ireland, further fostering the cooperation with relevant organisations, building on the ongoing activities related to the development of specific additional requirements and having regard to the Act's prohibition or restriction of the inclusion in programmes or user-generated content of commercial communications: infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars.

Recommendations:

- (i) extend beyond current EU laws, to prohibit the advertising of follow-on milks and toddler milks due to the similarities with infant formula and follow-on formula logos and branding. Furthermore, marketing communications should not allow any advertisements or cross promotion of products with logos and branding like infant formula, follow-on formula and toddler milks.
- (ii) take account of prohibiting the advertising of formula feeding products in Ireland that relevant competent authorities (e.g. FSAI, Safefood and the HSE) deem inappropriate/unsafe for the physical development of the child, e.g. formula preparation machines, UV sterilisers and bottle warmers
- (iii) these prohibitions should extend to the digital space where more and more parents spend their time.

Question 10 Response Product Placement and Sponsorship

How sponsorship and product placement impact health

Sponsorship and product placement are forms of food marketing and brand awareness. HSE Health & Wellbeing is of the opinion that product placement and sponsorship by companies that produce and sell HFSS plays a key role in shaping dietary behaviours and public health outcomes. It has been shown to influence children's food choices, normalise the consumption of unhealthy foods, and create misleading associations between unhealthy foods and healthy lifestyles. The result can be a negative impact on public health by contributing to food-related ill health such as heart disease, type 2 diabetes, some cancers and obesity.

The American Academy of Paediatrics has published several reports on how food advertisements (including those via product placement in media) influence children's dietary behaviours and contribute to food related ill-health such as obesity¹⁸. Research in journals like Paediatrics and The American Journal of Clinical Nutrition examining the effects of food marketing on children and adolescents, highlights how product placements of sugary snacks or fast-food increase consumption¹⁹.

Research also points to the negative influence of product placement in televised programmes on underage alcohol use. A recent study found that exposure to brand appearances in television shows was associated with initiation of alcohol use by adolescents and hazardous alcohol use²⁰. Children and young people are exposed to significant alcohol marketing through product placement. A study of reality TV programmes which were broadcast in the UK between August 2019 and 1st August 2020 found that alcohol content was seen in 5,167 intervals (39%) across 258 episodes (98%). Using viewing figures and census data, it was estimated that alcohol content was seen 3.5 billion times by the UK population, including 197.3 million times by children aged under 16²¹.

Question 10 recommendations

GCCC Section 8.11 and Section 9.9 outline the limitations on who can engage in sponsorship arrangements. In line with HSE Health & Wellbeing recommendation that GCCC Section 14 be used to term the marketing and promotion of HFSS food and beverage products to children as harmful, it also proposes that these sections should be the basis for introducing greater restrictions on sponsorship by sponsors whose product portfolio includes HFSS food and beverage products.

Regulating these sponsorships, particularly in vulnerable populations such as children, is crucial to mitigating their health impacts.

¹⁸ Gantz W, Schwartz N, Angelini JR. Television food advertising to children in the United States. The Kaiser Family Foundation. 2007 Mar;4.

¹⁹ Boyland E, McGale L, Maden M, Hounsborne J, Boland A, Angus K, Jones A. Association of food and nonalcoholic beverage marketing with children and adolescents' eating behaviors and health: a systematic review and meta-analysis. JAMA pediatrics. 2022 Jul 1;176(7):e221037-.

²⁰ Gabrielli, J., Erin Corcoran, E., Sam Genis, S., McClure, A.C., Tanski, S.E. (2022). Exposure to Television Alcohol Brand Appearances as Predictor of Adolescent Brand Affiliation and Drinking Behaviors. Available at: <https://pubmed.ncbi.nlm.nih.gov/33515372/>

²¹ Barker, A.B., Bal, J., Ruff, L., Murray, R.L. ("022). Exposure to tobacco, alcohol and 'Junk food' content in reality TV programmes broadcast in the UK between August 2019–2020. Available at: <https://academic.oup.com/jpubhealth/article/45/2/287/6580637>

HSE Health and Wellbeing also recommends that alcohol product placement in televised programmes should be explicitly banned.

Furthermore, there should not be erosion in current restrictions around product placement and sponsorship. HSE Health & Wellbeing urges Coimisiún to keep the EU AVMS directive which includes a general ban on all product placements. The rules for sponsorship should not be relaxed to allow for more commercial activity, especially removing the prohibition on sponsorship logos during children's programmes. In relation to radio broadcasting, we recommend Coimisiún to not allow for an exemption for radio programmes from the requirement to separate sponsorship from programming.

Overall, HSE Health & Wellbeing are satisfied that the current distinctions between advertising, sponsorship and production placement in the GCCC are sufficiently clear.

Conclusion

In conclusion, HSE Health & Wellbeing feel that the advertising of HFSS food and beverage products, follow-on formula, alcohol and zero alcohol products, and any erosion in current sponsorship and product placement restrictions represent significant health risks, especially for children. Evidence clearly supports the need for stricter regulatory codes to limit children's exposure to these harmful marketing practices. An overhaul of both the General Commercial Communications Code and the Children's Commercial Communications Code is necessary to protect children from the harmful marketing of HFSS food and beverage products and alcohol, and there is space to learn from international best practices, such as the upcoming UK legislation, which can lead to more effective strategies in addressing childhood obesity and promoting healthy dietary habits. HSE Health & Wellbeing would support the Coimisiún na Meán to act decisively to protect the health of children by ensuring comprehensive and enforceable restrictions on the advertising of HFSS food and beverage products, alcohol and zero alcohol products, and infant formula and follow-on formula are included in the upcoming revision of codes and rules for broadcasting on TV and radio. Similarly, we would like to see no change to the current restrictions on product placement and sponsorship.

Healthy Weight for Children Group Consultation Response Coimisiún na Meán Revised Broadcasting Codes and Rules

13th December 2024

Please find enclosed the HSE Healthy Weight for Children Group response to the Coimisiún na Meán revised broadcasting codes and rules



Introduction

In 2018, the HSE published the Healthy Weight for Children Framework. The Framework puts a child health lens on Healthy Weight for Ireland: Obesity Policy & Action Plan published in 2015. Drawing on international and national evidence, the Framework provides a strategic direction for a national and sustainable approach to promoting health and preventing obesity in children.

The Healthy Weight for Children Group is a collaboration of the health sector and public health partners interested in child health and obesity prevention, including the HSE Healthy Eating Active Living Programme, the HSE Healthy Childhood Programme, the HSE Obesity National Clinical Programme, safefood, and Irish Heart Foundation.

Over the last 30 years, like other countries in Europe and across the world, the levels of overweight and obesity in Ireland have increased significantly across all age groups, social classes and genders. This population-level BMI shift is heavily influenced and shaped by changes in the environment that we are born into, live, work, play and age in. The marketing and promotion of unhealthy foods and breastmilk substitutes are ubiquitous. Furthermore, children who experience socio-economic disadvantage are more exposed to food marketing than their more advantaged peers. The unequal effects of these changes mean that our children, young people and adults who experience disadvantage are more likely to live with poorer health for longer and to die prematurely than their peers in more advantaged areas.

Food marketing is not only a health concern, but also a children's rights concern. Marketing of foods high in saturated fatty acids, trans-fatty acids, free sugars and/or salt is in contradiction of several of the rights enshrined in the UN Convention on the Rights of the Child, including the rights to health, adequate and nutritious food, privacy, and freedom from exploitation. The UN Committee on the Rights of the Child has stated that the marketing of such foods should be regulated.

Marketing High-fat, Salt and Sugar (HFSS) products pose significant public health concerns, particularly to children. As dietary habits are shaped early on in children's lives, exposure to persuasive marketing of unhealthy foods can have long-lasting effects on children's health and nutrition. The Healthy Weight for Children Group believes that broadcasting codes and rules need to be strengthened to protect children from the harmful effects of such advertising and welcomes the opportunity to respond to this consultation.

This response will answer questions 5, 7, and 10 of the stage 2 review that covers advertising of HFSS food and beverage products, infant formula, including follow-on formula, and advertising, sponsorship, and product placement. This response will also include general recommendations for the General Commercial Communications Code

(GCCC) and the Children's Commercial Communications Code (CCCC) that apply to all questions.

Question 5 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?"

Question 7 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

Question 10 - Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

General recommendations for General Commercial Communications Code (GCCC) and the Children's Commercial Communications Code (CCCC) changes

The Healthy Weight for Children Group is of the view that the current codes in both the General Commercial Communications Code (GCCC) and the Children's Commercial Communications Code (CCCC) are not strong enough to protect children from the harmful effects of marketing HFSS foods or the disbenefits of advertising infant formula including follow-on formula. The Children's Commercial Communications Code defines children's commercial communications as "a commercial communication that promotes products, services, or activities that are deemed to be of direct or indirect interest to children and/or is broadcast in or around children's programmes." Section 17 of the CCCC refers to diet and nutrition, mostly regarding children's commercial communications that contain references to food. The view of the Healthy Weight for Children Group is that this section is unfit for its purpose of protecting children from marketing of HFSS food and beverage products. This section does not prevent commercial communications of HFSS food and beverage products being aimed at children or their parents, only the way they can be targeted at children. The separation of codes for fast food/confectionary and HFSS food and beverage products is also unnecessary as fast food and confectionary products will in most instances fall under the auspices of HFSS food and beverage products, and so should be subjected to the same marketing rules as HFSS food and beverage products.

In the GCCC, under Section 14 titled 'Provisions applying to all Commercial Communications', in the subsection titled 'Children' it is stated that "Broadcasters shall take appropriate measures to ensure that material contained in commercial communications that would be likely to impair the physical, mental or moral development of children is only made available in a way that children will not normally hear or see it".

Food marketing influences children's eating and related behaviours such as purchase requests, purchases, and preferences. Evidence for a relationship between food

marketing exposure and obesity meets epidemiological criteria for causality. It is thought to be the combination of salient food cues and creative content (e.g., branding, promotional characters, emotional appeals, and animation) in food marketing that produces such compelling commercial messages to influence children's behaviour and health outcomes. In other words, the impact of food marketing is a function of both exposure to the marketing message and its persuasive power.”¹

In addition to broadcast advertising exposure to digital marketing of unhealthy foods to children and adolescents is a major concern as food and beverage companies can target advertisements to specific children or adolescents based on their online profiles, personal characteristics, and previous browsing history. The WHO European Office for the Prevention and Control of Noncommunicable Diseases (NCD Office) developed the CLICK monitoring framework to support Member States to objectively monitor digital marketing as well as to enable them acting regarding marketing related regulations and policies, and to support their implementation. The CLICK framework² address several important aspects of marketing that countries should consider when evaluating the national digital ecosystem. Safefood recently commissioned research to monitor digital marketing to children and adolescents on the island of Ireland using the CLICK framework – the CLICKBITE study. This research found that

- Adolescents on the island of Ireland are exposed to huge volumes of unhealthy food marketing – they see 15-19 ads per hour of unhealthy, clear-cut marketing.
- Children of all ages understand advertiser persuasive intent well, but they do not interpret influencer, and some brand, content as advertising as they feel positively about it when it is ‘relatable’.
- Children of all ages respond to digital food marketing with hunger/thirst and often with pleasure and enjoyment.

The scale of unhealthy food messages to children demonstrated by the CLICKBITE study shows that upstream policy measures are urgently needed to protect children.

Given this evidence of impact, and with diet-related noncommunicable disease (NCD) risk and obesity prevention in children being public health priorities in many countries internationally, best-practice recommendations have been issued by the World Health Organization (WHO) and other authoritative bodies for governments and industry to restrict HFSS food marketing to children. In May 2010, the World Health Assembly unanimously adopted the WHO Set of Recommendations on the Marketing of Foods

¹ As cited in Boyland, Emma, Lauren McGale, Michelle Maden, Juliet Hounscome, Angela Boland, and Andrew Jones. 2022. ‘Systematic Review of the Effect of Policies to Restrict the Marketing of Foods and Non-alcoholic Beverages to Which Children Are Exposed’. *Obesity Reviews* 23(8):e13447. doi: 10.1111/obr.13447.

² World Health Organization. Regional Office for Europe. 2019. *Monitoring and Restricting Digital Marketing of Unhealthy Products to Children and Adolescents: Report Based on the Expert Meeting on Monitoring of Digital Marketing of Unhealthy Products to Children and Adolescents: Moscow, Russian Federation, June 2018*. WHO/EURO:2019-3592-43351-60815. World Health Organization. Regional Office for Europe.

and Non-alcoholic Beverages to Children through resolution WHA63.14³. The primary purpose of these recommendations was to guide Member States in the optimal design of new policies, or in strengthening existing policies, to maximise the achievement of public health goals. Also, in response to the mandate of that resolution, the WHO published a framework for policymakers to support the implementation of recommendations in individual territories⁴, and the WHO has led on the development of region-specific nutrient-profiling models to support policymakers in identifying products that should be restricted in marketing to children⁵.

Given the evidence above, under the current codes set out in the GCCC under section 14 in the children's subsection, the Healthy Weight for Children Group is of the view that this area should be used to term the marketing of HFSS food and beverage products to children across broadcast media as harmful.

The General Commercial Communications Code should be amended to reflect any such changes to the CCCC.

Legal basis for introducing changes to the existing media codes and introducing new online safety codes in relation to HFSS products:

The Coimisiún has the authority to introduce such codes through both Section 46(7) (for media service codes) and section 139K (5) (for online safety codes) of the OSMR, and to consult with public health authorities in doing so.

Section 46 (7) of the Online Safety and Media Regulation Act 2022 (OSMR) states that "Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit or restrict, in accordance with law, the inclusion in programmes of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars."

The Healthy Weight for Children Group proposes that this section should be the basis for introducing greater restrictions into the General Broadcast Codes and the Children's Commercial Communications Codes.

Furthermore, Section 139K (5) of the OSMR Act, in relation to online safety codes, states "Without prejudice to subsection (2) or (4), an online safety code may prohibit or

³ World Health Organization. Set of recommendations for the marketing of food and non-alcoholic beverages to children. http://whqlibdoc.who.int/publications/2010/9789241500210_eng.pdf, 2010.

⁴ World Health Organization. *A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children*. World Health Organization; 2012. <https://apps.who.int/iris/handle/10665/80148>

⁵ Raaijmakers VI, Rincón GPS, Sacks G. An accountability evaluation for the International Food & Beverage Alliance's Global Policy on Marketing Communications to Children to reduce obesity: A narrative review to inform policy. *Obes Rev*. 2019; **20**(S2): 90-106. doi:[10.1111/obr.12859](https://doi.org/10.1111/obr.12859)

restrict, in accordance with law, the inclusion in programmes or user-generated content of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or foods or beverages which contain fat, trans-fatty acids, salts or sugars.”

The Healthy Weight for Children Group proposes that this section should be the basis for introducing online safety codes that restrict commercial communications of HFSS food and beverage products and infant formula and follow-on formula in digital settings, like the legislation being commenced in 2025 in the UK. We are of the view that significantly stronger, mandatory codes are needed to be able to properly address this issue, as self-regulatory codes have already proven to not be strong enough.

Furthermore, there is evidence that supports the idea that self-regulation is not a feasible monitoring tool. A 2013 systematic review^[2] found significant divergence between the reported impact of marketing regulation (including self-regulation by industry) provided in peer-reviewed journals, or industry-sponsored reports, showing the need for external monitoring. Moreover, of studies evaluating voluntary policies, significantly more studies showed undesirable effects than desirable effects on exposure to, and power of, food marketing. This was not the case for studies evaluating mandatory policies.^[3]

We are taking the opportunity of the consultation on broadcast and radio codes to make suggestions regarding the introduction of similar codes in the online space to safeguard children from the harmful effects of HFSS and infant formula and follow-on formula marketing across all media channels.

Question 5 Response

Why is the regulation of commercial communication of high fat, sugar, and salt (HFSS) foods so important?

Food-related ill health is now the biggest cause of preventable illness and premature death in the developed world.

Among 5-year-olds in Ireland, 37% of children in fluoridated areas and 55% in non-fluoridated areas have experienced dental decay. More than one-fifth of 8-year-olds, half of all 12-year-olds and three-quarters of all 15-year-olds have experienced decay in their permanent teeth. Dental carries cause pain, disturb eating and sleep patterns and can have long term impacts on self-esteem and aesthetics. The cost of managing

^[3] Galbraith-Emami, S. and Lobstein, T. (2013) ‘The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review’. Obesity Reviews.

^[3] Boyland, E, McGale, L, Maden, M, Hounsborne, J, Boland, A, Jones, A. Systematic review of the effect of policies to restrict the marketing of foods and non-alcoholic beverages to which children are exposed. Obesity Reviews. 2022; 23(8):e13447. doi:10.1111/obr.13447

decay related tooth extraction in children in UK was estimated to be €40.7m in 2022, prevalence of dental carries in children in UK is lower than in Ireland.

Obesity is a progressive, chronic and complex disease that affects children's physical and mental health in a multitude of ways such as asthma, musculoskeletal problems, type 2 diabetes, high blood pressure, anxiety, depression, bullying. Currently, at least one in every five children in Ireland – from toddlers to teenagers – live with overweight and obesity. Research by safefood estimates that 55,056 children currently living in the Republic of Ireland and 85,688 on the whole island will die prematurely due to the health impacts of overweight and obesity.⁶

Numerous studies have shown that advertising HFSS food and beverage products directly influences children's food preferences and consumption patterns. The World Health Organization (WHO) emphasises that marketing of unhealthy food to children contributes to the growing epidemic of childhood obesity. The WHO published a guideline in 2023 entitled 'Policies to protect children from the harmful impact of food marketing'. These guidelines recognise that food marketing is increasingly becoming a children's rights issue and states that "Marketing of foods high in saturated fatty acids, trans-fatty acids, free sugars and/or salt negatively impacts several of the rights enshrined in the Convention on the Rights of the Child, including the rights to health, adequate and nutritious food, privacy, and freedom from exploitation"⁷.

- Studies in Ireland and elsewhere show that children are particularly vulnerable to HFSS advertising because they lack the cognitive ability to understand persuasive intent, which, combined with collaborations with celebrities and influencers in the online space, make them an easy target for marketers. As a result of this, exposure to HFSS advertisements can lead to the development of unhealthy dietary habits that can persist into adulthood, increasing the risk of chronic diseases such as heart disease, type 2 diabetes, some cancers and obesity.

Given this evidence, and the need to protect children and to support them through enabling a healthier food environment, the Healthy Weight for Children Group is of the view that the marketing of HFSS food and beverage products be recognised as harmful to children, to align with the World Health Organization and as a first step in introducing robust codes to limit exposure. Presently in the General Commercial Communications Code, HFSS foods are defined as "those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the Commission". We would recommend using the WHO Nutrient Profile Model to determine what products are classified as HFSS. We are

⁶ <https://www.safefood.net/getmedia/73152a66-def2-4dd8-8c28-6184bdde438b/safefood-2017-cost-of-childhood-obesity-Report.pdf>

⁷ [Policies to protect children from the harmful impact of food marketing](#)

conscious that the WHO has developed a nutrient profile model, and we would propose that consideration be given to using the WHO model in the context of reviewing the General and Children's Commercial Communications Codes and would be happy to discuss this further.

International Examples

The UK is set to implement legislation from October 1st, 2025, that will ban all commercial communications for food and beverage products deemed as HFSS across broadcast and on-demand media from 5:30am to 9:00pm. Included in this legislation is also a total ban on paid for advertising of these products online. This comprehensive approach represents a significant step forward in reducing children's exposure to unhealthy food marketing. By creating a protected time window and restricting online advertising, the UK legislation addresses multiple channels through which children are exposed to HFSS marketing.

Portugal introduced legislation in 2019 and is seen as an early mover in introducing legislation in unhealthy food marketing to children. The legislation introduced is aimed at restricting the advertising of HFSS foods to children aged 16 and under. The law covers advertisements broadcasted in the 30 min before and after programmes targeted at children or for which a minimum of 25% of the audience includes children under 16 years old, and extends across television programs and services, on-demand audio-visual communication services, and radio, including advertising in the respective breaks of these programs, as well as digital marketing restrictions.

A study carried out in Portugal to assess the potential exposure and power of food advertisements aimed at children, broadcasted on Portuguese TV channels found that there is still a high percentage of food advertisements with potentially child-directed content on television. This can be attributed to limitations of the legislation introduced, including enforcement and age verification across platforms. The study found that among all food and beverage advertisements, 78.3% did not meet the nutritional profile outlined by the Portuguese Directorate-General of Health, and while advertising aimed at children had decreased since the introduction of legislation, most HFSS food/beverage advertisements were targeted at families, which means that children and adolescents are likely exposed to large numbers of unhealthy food advertisements on television.

The legislation set to be enacted in the UK is a more comprehensive approach that ensures children are not targeted during peak advertising hours. These stricter standards provide a more robust and enforceable model that better protects children's health. The Healthy Weight for Children Group is advocating for similar restrictions to be implemented in Ireland. While we recognise that this consultation is solely focused on

broadcasting codes & rules for TV and radio, we would strongly encourage that the UK legislation be considered both presently in relation to the codes for TV and radio, and for future codes and rules relating to other broadcasting and on-demand media, including social media.

Question 5 HFSS food and beverage products recommendation

Proposal: The Healthy Weight for Children Group proposes that section 17 of the CCCC be amended to introduce codes like the legislation that is being introduced in the UK from the 1st of October 2025. The UK legislation will ban all commercial communications deemed as HFSS across broadcast and on-demand media from 5:30am to 9:00pm. Included in this legislation is also a total ban on paid for advertising of these products online. This comprehensive approach represents a significant step forward in reducing children's exposure to unhealthy food marketing. By creating a protected time window and restricting online advertising, the UK legislation addresses multiple channels through which children are exposed to HFSS marketing. The UK legislation is set to be introduced across multiple platforms in the UK. We recognise that this consultation is currently limited to broadcasting codes across TV and radio. However, the Healthy Weight for Children Group supports not only such changes to the broadcasting codes across TV and radio but supports similar codes to be introduced for online platforms. All proposed changes would need to be accompanied by strong monitoring and compliance systems and the work done under Best-ReMaP would be able to be used to facilitate such changes (see Appendix). Furthermore, consideration will need to be given to the continued use of the UK/ROI Nutrient Profile Model or to move to the WHO Nutrient Profile Model.

Question 7 Response

Why is the regulation of commercial communication of infant formula including follow-on formula so important?

The scale of the challenge to support more parents to make evidence-based decisions about infant feeding free from commercial influences has been documented in Ireland and by the WHO in the last year.

The recently published [World Breastfeeding Trends Initiative report](#) in October 2023 for Ireland outlines, that despite modest increases in breastfeeding rates, there is considerable progress to be made to reach the global target of at least 50% of babies exclusively breastfeed at 6 months. The predominant culture for infant feeding is Ireland

is that of formula feeding, and the report outlines recommendations to protect parents from marketing which is significantly influencing infant feeding behaviours in Ireland.

The Lancet series⁸, the most seminal recent international research on infant feeding was published in Feb 2023. This three-part series emphasises that multifaceted policy and societal responses are needed to increase breastfeeding rates and the need to mitigate negative undermining commercial influences. The series also illustrated how normal Infant behaviours can be misinterpreted as hunger or reframed as abnormal to promote artificial solutions by the formula feeding industry.

In a Briefing by the WHO in Jun 2023 titled *Countries Discuss Measures to Combat Industry Erosion of Exclusive Breastfeeding*, (<https://healthpolicy-watch.news/measures-to-combat-industry-erosion-of-exclusive-breastfeeding/>) the following points were noted:

- Rates of exclusive breastfeeding are 20% higher in countries that have legislation substantially aligned with the code
- Continuation of breastfeeding in the first two years of life is more than twice as high when the legislation is substantially aligned with the code. “Let’s put a stop to the commercialisation of our children’s health. It’s time to end exploitative marketing,” said the WHO Director General.
- Little progress (in increasing breastfeeding rates) has been made in high-income countries where the code has not been made into effective legislation and, as a result, exclusive breastfeeding rates are stagnating
- Manufacturers of breast milk substitutes are also using increasingly sophisticated marketing tactics, including targeted ads on pregnant mothers’ mobile phones, clandestine participation in online baby clips, or coaxing mothers to market formula to one another.
- High-income countries have the lowest rates of exclusive breastfeeding in children under six months
- Meanwhile, only 32 countries are fully compliant with the code and many others needed to update their legislation to address the “new forms of marketing”, including digital outreach and donations to professional societies

Despite laws governing cross-promotion of labelling and advertising of products in Ireland, there can be confusion with regards the labelling of products and lots of similarities between infant formula and follow-on formula. In a recent multi country study, the WHO and UNICEF found it is commonplace for mothers to recall seeing adverts for infant formula, which included the UK (78%), a country like Ireland which has restrictions on the advertising of infant formula. Parents likely recalled advertisements for follow-on formula or other products e.g. careline/baby club but

⁸ <https://www.thelancet.com/series/Breastfeeding-2023>

recognised the brand as infant formula, so recalled the advertisements as such. <https://www.who.int/publications/i/item/9789240044609>. The intended audience for products is parents and they should be included in the decisions around what is permitted/not permitted under this definition and it's monitoring, so to ensure that the codes are implemented, as intended.

Question 7 Recommendations

The updating of the broadcasting codes represents a significant opportunity to drive policy objectives of Healthy Ireland, further fostering the cooperation with relevant organisations, building on the ongoing activities related to the development of specific additional requirements and having regard to the Act's prohibition or restriction of the inclusion in programmes or user-generated content of commercial communications: infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars.

Recommendations:

- (i) extend beyond current EU laws, to prohibit the advertising of follow-on milks and toddler milks due to the similarities with infant formula and follow-on formula logos and branding. Furthermore, marketing communications should not allow any advertisements or cross promotion of products with logos and branding like infant formula, follow-on formula and toddler milks.
- (ii) also take account of prohibiting the advertising of formula feeding products in Ireland that relevant competent authorities (e.g. FSAI, Saferood and the HSE) deem inappropriate/unsafe for the physical development of the child, e.g. formula preparation machines, UV sterilisers and bottle warmers
- (iii) these prohibitions should extend to the digital space where more and more parents spend their time.

Question 10 Response Product Placement and Sponsorship

How sponsorship and product placement impact health

Sponsorship and product placement are forms of food marketing and brand awareness. The Healthy Weight for Children Group is of the opinion that product placement and sponsorship by companies that produce and sell HFFS products plays a key role in shaping dietary behaviours and public health outcomes. It has been shown to influence children's food choices, normalise the consumption of unhealthy foods, and create misleading associations between unhealthy foods and healthy lifestyles. The result can be a negative impact on public health by contributing to food-related ill health such as heart disease, type 2 diabetes, some cancers and obesity.

The American Academy of Pediatrics has published several reports on how food advertisements (including those via product placement in media) influence children's dietary behaviours and contribute to food related ill-health such as obesity⁹. Research in journals like Paediatrics and The American Journal of Clinical Nutrition examining the effects of food marketing on children and adolescents, highlights how product placements of sugary snacks or fast-food increase consumption¹⁰.

Question 10 recommendations

GCCC Section 8.11 and Section 9.9 outline the limitations on who can engage in sponsorship arrangements. In line with the Healthy Weight for Children Group recommendation that GCCC Section 14 be used to term the marketing and promotion of HFSS food and beverage products to children as harmful, it also proposes that these sections should be the basis for introducing greater restrictions on sponsorship by sponsors whose product portfolio includes HFSS food and beverage products.

Regulating these sponsorships, particularly in vulnerable populations such as children, is crucial to mitigating their health impacts.

Furthermore, there should not be erosion in current restrictions around product placement and sponsorship. The Healthy Weight for Children Group urges Coimisiún to keep the EU AVMS directive which includes a general ban on all product placements. The rules for sponsorship should not be relaxed to allow for more commercial activity, especially removing the prohibition on sponsorship logos during children's programmes. In relation to radio broadcasting, we recommend Coimisiún to not allow for an exemption for radio programmes from the requirement to separate sponsorship from programming.

Overall, the Healthy Weight for Children Group are satisfied that the current distinctions between advertising, sponsorship and production placement in the GCCC are sufficiently clear.

Conclusion

In conclusion, the Healthy Weight for Children Group feel that the advertising of HFSS food and beverage products, follow-on formula and any erosion in current sponsorship and product placement restrictions represent significant health risks, especially for children. Evidence clearly supports the need for stricter regulatory codes to limit children's exposure to these harmful marketing practices. An overhaul of both the

⁹ Gantz W, Schwartz N, Angelini JR. Television food advertising to children in the United States. The Kaiser Family Foundation. 2007 Mar;4.

¹⁰ Boyland E, McGale L, Maden M, Hounsime J, Boland A, Angus K, Jones A. Association of food and non-alcoholic beverage marketing with children and adolescents' eating behaviors and health: a systematic review and meta-analysis. JAMA pediatrics. 2022 Jul 1;176(7):e221037-.

General Commercial Communications Code and the Children's Commercial Communications Code is necessary to protect children from the harmful marketing of HFSS food and beverage products, and there is space to learn from international best practices, such as the upcoming UK legislation, which can lead to more effective strategies in addressing childhood obesity and promoting healthy dietary habits. The Healthy Weight for Children Group would support the Coimisiún na Meán to act decisively to protect the health of children by ensuring comprehensive and enforceable restrictions on the advertising of HFSS food and beverage products and infant formula and follow-on formula are included in the upcoming revision of codes and rules for broadcasting on TV and radio. Similarly, we would like to see no change to the current restrictions on product placement and sponsorship.

Consultation response form – Stage 2 Deadline 30th November 2024

This form lists the questions that Coimisiún na Meán is seeking submissions on in response to the stage 2 public consultation on draft revised Media Service Codes and Rules.

Please complete any or all sections of this form and return by email, by post or by hand to:

Post: Coimisiún na Meán, One Shelbourne Building, Shelbourne Road, Dublin 4, D04 NP20.

You do not have to respond to all questions in your submission to the consultation.

When preparing your response, please:

- refer to the full text of the Draft Codes and Rules and not the summaries provided in the consultation document, which are intended to be indicative only;
- clearly identify the specific section(s) or proposal(s) of the Draft Codes and Rules that are being addressed in the response;
- give reasons for your answer; and
- be concise.

Please note that this form is provided for your convenience only. Coimisiún na Meán accepts submissions in other formats or means should you prefer.

Respondents may wish to refer to Coimisiún na Meán's [Consultation Guidelines](#), which can be accessed on our website.

Important note on confidentiality:

It is Coimisiún na Meán's intention to publish submissions received in response to this consultation. If you wish to make all or any part of your submission on a confidential basis, please indicate this clearly at the start of your response to each relevant question.

Coimisiún na Meán will treat confidential information in accordance with its Consultation Guidelines.

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 30th November 2024
Full name	Laura McHugh
Contact phone number	
Representing	Organisation (Delete as appropriate)
Organisation name	Health Service Executive
Email address	

Your response:

Please insert your response under each of the respective questions below.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

Question 2: Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science, and health?

Question 3: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?

Question 4: Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?



Question 5: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

Question 6: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

Question 8: Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.



Question 9: Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

Question 10: Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

Question 11: Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?

Question 12: Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?

Submission to Consultation document: Revised Broadcasting Codes and Rules

<https://www.cnam.ie/coimisiun-na-mean-launch-consultation-on-revised-broadcasting-codes-and-rules/>

From: HSE National Child Health Public Health Programme

- Dr Abigail Collins, Clinical Led Child Health Public Health
- Anne Pardy, Programme Manager, National Healthy Childhood Programme
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1.0 National Child Health Public Health Programme

Approximately 55,000 babies were born in Ireland in 2023¹ and, as children (under 18 years) account for 25% of the Irish population, we have the youngest population in the EU².

The Health Service Executive, through the delivery of The National Child Health Public Health Programme, has a key role in supporting families so these babies can fully realise their potential into adulthood. From birth to their 14th birthday each child will have had at least 22 contacts with the health service as part of the Programme – that is 1.5 million opportunities to “Make Every Contact Count”. Making every contact count is critically important - investment in the early years of life, starting from conception, creates the best outcomes for children, providing the foundations for health and development over their lifetime.

Breastfeeding is the biologically normal feeding method for infants and young children and ensures optimum growth and development. The World Health Organization (WHO), Department of Health and the HSE recommends that infants are exclusively breastfed for the first six months with continued breastfeeding up to 2 years or beyond³. Despite 64% of babies starting to breastfeed in hospital, by the time the baby is 3 months old, formula feeding is the prevailing cultural norm in Ireland, with approximately 69% of babies receiving some formula at 3 months old.

The HSE, in its public service duties, provides evidenced based information and support to all parents regardless of their feeding method of choice. This submission will outline how current laws are diluting the impact of this support and misleading the public and indeed some staff as to the role of infant and follow-on formula due to the pervasive advertisements of these products in Ireland.

We were surprised by, and disagree with, the decision to exclude crucial protections for supporting the healthy development of children within the scope of the recently published online safety Codes, given the explicit provision outlined within the Online Safety and Media Regulation Act 2022:

‘Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit or restrict, in accordance with law, the inclusion in programmes of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars’.

¹ <https://www.hse.ie/eng/about/who/acute-hospitals-division/woman-infants/national-reports-on-womens-health/irish-maternity-indicator-system-national-report-2023.pdf>

² <https://ec.europa.eu/eurostat/web/interactive-publications/demography-2023>

³ <https://www.who.int/news-room/fact-sheets/detail/infant-and-young-child-feeding>

The HSE National Child Health Public Health Programme is of the view that broadcasting codes and rules need to be strengthened to protect infants, young children and their families from the harmful effects of such advertising and welcome the opportunity to respond to this consultation. We will take the opportunity to provide feedback relating to the general commercial communications code and online media safety codes in general.

2.0 Background

The WHO consistently emphasise and encourage member states to [adopt national measures to implement the International Code of Marketing of breast milk substitutes](#) and end the inappropriate promotion of foods for Infants and Young children.

Restricting marketing does not mean that the products cannot be sold, or that factual and scientific information about them cannot be made available to healthcare professionals. Nor does it restrict parents' choice. It simply aims to make sure that their choices are made based on full and impartial information rather than misleading, inaccurate, or biased marketing claims.

The WHO published guidance for member states in November 2023 for developing and applying regulatory measures aimed at restricting digital marketing of products that fall within the scope of the International Code of Marketing of Breast-milk Substitutes and other subsequent relevant resolutions of the World Health Assembly by applying the Code to digital environments in response to a request from the Seventy-fifth World Health Assembly.

Priority should be given to protect parents and children online, given that this is where the majority of the lucrative marketing takes place and where the greatest protections need to be⁴. The [Scope and impact of digital marketing strategies for promoting breast-milk substitutes](#) noted that digital environments are fast becoming the predominant source of exposure to promotion of breast-milk substitutes globally, digital marketing amplifies the reach and power of advertising and other forms of promotion in digital environments, and exposure to digital marketing increases the purchase and use of breast-milk substitutes. Broadcasting codes in Ireland need to reflect this international recommendation.

The lancet series⁵, the most seminal recent international research on infant feeding, emphasised that multifaceted policy and societal responses are needed to increase breastfeeding rates and the need to mitigate negative, undermining commercial influences. The series also illustrated how normal Infant behaviours can be misinterpreted as hunger or reframed as abnormal to promote artificial solutions by the formula feeding industry.

In a Briefing by the WHO in Jun 2023 titled *Countries Discuss Measures to Combat Industry Erosion of Exclusive Breastfeeding*, (<https://healthpolicy-watch.news/measures-to-combat-industry-erosion-of-exclusive-breastfeeding/>) the following points were noted:

⁴ <https://iris.who.int/bitstream/handle/10665/373130/9789240077249-eng.pdf>

⁵ <https://www.thelancet.com/series/Breastfeeding-2023>

- Rates of exclusive breastfeeding are 20% higher in countries that have legislation substantially aligned with the code.
- Continuation of breastfeeding in the first two years of life is more than twice as high when the legislation is substantially aligned with the code. “Let’s put a stop to the commercialization of our children’s health. It’s time to end exploitative marketing,” said the WHO Director General.
- Little progress (*in increasing breastfeeding rates*) has been made in high-income countries where the code has not been translated into effective legislation and, as a result, exclusive breastfeeding rates are stagnating.
- Manufacturers of breast milk substitutes are also using increasingly sophisticated marketing tactics, including targeted ads on pregnant mothers’ mobile phones, clandestine participation in online baby videos, or coaxing mothers to market formula to one another.
- High-income countries have the lowest rates of exclusive breastfeeding in children under six months.

Meanwhile, only 32 countries are fully compliant with the code and many others needed to update their legislation to address the “new forms of marketing”, including digital outreach and donations to professional societies.

The HSE National Child Health Public Health Programme has 8 core recommendations which are important to attend to.

1. The scope of the definition for prohibited commercial communications should be expanded to extend beyond EU laws, to **FULLY** prohibit the advertising of follow-on milks and toddler milks due to the similarities with infant formula and follow-on formula logos and branding, which means including any milks (or products that could be used to replace milk) that are specifically marketed for feeding infants and young children up to the age of 3 years.
2. That infant formula and follow-on formula is included within all of Ireland’s regulatory media service codes, including the most significant and influential online safety codes.
3. That robust and transparent control measures are put in place to comply with all related Irish and EU laws are part of provision 21.10 to include:
 - a. The onus of responsibility with monitoring of marketing should be with the broadcaster, video sharing platform services and producers of the advertisements and not with the end user to submit complaints. Self-regulation and individual complaints processes are not sufficient.
 - b. Review the scope of existing control measures with the Advertising Standards Authority for Ireland (ASAI) and align and/or expand their scope, where indicated.
 - c. Require broadcasters and video sharing platform services to monitor, report and publish the actions taken to ensure compliance with broadcasting codes.
 - d. Develop effective, dissuasive sanctions for non-compliance.

4. The criteria for what is permitted as evidence which enables companies to make “no.1” claims needs to be amended to remove market research surveys from the list of criteria for any commercial milk formula product.
5. Follow on formula producers should be prohibited from advertising or drawing attention to non-mandatory ingredients names, abbreviations or illustrations in advertisements.
6. Amend section 21.1 B) to indicate that this product is unsuitable for infants and young children up to the age of 12 months.
7. The language used in advertisements of follow on formula must be tightly monitored and expanded beyond the wording used in the regulations, in order to adapt and prevent industry from directly and indirectly making health benefits claims, that may cause confusion between infant formula and follow on formula and its comparability with breast milk.
8. The scope of section 21.11 D should:
 - a. Fully take into account the evidence that cross promotion between infant formula, follow-on formula and toddler milks is taking place currently within the scope of the current laws and adopt measures to stop this practice.
 - b. Restrictions on marketing communications should also be expanded to include the multiple channels used by companies to indirectly promote their infant and follow on formula branding, e.g. through care lines and baby clubs.
 - c. Prohibit the advertising of formula feeding products that relevant competent authorities (e.g. FSAI, Safer Food and the HSE) deem inappropriate/unsafe for the physical development of the child, e.g. formula preparation machines, UV sterilisers and bottle warmers.
 - d. Prohibit incentives, rewards or provision of free samples within all forms of advertisements (online and broadcasting), which are used to attract the user to sign up to the website/product with logos/branding/similarities to any formula milk or toddler milk product.

2.0 Question 7 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

The view of the HSE Child Health Public Health Programme is that sections 21.1 and 21.11 are unfit for its purpose of protecting parents from marketing from infant formula, as the relevant Irish and EU laws in this area are not in line with accepted WHO recommendations, DOH and HSE infant feeding policies.

2.1 Follow on formula – clever marketing ploy

Given the special vulnerability of infants and young children and the risks involved in inappropriate feeding practices, usual marketing practices are unsuitable for these products.

Follow-on formula was created to get around advertising laws⁶. This allows the companies to advertise the same brand name, logos, colour of packaging and style of infant formula on TV, online, in magazines and elsewhere. When people see adverts for follow-on formula, some think they are seeing adverts for infant formula⁷.

There have been a number of World Health Assembly (WHA) resolutions adopted since 1981 that refer to the marketing and distribution of breast-milk substitutes and clarify or extend issues covered in the Code⁸. For example the 2016 resolution on ending inappropriate promotion of foods for infants and young children ([WHA 69.9](#)) urges Member States, manufacturers and distributors, health care professionals and the media to implement new WHO Guidance recommendations that contain a number of implications for the Code:

- Clarification that “follow-up formula” and “growing-up milks” fall under the scope of the Code and should not be promoted.
- Recommendation that messages on complementary foods should always include a statement on the need for breastfeeding to continue through 2 years and that complementary foods should not be fed before 6 months.
- Recommendation that the labels and designs on products other than breast milk substitutes need to be distinct from those used on breast-milk substitutes to avoid cross-promotion.

The 2022 resolution [WHA75\(21\)](#) led the WHA to request that the director general develop guidance for Member States on regulatory measures aimed at restricting the digital marketing of breast-milk substitutes, so as to ensure that existing and new regulations designed to implement the International Code of Marketing Breast-milk Substitutes and subsequent relevant Health Assembly

⁶ Milking it – How milk formula companies are putting profits before science available at: <https://changingmarkets.org/wp-content/uploads/2017/10/Milking-it-Final-report-CM.pdf>⁸.

⁷https://static1.squarespace.com/static/59f75004f09ca48694070f3b/t/5f93548ed1d6ae350aa8050c/1603490967170/Marketing_of_infant_milk_in_the_UK-what_do_parents_see_and_believe_finala.pdf

⁸ <https://iris.who.int/bitstream/handle/10665/254911/WHO-NMH-NHD-17.1-eng.pdf>

resolutions adequately address digital marketing practices. This work was published at the end of 2023 <https://www.who.int/publications/i/item/9789240084490>.

Recommendation 1

The scope of the definition for prohibited commercial communications should be expanded to include any milks (or products that could be used to replace milk) that are specifically marketed for feeding infants and young children up to the age of 3 years, including follow-up formula and growing-up milks, in line with WHO recommendations and HSE infant feeding policies.

Recommendation 2

That infant formula and follow-on formula is included within all of Ireland's regulatory media service codes, including the most significant and influential online safety codes.

2.2 Issues with current wording in sections 21.10 to 21.11

We are competent experts in the area of infant feeding and disagree that sufficient information on the appropriate use of these products is currently provided in advertisements. In our opinion that adverts are misleading for parents and that current laws are not being upheld. We will use the example of this recent advertisement for follow on formula to illustrate some of our points, <https://www.youtube.com/watch?v=snplYNNqhDw>.

- 2.2.1 **Section: 21.10.** The WHO in 2022 describe formula milk advertising as '*one of the most underappreciated risk to infants and young children health as it undermines parents confidence in breastfeeding*'. In the absence of a robust monitoring framework, international and national concerns around unethical marketing practices for infant feeding continue, and are not sufficiently monitored.

Self-regulation and individual complaints processes to the relevant agency, e.g. FSAI and ASAI are not sufficient to ensure companies adhere to infant formula and follow on formula regulations. For example the World Breastfeeding Trends Initiative ([WBTI](#)) [report on page 34](#) cites that 6 cases were upheld by the ASAI about inappropriate advertising of commercial milk formula. We are not aware of any penalties or fines issued for breach of legislation regarding advertising and promotion of infant formula. At present, it appears that the most used "sanction" is to request that an advertisement/ promotion/ marketing tool be discontinued. We feel that this is insufficient, and that the advertisement may have already served its purpose of promoting the brand/product by the time its removal is requested.

Recommendation 3

That robust and transparent control measures to comply with all related Irish and EU laws are part of provision 21.10 to include:

- I. The onus of responsibility with monitoring of marketing should be with the broadcaster, video sharing platform services and producers of the advertisements and not with the end user to submit complaints. Self-regulation and individual complaints processes are not sufficient.
- II. Review the scope of existing control measures with ASAI and align and/or expand their scope, where indicated.

- III. Require broadcasters and video sharing platform services to monitor, report and publish the actions taken to ensure compliance with broadcasting codes.
- IV. Develop effective, dissuasive sanctions for non-compliance.

2.2.2 **Section 21.1 A).** It is misleading to infer that the follow on milk as seen in image 1 is the no.1 recommended milk in Ireland. Follow on milks are not recommended on a population basis by the DOH and the HSE. Parents are advised of this within parent resources in print and online, <https://www2.hse.ie/babies-children/bottle-feeding/types-formula/>. The categories of 'proof' as permitted within current laws are unquestionably not appropriate here. Market surveys (most likely funded though industry) should not be allowed to be quoted as 'no.1' recommendation with regards to any commercial milk formula product as these are not recommended by health care professionals, and using the word recommended here implies a health recommendation, which is inaccurate and not in line with the spirit of the legislation that prohibits the advertising of infant formula. This point also relates to section 14.5 – that claims that a brand is no.1 shall be based on facts that can be substantiated.

This section is too vague in its provisions to prohibit companies from implying that their product is superior to breastfeeding *either directly or by implication*. The quoting of additional ingredients or quantities of ingredients outside of mandatory requirements in the advertisements implies superiority of this product (image 2). Current regulations permit the addition of GOS and FOS to infant and follow on formula, stating maximum amounts, however they are non-essential ingredients. The addition of GOS/FOS does not make the product superior and the tactic that this product contains 50% more GOS/FOS misleadingly implies that the product is better. If this were the case, the legalisation would have allowed for this in the mandatory ingredients. GOS/FOS as outlined in this advertisement is not an easily understood term, implies that it is beneficial, and for those reasons should not be permitted.

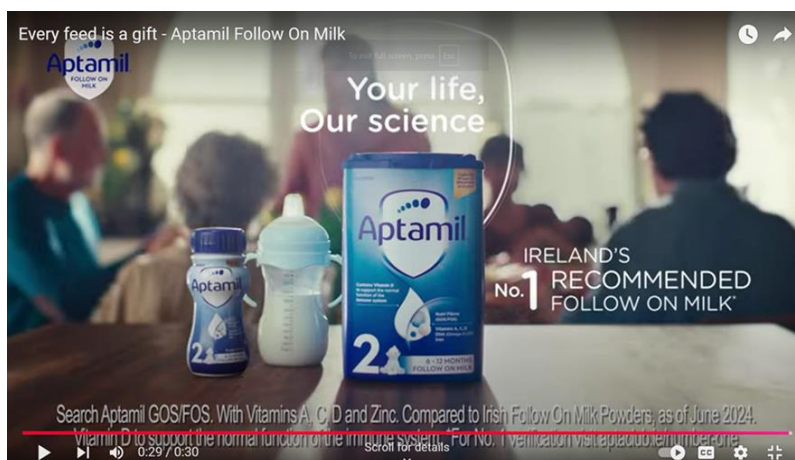


Image 1

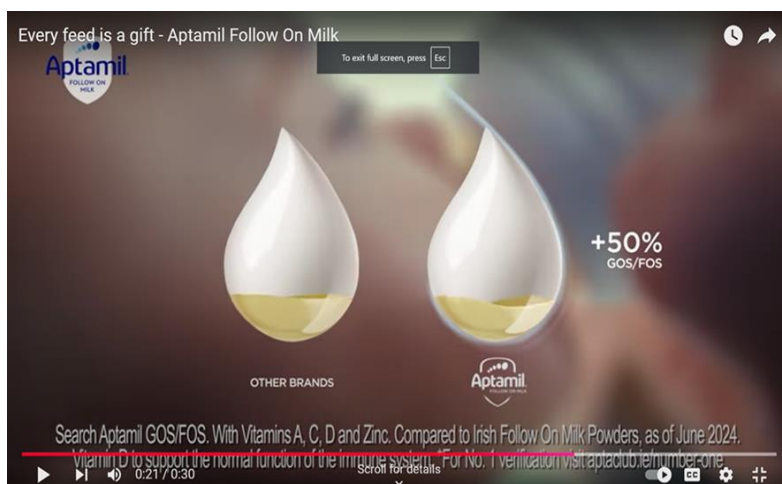


Image 2

Recommendation 4

Market research surveys should not be allowed as evidence to quote 'no.1' recommendation with regards to any commercial milk formula product.

Recommendation 5

Follow on formula producers should be prohibited from advertising or drawing attention to non-mandatory ingredients names, abbreviations or illustrations in advertisements.

- 2.3.3 **Section 21.1 B).** The DOH and the HSE recommend that if babies are formula fed, that they are fed First follow on milk until their baby is 12 months old, after such time, they can be fed cow's milk. The provision as written is against health advice here and we suggest that this is amended to 1 year.

Recommendation 6

Amend section 21.1 B) to indicate that this product is unsuitable for infants and young children up to the age of 12 months.

- 2.3.4 **Section 21.1 C).** It is our view that this section is incomplete, and allows for too much subjective opinion in assessing an advertisement, allowing the companies to use words and imagery to glamorise, endorse and promote infant and follow-on formula as the optimum source of nutrition for infants and young children and their families. *"other terms similar to them"* leave too much scope with the companies and little guidance for broadcasters as to what similar terms actually means. For example, In this [advertisement for follow on formula](#), the use of many terms together including the "no.1 recommendation" in our view also implies a health recommendation and when taken alongside the language used across the entire advertisement e.g. "immune benefits", "every feed is a gift", "dedicated 50 years to breastmilk research", "50% more GOS/FOS" than any other brand" and "your life, our science", implies that this product is beneficial and superior.

Recommendation 7

The language used in advertisements of follow on formula must be tightly monitored and expanded beyond the wording used in the regulations, in order to adapt and prevent

industry from directly and indirectly making health benefits claims that undermine a mothers confidence in her ability to breastfeed and may cause confusion between infant formula and follow on formula and its comparability with breast milk.

2.3.5 **Section 21.1 D).** Despite laws governing cross promotion of labelling and advertising of products in Ireland, there can be confusion with regards the labelling of products and lots of similarities between infant formula and follow-on formula.

Advertisements for baby clubs and carelines (with logos, colouring and branding similar to infant formula, follow on formula and toddler milks) are used to market infant formula and follow on formula and gain contact details, within the scope of current laws.

In a recent [multi country study](#), the WHO and UNICEF found it is commonplace for mothers to recall seeing adverts for infant formula, which included the UK (78%), a country which has restrictions on the advertising of infant formula, as does Ireland. Parents likely recalled seeing saw advertisements for follow-on formula or other products e.g. careline/baby club but recognised the brand as infant formula. Dr Amy Brown also confirmed such practices in a [UK based survey](#) of 1300 mothers.

The brand name, colour, style and logo and colours of the follow on formula packaging in images 1,2,3 and 4 in this submission are practically identical to the infant formula equivalent. The blue cap, dominant logo and use of blue and white colours throughout (image 4), make it hard to distinguish clearly between the infant formula and follow on formula product. The current provisions that *“they shall be designed in such a way that it avoids any risk of confusion between infant formula and follow-on formula and enables consumers to make a clear distinction between them, in particular as to the text, images and colours used”* does not go far enough and should also require that the packaging using the advertisements should also be clearly distinguishable – i.e. the colours of the containers and the use of the brand logos in a prominent position should not be permitted.



Image 4

The following online advertisements from October 2023 also illustrate the similarities in the use of logos, colours, style of wiring and enticing mothers to join a baby club while pregnant by means of a

promotion. In line with international research findings, the baby club is clearly a front to entice pregnant women to sign up and receive more sophisticated targeting messaging in line with their baby’s stage of development.

<div><div>12:124G</div><div><div><div><div>C&G</div><div>C&G Babyclub Ireland</div><div>Sponsored</div></div><div><div>FANCY WINNING A FREE HAMPER? Sign up with C&G Babyclub to get expert advice throughout pregnancy and when baby arrives. Also, be in with a chance to win a hamper full of pregnancy and baby goodies! We'll pick one lucky C&G Babyclub member who signs up from 01/10/23- 31/10/23. 🍀</div><div>Winner will be emailed within 2 weeks of the closing date. 18+. ROI only. No purchase necessary. Starts 9 a.m. on 01/10/23. Entries must be received by 9 a.m. on 30/10/23. To enter, sign up to https://www.candgbabyclub.ie/register.html . 1 winner. Prize is a hamper, contents may vary to the one pictured. For competition T&C's please see here: http://bitly.ws/9P68 and for full T&C's see our website: https://www.candgbabyclub.ie/.../terms-and-conditions.html</div></div></div><div><div><div>WIN</div><div>a hamper</div><div>for you and your baby</div><div>worth up to €150</div></div><div><div>Join C&G baby club</div><div>to enter</div></div></div><div><div><div>Write a comment...</div><div><div><div></div><div>GIF</div><div></div></div></div></div></div></div></div>	<div><div><div><div>SMA</div><div>nutrition</div></div><div>SMA Nutrition UK & Ireland</div><div>Sponsored</div></div><div><div>Join SMA® Baby Club for a chance to win a €1,000 voucher to spend on baby essentials. Full terms and conditions visit https://babyclub.smababy.ie/j... See more</div></div><div><div><div>A chance to</div><div>WIN</div><div>€1000</div><div>for you and your baby</div></div><div><div>Join SMA® Baby Club to enter</div><div>T&C's Apply*</div></div><div><div>smababy.ie</div><div>Sign up</div><div>Sign Up</div></div></div></div>
<div><div>The C&G baby club logo has similarities with the logo used in the range of Cow & Gate products below</div><div><div><div>• colour</div><div>• large heart shape</div><div>• small heart shape</div><div>• font style</div></div></div></div>	<div><div>The SMA baby club logo has similarities with the logo used in the range of SMA products below</div><div><div><div>• colour pattern</div><div>• design</div><div>• font style</div></div><div>Additionally in the advertisement above, the words SMA nutrition and SMA baby club are used interchangeably, implying alignment with each other and supporting brand recognition.</div></div></div>
<div><div><div><div><div>1</div><div>First infant milk</div><div>ready to use</div></div><div><div>comfort</div><div>ready to use</div></div><div><div>Follow-on milk</div><div>ready to use</div></div></div></div></div>	<div><div><div><div><div>3</div><div>GROWING UP MILK</div><div>100g</div></div><div><div>100g</div></div><div><div><div>PRO</div><div>100g</div></div></div><div><div><div>PRO</div><div>100g</div></div></div></div></div></div>

The advertisements above use imagery of a pregnant woman, a baby club logo, and the adverts are promoting a new membership reward too. The C&G advertisement also states that no purchase is necessary, it is equivalent to offering free products as an enticement to sign up. As the baby club logos are very similar to the Cow & Gate and SMA logo on the formula and follow-on formula products, such adverts promote the brand and try to entice women to sign up to the baby club,

providing future marketing opportunities which is not immediately obvious to the viewer. Once you log into any of the companies baby clubs – first infant milks are advertised by clicking on “products” from the home page.

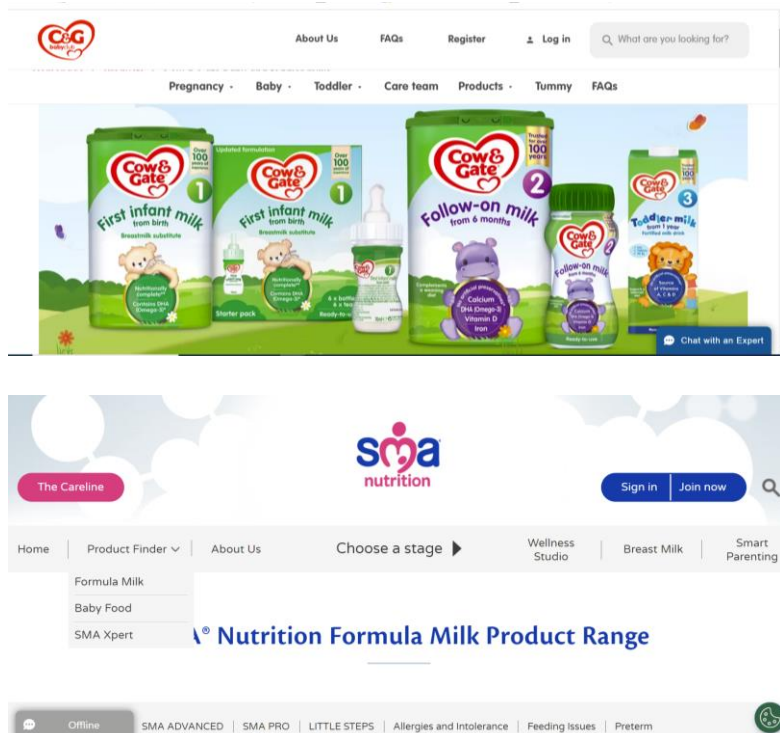


Image 3

Furthermore, using imagery of a pregnant woman in the online advertisement, and offering a reward for signing up to a company that is a competitor of breastfeeding, is not responsible, as it is scientifically proven that breastfeeding gives infants and young children the optimal start in life. Not being breastfed is associated with an increased incidence of infectious morbidity, including otitis media, gastroenteritis, and pneumonia, as well as elevated risks of childhood obesity, type 1 and type 2 diabetes, and sudden infant death syndrome (SIDS)⁹.

Neither is it responsible to target women while pregnant, who are being subjected to mixed messages around feeding during this time. HSE services are promoting and preparing mothers to breastfeed as the optimum infant feeding method after birth. This is an emotionally vulnerable time for parents who want to do the best for their babies. Exposure to such advertising may impact negatively on the confidence they have in themselves and their bodies to breastfeed, while aiming to make them brand-loyal. The advertisement above demonstrate the tactics that companies employ to target younger, pregnant women in particular – referred to by some marketing executives as the “holy grail” for formula milk sales¹⁰.

Recommendation 8: The scope of section 21.11 D should:

⁹ <https://www.thelancet.com/series/breastfeeding>

¹⁰ Hastings G, Angus K, Eadie D, Hunt K. Selling second best: how infant formula marketing works. *Globalization and Health*. 2020;16(1):77.

9. Fully take into account the evidence that cross promotion between infant formula, follow-on formula and toddler milks is taking place currently within the scope of the current laws and adopt measures to stop this practice.
10. Restriction of marketing communications should be expanded to include the multiple channels used by companies to indirectly promote their infant and follow on formula branding, e.g. through care lines and baby clubs.
11. Prohibit the advertising of formula feeding products that relevant competent authorities (e.g. FSAI, Safefood and the HSE) deem inappropriate/unsafe for the physical development of the child, e.g. formula preparation machines, UV sterilisers and bottle warmers.
12. Prohibit incentives, rewards or provision of free samples within all forms of advertisements (online and broadcasting), which are used to attract the user to sign up to the website/product with logos/branding/similarities to any formula milk or toddler milk product.

Consultation response form – Codes Stage 2 - Deadline 20th December 2024 – submitted by Independent Broadcasters of Ireland

We note we do not have to respond to all questions in your submission to the consultation. We believe we have clearly addressed the issues in a concise way, and are happy to provide any clarification required.

Confidentiality: We note that it is Coimisiún na Meán's intention to publish submissions received in response to this consultation and we have no difficulty in our submission being published.

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 20 th December 2024
Full name	MICHAEL KELLY, CHIEF EXECUTIVE
Contact phone number	
Representing	INDEPENDENT BROADCASTERS OF IRELAND
Organisation name	INDEPENDENT BROADCASTERS OF IRELAND
Email address	

Response:

We have inserted our response under each of the respective questions below and we start with an introduction.

Introduction

The Independent Broadcasters of Ireland (IBI) welcomes the opportunity to input into Coimisiún na Meán's review of the Broadcasting Codes and Rules. This is a timely opportunity to ensure the independent commercial radio sector is supported by a modern regulatory framework that strikes the balance between providing simplified, proportionate guidance that upholds high editorial standards, while enabling the sector to operate and thrive commercially in a complex and competitive media market.

While we will respond to individual consultation questions in turn below, in general, we note that the Stage 2 Review seems to start from a point of considering what additional regulation could be put in place or that additional regulation is required.

We would instead respectfully ask the Coimisiún to consider a more proportionate and risk-based approach before launching any expanded regulation, bearing in mind that radio is already a highly regulated and respected medium. We would encourage the Coimisiún to only create additional editorial or commercial regulations where there is unmistakable evidence of potential or actual audience harm. We would stress that broadcast media has a very good track record of compliance, respect for individuals, and for fact checking and countering misinformation. The majority of calls for greater regulation are justifiably directed at social media companies.

We would also suggest that prior to introducing any further editorial or commercial regulation, the Coimisiún should undertake economic impact assessments, to understand the financial impact of any proposed new regulations or policies on the range of stakeholders it regulates. This needs to be mindful of the lack of a level playing-field in Ireland, and the potential for extensive and intrusive further regulation to focus on broadcasters in general and radio in particular while competing players in the media market remain unregulated or benefit from self-regulation.

We believe that increasing regulation has the potential for negative outcomes, if implemented without consideration of the burden on small sector (independent radio) operating in small, open market, which is to a large extent anglophone, meaning that widespread competition by audio products or services from across the world is a feature of the Irish landscape. Irish radio is determined to, and able to, compete but it needs a level-playing field in all areas, including regulation.

We note that the Irish independent radio sector is a mature one which has been regulated since 1989 and therefore respectfully suggest that further detailed consideration is needed before large-scale increase in regulation for our sector.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

We do not believe that there is a need for additions or amendments related to environmental sustainability as we believe that the independent radio sector, both in its commercial operations and in news and current affairs reporting, already provides highly accurate, balanced and responsible content of both issues which is covered by existing Codes.

We specifically deliver fair, balanced and accurate information on this topic. Our industry has given a lead in this area with initiatives such as the “Ours to Protect” series, and all IBI members are part of the Broadcasting Sustainability network.

The addition of further Codes could we submit, 1.) lead stakeholders or listeners to feel that there has been a problem in the past, which would be an inaccurate conclusion and without any basis, 2.) interfere unnecessarily with the normal operational and editorial freedom and independence in considering all issues on their merits and 3.) create a perception that where coverage of these issues takes place it is in some way directed by the “powers that be”, which is not the case. Our sector justifiably guards its freedom of editorial decision-making which is protected under the EU Media Freedom Act and national and international law. We are already highly responsible, ethical, compliant and regulated in our overall coverage and commercial operations and further regulation on particular topics is not required, and as stated, could have negative and unintended consequences. This point is expanded further in our response to Question 2. We believe that the input of stakeholders who are specifically operating stations or representing views of stations in the broadcast sector should be considered carefully before any new topic-based regulation is introduced. The implementation of additional regulation in this area could result in heavier, more onerous and unsustainable burdens on our sector.

Question 2: Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science, and health?

The Independent Broadcasters of Ireland recognises the importance of objective, accurate and factual reporting. We believe our record stands for itself in terms of: 1) the level of complaints or other compliance issues our sector receives; 2) our sector's high level of commitment through the employment of over 160 trained professional journalists across our sector; and 3) our commitment to ongoing training and development through the sector's training organisation, Learning Waves.

We have demonstrated our high editorial standards in covering matters related to climate change, science and health (particularly during the Covid-19 pandemic) as well as across many elections and referenda and in covering issues where debate arises on such issues of concern to listeners. We are not aware of any issues relating to the reporting of our members of the topics referred to that would warrant the inclusion of additional editorial regulation.

As set out in response to Question 1, the independent radio sector produces high quality programming on the topic of the environment and climate change, as well as routinely covering items concerning the environment, science and health in news bulletins and in regular discussion programmes. We refer in particular to our high quality "Ours to Protect" series, on independent stations which is shortly moving to series two with the assistance of the Sound and Vision support scheme, funded by the Coimisiún with the TV Licence.

The codes dealing with news and current affairs reporting function currently in maintaining awareness and compliance in relation to fair and balanced and accurate coverage of all issues including environmental, health and science matters. The introduction of specific rules on content and coverage of environmental/science or health matter is therefore unnecessary and would not bring any clear benefit to radio stations or listeners, or indeed to the serious debate on environmental issues in society. The introduction of new code requirements, if they affected editorial freedom, would not be conducive to trust among our listeners, and in fact may lead to an inaccurate and damaging conclusion that there has been some issue in the past with reporting, which we reject categorically.

We would caution that additional regulations might inadvertently provide a charter for groups or individuals putting forward their views in an unreasonable way, and to result in an excessive administrative burden on station management resources in dealing with challenges or complaints. A radio station has to retain the absolute right to protect itself from any risk of defamation or hate speech, and to ensure fairness and balance in content. This has to include the right of stations to offer reasonable alternatives and to work on bona fides ways to resolve any issues, as well as clear protections to support radio stations and individual journalists.

Question 3: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?

The coverage of election news and current affairs in the Independent radio sector was described by the late Tommie Gorman as “gold standard” and it is undoubtedly true and well-recognised by legislators that the standard of content and output in our sector is extremely high in relation to elections or referenda. We submit that it is not possible to deal with this issue comprehensively without addressing the “elephant-in-the-room”, or the continued restrictions of the election moratorium/period of extra care. Therefore, at the end of our comments in our answer to this question we deal with that briefly.

There is definitely a case for ensuring clarity on regulations and Codes around election coverage, making it clear that no candidate is guaranteed live on-air time and that decisions by those with editorial responsibility should be supported unless there is evidence of a major injustice. This need for clarity in editorial codes is because of the experience that some candidates seek election have gained their experience of communication in the unregulated and aggressive social media environments, where factual accuracy is not required. This means that it is possible that they are not aware of the legislative, regulatory and professional responsibility of broadcasters not to carry hate speech, defamation, or contempt of court or any other content which could negatively affect listeners on-air unedited. This needs to be explicitly addressed, and we believe it would be important that the Commission urgently expand its work in the area of digital safety to specifically and explicitly respond to intimidation or harassment of journalists, in the same way as its recent welcome procedures to protect election candidates. Pre-recorded sessions must be an available method recognised in the Codes for stations to meet their obligations to candidates in a fair way while managing risk to stations, their staff and listeners. The use of a complaints process by anyone can only be on good faith basis and the Codes need to ensure that is the case.

The Codes should be designed to be clear enough for busy news editors and journalists covering elections to use. We have a total over 160 journalists in such roles in independent radio across the stations collectively providing thousands of hours of election coverage and count station coverage in each election including candidate debates, analysis, discussion etc and they are at this stage exhausted by two sets of elections this year, so assistance from the Codes area of CnaM and from the Media Development area would be very welcome.

Experience in the most recent elections was that the change to the moratorium was not seen by most stations as lifting the regulatory burden in this area. We recognise that the changes had to be made

urgently, and we welcome that the Coimisiún clearly stated at the time the latest changes that it would review this again based on the experience of the most recent General Election.

Although no-one in the media had sought an increase in the amount of time that restrictions would apply, the period of additional care was brought forward from 2pm on the day before polling to 7am on that day. Our sector found that this was not justified factually and was not an improvement. In addition, the lack of specific guidance on coverage which could mislead or cause confusion or ought to have been known by broadcasters to confuse or mislead, including items which were factually accurate, was unhelpful. Effectively the changes introduced before the last general election resulted in most stations having to apply the previous moratorium restriction for a longer period because of perceived risk of regulatory sanction. While the decision on the moratorium was seen by some in a simplistic way as removing the moratorium, that was not the situation in practice. It brought extra uncertainty and a longer period affecting broadcast media than before.

We respectfully suggest that a far cleaner, clearer and more effective solution would have been to remove the moratorium entirely and for the Coimisiún to instead rely on the normal election news Codes and enhanced guidance which apply throughout an election campaign and indeed the 365-day compliance with overall fairness and balance of IBI members both of which work well. Since no moratorium whatsoever applies to web, social media, or news aggregators or other media beyond broadcast, it is arbitrary and unfair to apply the current restrictions to broadcast alone and that should be removed as argued strongly by all broadcasters in the consultations. There is also a risk that an item raised on the web or in social media which was misinformation could not be corrected by the trusted broadcast media, increasing the risk of election interference which could not be addressed. We urge that the call by broadcasters in the consultation submissions on this point is considered carefully and that the moratorium or period of extra care is removed entirely. The change trialed in the last election has been found not to improve the overall situation. The longer period was very unwelcome in our sector. We will participate in any review.

Question 4: Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?

We cannot see that there is a pressing need to widen the Broadcasting Code to cover cryptocurrency and related financial products and services on radio at this time. If the intention is to prohibit the advertising of potentially fraudulent schemes or scams, we would respectfully suggest that existing regulations would safeguard against this on radio. We also suggest that most cryptocurrency advertising takes place online, rather than on traditional regulated mediums like radio.

We do not consider that the existing guidelines requiring advertisements to have lengthy terms and conditions at the end of financial advertisements are helpful. It has been established through research that those restrictions do not work and do not achieve what they are designed to do.

There is also now large-scale duplication of effort where the Central Bank of Ireland, the Coimisiún and the ASAI all regulate financial advertising. In fact we believe they potentially act as a disadvantage and restrict the role a successful radio sector, and in particular local radio, could play in combatting misinformation in this area. Radio has proven its value in being a trusted source of information particularly during Covid, there is room for really effective collaboration between radio and the banking sector to improve financial literacy and awareness among the public.

We believe there are far better ways of ensuring that listeners are not put at risk in advertising and that they are fully informed, and we have detailed and practical proposals we can put forward. This is an urgent issue as restrictions have the potential to unfairly deter financial advertising on radio which is not what their stated aim is.

In general terms, where potential new products or much-needed sources of revenue for radio develop due to technology, we feel a risk based assessment is the best way of deciding if new regulation is needed and this should be informed by the compliant and responsible attitude of the independent radio sector.

Question 5: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

There are already strict restrictions applying to broadcasters (as below). These are being followed by our sector. There is, we submit respectfully, no need for further restrictions in this area.

“High Fat Salt and Sugar (HFSS) Food and Beverages

21.12 Broadcasters shall ensure that a maximum of 25% of sold advertising time and only one in four advertisements for HFSS food and beverage products and/or services products are permissible across the broadcast day.

21.13 Consistent with the further requirements set out in the Children's Commercial Communications Code,⁶ broadcasters should aim to effectively reduce the exposure of children to commercial communications for HFSS food and beverage products and/or services. In this respect, commercial communications for such foods and beverages shall not be broadcast or made available in or around children's programmes.”

Before introducing any new regulation aimed specifically at broadcasters on this subject, it is felt the Coimisiún could review the wide and largely unregulated information on the web and social media and other media on this topic.

Question 6: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

There are already strict restrictions on alcohol advertising on radio both under legislation and under the Advertising Standards Authority for Ireland (ASA)_ code. There is no need for further restrictions on non-alcoholic products.

It will be noted that new statutory regulations on advertising of alcohol are due to take effect in Ireland in January 2025 in relation to advertising and alcohol and the roll-out of those should be reviewed before new regulations are considered in the media sector. (The new regulation is the S.I. implementing Section 19 of the Public Health (Alcohol) Act).

Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

There are already strict restrictions in place on broadcast advertising of infant and follow-on formula and further regulation is not in our view needed. Regulations do not currently apply to any other media and are restricted to broadcasting.

Question 8: Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.

We consider that this question is more relevant to national TV broadcasters than the independent radio sector.

IBI members take the welfare of contributors very seriously. For most stations, the participation of members of the public in radio programmes is minor (e.g. phoning a radio show to request a song or take part in an on-air competition or to engage in a brief comment), and their public exposure is low, particularly given that most independent radio stations operate locally or regionally. Other than on one or two high profile national radio programmes, it is relatively rare that members of the public are discussing particularly sensitive, life changing or private aspects of their lives on radio, and we would be very cautious about putting a vulnerable member of the public on-air. Our members are highly connected to their audiences and do not place those audiences at risk.

We fully comply with the Data Protection Act and with other relevant codes in ensuring that privacy is protected while balancing media freedom. Further restrictions are unnecessary for the radio sector, given the nature of most radio programming.

Existing codes are well known and adhered to by IBI member stations, and Learning Waves provides valuable training in this area. Stations also have good networking relationships and frequently seek advice from each other or share knowledge.

We consider it could be useful for the Coimisiún to work with broadcasters co-operatively to help them if needed to put in place policies outlining a set of procedures, supports and actions when dealing with vulnerable individuals as programme participants.



Question 9: Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

We fully support a consolidation of, and reduction where possible, in the number of requirements in the broadcast Codes. We would also support stakeholder initiatives which would encourage exchange of information, education and dialogue about Codes. Moving to risk-based regulation where concrete proof is needed before additional regulations are introduced is a good way of approaching this, as well as continual engagement with those working at the front line in the radio sector. Regulatory cost analysis and impact analysis before the introduction of new regulations is a principle which could be reasonably adopted as well as a potential consideration of a “one-in, one out” stance to ensure that regulation remains at proportionate and moderate levels while achieving its objectives. A regular stakeholder engagement (say once or twice a year) between broadcasters and the CnaM to discuss codes, issues etc would be greatly beneficial.

In relation to the handling of complaints, any departure from the well-established procedures, or moving to the acceptance of complaints on an anonymous basis, would go against natural justice and is likely to encourage unnecessary vexatious complaints.

Question 10: Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

We warmly welcome and encourage further dialogue between the sector and Coimisiún regarding sponsorship & product placement in potential expanding the opportunities in this area.

We consider that the current distinctions are sufficiently clear to radio listeners. But further commercial opportunities and relaxation in this area would be welcome, given the pressures facing the sector.

We are grateful for what we perceive as an open attitude by the Coimisiún in this aspect of the consultation to look at modernising and allowing innovation in these areas, as part of its mission of promoting a thriving media landscape.

We would welcome the Coimisiún taking this opportunity to move to a more current and proportionate approach to commercial communications on radio, to reflect the advertising ecosystem that radio now operates in, and the changes in marketing trends and technology which have developed in recent years which consumers are familiar with and able to navigate.

We would encourage the Coimisiún to allow integrated commercial messaging in live radio broadcasts, accompanied by appropriate transparency requirements. In the experience of our members, audiences understand the difference between commercial and editorial content and are familiar with integrated commercial messaging given its heavy use on other channels (e.g. presenter live-reads in podcasts and in social media posts).

We also encourage the regulator to take a more proportionate approach to commercial sponsorship on radio. Reflecting changes in audience expectations and the wider media market we operate in, we would welcome a liberalisation of restrictions on rules related to commercial sponsorship, accompanied by transparency requirements. Product placement, where specifically and clearly identified as such, could be permitted on radio, as it is on other media.

We believe that the restriction on political advertising on radio no longer makes sense given the widespread use of social media channels by candidates as well as across other media. It is commercially unfair and against the idea of a pluralist media.

Guidance documentation, webinars, and meetings with broadcasters on these issues to assist them on clarity and work on practical implications would be positive. This could include anonymised previous decisions which would help broadcasters understand CnaM's interpretations of the Codes. This type of material is successfully provided currently, for example, by the Data Protection Commission.

There were changes made in the UK relating to this general area by Ofcom in 2010 in consultation with Radiocentre UK, which could be considered: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-standards/broadcast-code/>

Question 11: Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?

In the lengthy experience of our members involved in broadcasting news and current affairs programming, there is no need for additional regulation in this space. Advertising or public communication by the Coimisiún may be helpful to ensure that listeners are aware that there is no requirement for false equivalence of factual and non-factual positions.

Some modification may be useful. The Codes allow for determined, persistent or “forceful” questioning in order to provide a wide array of views (14.6 of Media Service Code on Fairness and Impartiality in News and Current Affairs) and to ensure contributions by interviewees are tested. It also mentions that presenters should not give a personal opinion on matters of public debate (14.5). Provision should be specifically made to allow presenters to make statements of fact, that are proven by international expert bodies, where they and their editors decided that was appropriate or needed, so that those interventions could be made in real-time in order to identify, correct and oppose any incorrect information which is being put forward in a case of false equivalence. A modification to the code to provide for such an outcome would be beneficial. As already mentioned, we would welcome consideration for protections that could be given to stations and their journalists in the event of repeated, unjustified or frivolous challenges or complaints.

Question 12: Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?

As we set out at the start of this response, we would encourage the Coimisiún to only create additional regulations where there is clear evidence of potential or actual audience harm.

We would also suggest that prior to introducing further editorial or commercial regulation, the Coimisiún should undertake economic impact assessments, to understand the financial impact of proposed new regulations or policies on the range of stakeholders it regulates.

These steps would help to ensure that additions or amendments to the Broadcasting Codes and Rules are proportionate and warranted.

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- General comment, in conclusion: We are grateful for the fact that our response has been sought on the Codes, but in general we earnestly ask the Coimisiún to consider the very large number of consultations which have taken place in 2024 and the heavy burden that has placed on leanly-resourced management teams and representative organisations in the commercial sector. We feel it would be vital for the Coimisiún to publish an annual calendar of consultations or research in advance, and to engage with our sector, before further large-scale or multiple consultations or research projects are launched. This is particularly important in relation to planned initiatives by the Coimisiún in the areas of Irish music, gender representation in music and news, ábhar i nGaeilge, sustainability and GEDI. Making such initiatives as feasible and well-planned as possible is in the interests of the regulator and the independent sector.

**Submission to Coimisiún na
Meán consultation on
revised Broadcasting Codes
and Rules**

November 2024

Introduction

Overweight and obesity represent a grave threat to the health and wellbeing of our children. Without drastic action to change their futures, many will face lives dominated by chronic disease and long-term ill health in advance of premature death.

The Irish Heart Foundation therefore welcomes the opportunity to make the case in this submission for appropriate additional protections for children from harmful advertising in the revised Broadcasting Codes and Rules. Whilst our main focus in this document is on advertising of food and non-alcoholic beverages high in fat, sugar and salt (HFSS), we also make a number of recommendations in respect of alcohol and commercial milk formula advertising, along with general recommendations in relation to the Codes, their monitoring and implementation.

The evidence is clear that the high prevalence of childhood obesity cannot be tackled effectively without the pervasive influence of the marketing and advertising of HFSS food and non-alcoholic beverages on children's food choices being addressed first.

The consequences of failing to act decisively with Codes that provide much stronger protection for children than currently exists are also evident. The State's own research estimates that over 85,000 of this generation of children on the island of Ireland will die prematurely due to the health effects of overweight and obesityⁱ.

Obesity is a complex problem with many contributing factorsⁱⁱ. HFSS advertising isn't solely responsible for the explosion in childhood obesity rates in the last generation. But it is a key driverⁱⁱⁱ. The additional calories that children consume as a direct result of HFSS advertising are often the difference between a healthy and unhealthy diet^{iv}.

Whilst much of the HFSS marketing and advertising material seen by children is now online, its proliferation on broadcast media^v continues to play an important role in fuelling Ireland's obesity crisis. The UK is in the process of taking decisive action in this regard. From next October, new regulations will take effect, with broad political and public support, imposing a 9pm watershed on HFSS advertising on TV and a total ban on paid for online ads^{vi}.

The rationale set out in the UK Government Impact Assessment^{vii} is that the measure will reduce the rate of childhood obesity by addressing two market failures caused by HFSS advertising: the negative externalities of the health consequences of excessive consumption of unhealthy products, along with the burden this places on the taxpayer; and an information failure caused by lack of public awareness and industry transparency on the effects of HFSS consumption on future health.

We believe that in a number of respects, existing regulations in Ireland are failing to protect the health of our children and their right *to the enjoyment of the highest attainable standard of health* set down in the UN Convention on the Rights of the Child^{viii}. This includes the impact of the marketing and advertising of alcohol and commercial milk formula, as well as HFSS food and beverages.

Legal analysis commissioned by UNICEF in 2018^{ix} concluded that food marketing negatively affects many of the rights enshrined in the UN Convention and other legally binding human rights instruments, most notably: the right to health, the right to adequate and nutritious food, the right to privacy and the right to be free from exploitation.

We also contend that the Draft Codes are contradictory as they would permit a level of exposure of children to HFSS advertising that is in breach of the following clauses:

Clause 13.2 e of the draft General Commercial Communications Code for Radio and Television Broadcasters: *A broadcaster shall ensure that it does not broadcast commercial communications that encourage behaviour prejudicial to health or safety.*

Clause 17.1 of the Children's Communications Code for Radio and Television Broadcasters: *Broadcasters shall ensure that children's commercial communications are responsible in the manner in which food is portrayed. Children's commercial communications should not encourage an unhealthy lifestyle or unhealthy eating or drinking habits such as immoderate consumption, or excessive, compulsive or restrictive eating.*

Summary of recommendations

HFSS food and non-alcoholic beverages

1. No TV advertising of HFSS food and beverages should be permitted between 5.30am-9pm daily.
2. The 25% limit on sold advertising time and one in four HFSS advertisements should apply only between 9pm and 5.30am.
3. References in the Codes to 'should be eaten in moderation and as part of a balanced diet' should be replaced with 'foods high in fat, sugar and salt should be eaten a maximum of 1-2 times a week'.
4. The terms *children's programming* or *children's programmes* relating to programmes where at least 50% of the audience are children should be dropped.

5. A review should be carried out as a priority to establish the most appropriate Nutrient Profile Model to protect the health and wellbeing of our children which is then applied to the Codes.

Alcohol

6. Zero alcohol advertisements that use the branding of alcohol producers should be subject to the same restrictions as alcohol advertisements.
7. Alcohol ads on pitches and hoardings around pitches should not be broadcast to TV audiences before the 9pm watershed.

Commercial milk formula

8. Protections should be extended *to cover all Commercial Milk Formula, comprising all forms of breastmilk substitutes for children up to 36 months.

Sponsorship and product placement

9. Sponsorship and product placement should not be permitted for HFSS products, or alcohol from 5.30am-9pm daily.

General recommendations

10. Coimisiún na Meán should itself be responsible for monitoring and adjudicating on breaches of Codes relating to all commercial communications across all platforms.
11. Comprehensive monitoring of children's exposure to harms outlined in the Codes should be carried out by Coimisiún na Meán and regular reports on breaches published along with the actions taken .
12. Penalties for repeated breaches of regulations across all platforms and media should be developed to ensure compliance.
13. A formal mechanism should be established to regularly review children's media consumption and the effectiveness of protections from potential harmful marketing and advertising set out in the Codes.
14. Ongoing public awareness campaigns should be undertaken to ensure the complaints process is as user friendly and transparent as possible and that the public is empowered to participate fully in its effective operation.

Question 5 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

Background

The causal link between junk food marketing and childhood obesity has been conclusively proved^{x xi}. And yet throughout the day, every day, children are exposed to saturation levels of advertising for unhealthy food and beverages across multiple platforms and media, as well as in the physical environment. TV and radio remain important vehicles by which the food choices of young people are distorted by an advertised diet that encourages overconsumption and thereby increases the risk of long-term ill-health^{xii}.

These health impacts are also well established. In addition to the research predicting 85,000 premature deaths on the island, children as young as eight are presenting with high blood pressure in significant numbers^{xiii} and teenagers with a cardiovascular age as high as 60^{xiv}. Young people living in disadvantaged communities are disproportionately affected^{xv}.

Children are particularly vulnerable to marketing messages and the role these play in what they eat. Even infants as young as 18 months can recognise brands^{xvi}, with preschool children demonstrating preferences for branded products.^{xvii} They have a right to protection due to their limited capacity to critically understand advertising and marketing tactics.^{xviii} Yet, in Ireland their level of exposure to advertising of products from the top shelf of the food pyramid is far in excess of the very small part of a child's recommended diet these products should constitute, including on TV^{xix}.

The World Health Organisation (WHO) has stated that because the effectiveness of marketing in influencing behavioural outcomes is a function of both exposure and power, it is necessary to limit both the exposure of children to HFSS food marketing and to reduce the power of such marketing^{xx}. In that regard, "exposure refers to the volume of marketing children see, as determined by the frequency and reach of marketing messages (i.e. which media do children use?). Power refers to the creative content, design and execution of the message that enhance its persuasive appeal (i.e. what techniques are particularly effective in persuading children?)".

The rise of social media has usurped television as the most popular entertainment medium for children. The Broadcasting Authority of Ireland's (BAI) Statutory Report on the Children's Commercial Communications Code 2020 indicated a significant impact between 2011 and 2019, both in the amount of television children watch and of HFSS advertising that is reaching them through this medium. Yet, children's TV exposure to HFSS advertising remains significant and it is noteworthy that after 2019 there was a marked increase in the annual spend on TV food advertising in Ireland^{xxi}.

The protection of children from HFSS advertising on TV cannot be considered in isolation from a wider ecosystem in which children are confronted by a daily bombardment of HFSS marketing across a variety of platforms and media^{xxii}.

As yet unpublished Safefood research examining exposure of 12-17 year-olds on the island of Ireland to HFSS advertising and marketing on social media indicates that they are seeing almost as many clear-cut unhealthy food ads every hour as in Australian research which found that children see more than 17 food and beverage promotions during each hour they spend online^{xxiii}.

It is important based on the evidence we have, that regulation seeks to protect children comprehensively in a coherent manner with a level regulatory playing field across all platforms and media. Reputable multinational food companies will obey the rules. But their remit is to maximise shareholder wealth, so where opportunities exist through ineffective regulation to promote their products to children, they cannot be expected to let them pass. To do so could put them at a competitive disadvantage^{xxiv}. Issues such as dual screening – whereby children are watching television and are online simultaneously – have become a significant feature of children’s use of media also need to be taken into account.

The impact of obesity

The latest data from the HSE’s Childhood Obesity Surveillance Initiative (COSI): Round 6 2022-2023^{xxv} shows that almost one in five children in Ireland live with overweight and obesity. The research found that the prevalence increased to one in four in schools that participate in the Delivering Equality of Opportunity in Schools (DEIS) programme.

The findings of the Bogalusa Heart Study^{xxvi} showed that three quarters of children affected by obesity continue to live with the condition as adults and are therefore at much greater risk of an adult life dominated by chronic disease and then of premature death. This is important in establishing the direct link between HFSS marketing to children and the health consequences of overweight and obesity in later life.

Meanwhile, 60% of adults in Ireland are living with overweight and obesity – with just under two-thirds of men affected. According to the WHO, 65% of the diabetes burden, 23% of heart disease and between 7% and 41% of certain cancers are attributable to overweight and obesity.^{xxvii} Similarly, the risk of coronary heart disease, ischaemic stroke and type 2 diabetes grows steadily with increasing body mass.

It’s important to note that obesity isn’t the only negative impact of an unhealthy diet on children. Children who are poorly nourished are likely to have weaker immune systems which increases their risk of illness, whilst their behaviour and ability to learn may also be

affected^{xxviii}. They can also suffer premature hardening of the arteries, increasing their risk of cardiovascular disease in later life^{xxix}.

The economic costs are also substantial and likely to grow further as chronic disease rates increase in line with rising rates of overweight and obesity. The total lifetime cost of obesity in the Republic of Ireland was estimated at €4.6 billion in 2017, the equivalent of over €16,000 per person^{xxx}.

If the national body mass index (BMI) was reduced by 1%, the lifetime cost of childhood overweight and obesity would be reduced by €270 million. A BMI reduction of 5% would reduce the lifetime costs by €1.1 billion.^{xxxi} The additional burden placed by high rates of obesity-related chronic disease on already hard-pressed acute services means its impact will also be felt by patients across the hospital system.

The role of marketing and advertising

The evidence base on the role of marketing and advertising in childhood obesity stretches back more than two decades. The seminal 2003 Hastings Review^{xxxii} on the extent and impact of food promotion to children was the first to document that food promotion affects preferences not only at brand level but also, more importantly, at category level, i.e. an ad for fast food doesn't just result in additional sales for the brand promoted, but for fast food generally.

In 2013, the World Health Organisation stated that 'the promotion of potentially unhealthy food and beverage products is now widely recognised in Europe as a significant risk factor for child obesity and for the development of diet-related noncommunicable diseases'.^{xxxiii}

Research published in the American Journal of Clinical Nutrition in 2016^{xxxiv} concluded:

- Small effects at an individual level can have huge impacts across populations because of the deep saturation of unhealthy food advertising amongst all children in Westernised societies.
- The current growth in obesity prevalence results from relatively small, but cumulative increases in absolute energy intake at the individual level.
- The collective effects of continuous exposure to food marketing that occurs over time may amplify these effects, particularly when the marketing is repetitious and delivered over multiple platforms across numerous settings.

A 2022 systematic review^{xxxv} and meta-analysis of 96 studies (64 randomized clinical trials, 32 nonrandomized studies), found HFSS marketing was associated with significant increases in food intake, choice, preference, and purchase requests.

UK research from 2020 found that most adolescents (90·8 %) reported awareness of a least one marketing activity for HFSS foods, and at least half reported seeing 70 or more instances in the past month^{xxxvi}. Television, social media and price offers were the marketing activities most frequently reported. Awareness was associated with higher weekly consumption for ten of the twelve HFSS foods. For example, those reporting medium marketing awareness were 1·5 times more likely to report higher weekly consumption of cakes/biscuits compared with those reporting low awareness. The likelihood of higher weekly HFSS food consumption increased relative to the level of marketing awareness. In other words, the more HFSS advertising children were exposed to, the higher their intake of these products.

In 2018, a systematic review and meta-analysis on the effect of screen advertising on children's dietary intake found that food advertising increased dietary intake in children under experimental conditions when compared with exposure to non-food advertising.^{xxxvii} The research found that exposure to just 4·4 minutes of food advertising would increase a child's food consumption by 60·0 calories on average, whilst playing an advergame with food cues for 5 minutes would increase consumption by 53·4 kcal on average.

A 2016 systematic review and meta-analysis of 29 randomised trials evaluating the effects of unhealthy food and beverage marketing involving almost 6,000 children aged 2–18 years found that exposure to unhealthy food and beverage marketing increased children's dietary intake and influenced children's dietary behaviours during or shortly after exposure to advertisements.^{xxxviii} The study concluded that the short average time children were exposed to the adverts (approximately 5 min) coupled with the nearly 30 kcal (4·5 g) increase in dietary intake over an average of 15 minutes, indicated a plausible association between exposure to energy-dense, low-nutrition food and beverage advertising and weight gain, obesity and other dietary related non-communicable diseases.

Subgroup analysis comparing children and adults in a 2016 systematic review and meta-analysis of the effects of acute exposure to unhealthy food and nonalcoholic beverage advertising indicated a significant effect of moderate size for advertising on food consumption with children eating more after exposure to food advertising than after control conditions.^{xxxix} This provides evidence that acute exposure to unhealthy food advertisements increases food intake in children.

Six key obesogenic environments through which the food industry influences obesity-related dietary behaviours in children were identified in a 2015 systematic review on the influence of the food industry on obesity-related dietary behaviour among children: schools, retailers, mass media “television”, mass media “internet”, home and promotional campaigns.^{xl} It found that HFSS food products are overwhelmingly promoted and that the food industry uses persuasive marketing techniques and emotional appeals to forge long-lasting relations with children and create brand loyalty.

This is just part of an extensive body of evidence establishing the association between HFSS product marketing and childhood obesity.

The extent and impact of children's exposure to TV advertising

Research on the televised advertised diet to children in Ireland^{xli} asserts that TV uses a coherent system of images and messages, to cultivate predispositions, preferences and a particular perception of reality from infancy onward. Thus, consistent exposure to a distorted food advertising pattern is likely to lead children and parents to form unhealthy normative beliefs about food, its function and meaning, about what constitutes 'children's food' and about taste. Such beliefs are likely to affect children's food preferences as well as parents' decisions about how to feed children.

The 2013 BAI regulations provided a level of protection for children from HFSS advertising. However, significant weaknesses in these rules have resulted in significant continuing exposure of children to unacceptable levels of HFSS advertising on TV.

In 2014, research showed that in an environment of full compliance with the regulations, children aged 4-6 were still seeing over 1,000 adverts a year for HFSS products^{xlii}. This is significantly higher than the exposure required to increase consumption resulting in weight gain over time and therefore highlights a failure in meeting the objectives of the regulations.

An Irish Heart Foundation analysis of the knockout stages of the 2018 World Cup found that in the last 16 matches alone, children were exposed to 1,357 pitch side digital billboard displays and 40 TV advertisements promoting HFSS food and beverages^{xliii}. Audiences for these games included large numbers of children. Yet, this bombardment of healthy food advertising was not a failure of broadcasters to adhere to regulations, but a failure of the regulations themselves.

In 2015, a study of advertisements within children-specific programming on Irish television found that one-third of ads shown during children-specific broadcasts were for food and beverages, with two-thirds of these advertising foods that should be eaten in moderation. The most frequently recorded food ads were for fast food products (27.3 %), followed by confectionary (21.6 %).^{xliv}

UK research showed that 49% of children's viewing time takes place in adult air time when HFSS restrictions do not apply. Evidence from Ofcom in 2016 put this higher, at 64% of children's viewing time watching programmes outside children's programming. Meanwhile research by the Institute of Fiscal Studies^{xlv} found that 70% of the television advertising children saw for HFSS products, restaurants and bars was shown before the 9pm watershed.

Analysis from the University of Liverpool, commissioned by the Obesity Health Alliance^{xlvi}, of the adverts shown during some of the TV shows popular with children in 2017 found that:

- The majority (59%) of food and drink adverts shown during family viewing time would be banned from children's TV
- In the worst case example, children saw nine HFSS adverts in just a 30 minute period.
- Ads for fast food and takeaways appeared more than twice as often as any other type of food and drink adverts – largely because of sponsorship links with popular family shows. But ads for fruit and vegetables made up just 1% of family viewing time advertising.

The Statutory Report on Children's Commercial Communications Code 2020^{xlvii} showed that apart from sports programmes, virtually all the Top 20 viewed programmes by 4-17 year-old in 2011 and 2019 were outside children's programme hours, with most in the family viewing time from 6-9pm.

There is also a significant body of evidence on the impact of HFSS advertising on broadcast media on food intake. Canadian research showed that one off exposure to a single unhealthy food ad increases food intake by 30-50 calories^{xlviii}. But we know that consumption of an extra 48-71 calories a day depending on age is enough to generate weight gain in children over time^{xlix}.

Research in 2018 for Cancer Research UK (CRUK) showed that seeing just one extra broadcast advert per week predicted a large amount of HFSS eating and drinking, estimated at almost 350 calories a week^{li}. This equates to an extra 18,000 calories a year – the equivalent of around 60 cheeseburgers.

Further CRUK research from the same year concluded that 7 – 11 year old children exposed to high levels of commercial advertising for HFSS foods are far more likely to pester for, buy, and consume unhealthy foods^{lii}. It found that each additional hour of commercial TV that children watched was associated with a 28% increased likelihood of buying junk food and drink. Children who watched over 3 hours of TV per day were almost 3 times more likely to buy junk food products than children who watched little or no TV.

Children are not being adequately protected by existing regulations

The evidence cited on children's exposure to HFSS advertising on TV, its effect on what and how much they eat, the small increases in calorie intake that can lead to weight gain, the impact that's having on individual children, and the scale of the problem across our young population, all indicate that children are not being adequately protected by current regulations. This lack of protection would persist if the draft codes are implemented without

significant change and thereby the long-term health of a large proportion of children would continue to be put at risk.

This puts the existing Codes in breach of children's right under the UN Convention on the Rights of the Child in respect of the right *to the enjoyment of the highest attainable standard of health*. As stated in the introduction to this submission, leaving the Draft Codes unchanged would contradict clauses 13.2 of the General Commercial Communications Code and 17.1 of the Children's Communications Code relating to encouraging behaviour prejudicial to health or safety, or encouraging unhealthy eating or drinking habits.

Healthy eating advice set out in the Healthy Ireland Food Pyramid recommends HFSS products should be consumed a 'maximum once or twice a week'^{liii}. So, these clauses can never be satisfied whilst regulations permit up to 25% of sold advertising time and one in four advertisements for HFSS food and beverages. Instead the products most commonly marketed to children – sugary breakfast cereals, soft drinks, confectionery, savoury snacks and fast food – assume the guise of every day products for every day consumption. The result is an advertised diet that has turned the food pyramid on its head, normalising overconsumption and the public perception of what constitutes a healthy diet.

In the context of such high levels of potential exposure, the stipulation that a message is included stating 'should be eaten in moderation and as part of a balanced diet' offers no meaningful protection to children and smacks of tokenism.

Consequently, section 21.7 of the Broadcast Commercial Communications Code and 17.4 of the Children's Communication Code should be changed to replace the words 'should be eaten in moderation and as part of a balanced diet' with 'foods high in fat, sugar and salt should be eaten a maximum of 1-2 times a week'. This would more accurately describe the State's healthy eating guidance.

The definition of children's programmes is redundant in the context of protecting children from HFSS product marketing

It's clear that the terms *children's programming* or *children's programmes* serve no purpose in creating boundaries around the exposure of children to TV advertising given that they do not accurately portray the programmes children are watching.

Clause 21.13 of the General Commercial Communications Code states that "....broadcasters should aim to effectively reduce the exposure of children to commercial communications for HFSS food and beverage products and/or services. In this respect, commercial communications for such foods and beverages shall not be broadcast or made available in or around children's programmes."

Firstly, the requirement to “aim to effectively reduce the exposure of children” obliges broadcasters only to *try* to reduce exposure to an unspecified level. This statement is too weak to invoke any actual restriction.

It is weakened even further by the definition of children’s programmes as “programmes that are commonly referred to as such and/or have an audience profile of which over 50% are under 18 years of age”.

As a result, a child audience, even of tens of thousands, watching a sports event, film, or soap opera is unlikely to make up half the audience and therefore lacks necessary protections. The Ofcom finding that the vast majority of children’s TV viewing time was outside of children’s programmes^{liv} would likely be replicated by research in Ireland, given the similarities between relevant media consumption between the UK and Ireland.

This issue was highlighted at a Joint Oireachtas Committee on Children and Youth Affairs discussion on Tackling Childhood Obesity in July 2018, by Mr Declan McLoughlin, senior manager of the BAI who said^{lv}:

“There is the issue of how many children are watching versus how much of the audience is made up of children. There might be a small number of children watching but they would make up more than 50% of the audience because it is a children’s programme and that is the only audience. One finds that if there is a programme that is very popular with children, such as during the family viewing time or the World Cup, there might be significantly higher numbers of individual children watching but they would not make up half of the audience.”

The Children and Youth Affairs Committee subsequently recommended that regulations on HFSS advertising be amended to apply to programmes watched by a significant number of children^{lvi}.

The corresponding levels of 15% in Canada and 25% in New Zealand^{lvii} provide extra protection to children in those countries. However, they also don’t adequately mitigate against a very high number of children watching a programme without breaking the threshold.

Impact of the UK’s 9pm watershed for HFSS ads

A UK modelling study led by the University of Liverpool found that if all HFSS advertising before 9pm was withdrawn, the number of children with obesity in the UK would be reduced by 4.6%, equivalent to 40,000 children, saving 240,000 disability adjusted life years and a health-related net monetary benefit of £7.4 billion^{lviii}.

The UK Government's *Introducing further advertising restrictions on TV and online for products high in fat, sugar and salt (HFSS)* document^{lix} published in March 2019 estimated that introducing a watershed across broadcast TV and online media could remove around 8 billion calories per year in total from children's (across all 4-15 year olds) diets by direct influence on children's consumption.

It said there would also be multiple indirect health benefits from such restrictions, which it has not been possible to model. It also expected industry to respond to the watershed by reformulating some products to make them healthier, in order to be able to advertise products more freely. This would further reduce HFSS product consumption and consequently child overweight and obesity rates.

Meanwhile, the UK Department of Health and Social Care estimates that the combined ban on television advertising before the 9pm watershed and the online ban for paid advertising will deliver health benefits of £2 billion and NHS savings of £50 million over the life course of the current cohort of children^{lx}.

Concerns relating to the Nutrient Profile Model

Concerns have been raised that children's exposure to HFSS ads on TV is further increased due to the use in Ireland of the Nutrient Profile Model developed by the UK Food Standards Agency to determine what qualifies as a HFSS food.

Research from 2013 found that the UK model was the least restrictive of eight models analysed in terms of the food products it deemed to be unhealthy, which could result in increased exposure to HFSS advertising^{lxi}. Indeed, in 2018, the Oireachtas Joint Committee on Children and Youth Affairs was so concerned about the efficacy of the current model that it recommended its replacement with the WHO European Region nutrient profile model^{lxii}.

During its hearings into childhood obesity, Dr Mimi Tatlow Golden of the Open University highlighted research she led showing that a significant increase in the number of products deemed to be unhealthy by the WHO model^{lxiii}. Her study showed that 55.2% of food ads at times viewed by most children were for products rated unhealthy under the model used, but permitted as they were not broadcast during 'children's programmes'. This rose to 71.9% when the WHO model was applied by the research team.

The FSA model has also been criticised in the UK because it is now almost two decades old and fails to encompass more recent additions to dietary recommendations, in particular those for free sugars and fibre. In 2016 the UK Government made a commitment in its child obesity plan to review the FSA model^{lxiv} and test options for a new model better reflecting evidence-based dietary guidance. A consultation was carried out in 2018, but to date no new model has been published.

The BAI's 2020 Statutory Report on the Effect of the BAI Children's Commercial Communications Code said its review indicated that the model has worked well in practice and has presented no apparent implementation issues. It said this is very likely on account of the fact that it was developed specifically for use in a broadcast context.

It is obviously important that a model is adopted that works efficiently in practice. However, its primary function is to protect the public, particularly children, from potential harm from HFSS marketing. It would be remiss of Coimisiún na Meán to simply wave it through this consultation, whilst a process of review, committed to by the UK Government almost a decade ago, is underway, albeit greatly delayed.

A failure by Coimisiún na Meán to reconsider a Nutrient Profile Model that is being reviewed in its country of origin due to concerns over whether it is fit for purpose, could undermine confidence in its ability to operate effective Codes.

The Irish Heart Foundation view is that the WHO model is the most appropriate for Ireland. However, we would support an evaluation being carried out to establish the best model to protect the health and wellbeing of children.

Recommendations

The current codes are not providing adequate levels of protection for children and the following changes should be made:

- No TV advertising of HFSS food and beverages should be permitted between 5.30am-9pm daily.
- The 25% limit on sold advertising time and one in four HFSS advertisements should apply only between 9pm and 5.30am.
- References in the Codes to 'should be eaten in moderation and as part of a balanced diet' should be replaced with 'foods and beverages high in fat, sugar and salt should be eaten a maximum of 1-2 times a week'.
- The terms *children's programming* or *children's programmes* relating to programmes where at least 50% of the audience are children should be dropped.
- A review should be carried out as a priority to ensure Ireland is using the most appropriate Nutrient Profile Model to protect the health and wellbeing of our children and then applied to the Codes.

Question 6 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

The Public Health Alcohol Act (PHAA) was a regulatory response to major public concern over the nature and extent of youth drinking in Ireland.

In relation to marketing and advertising of alcohol, there is clear evidence that children exposed to alcohol marketing are more likely to start drinking and children already drinking are likely to drink more.^{lxv}

The introduction of the 9pm broadcast watershed for alcohol in the New Year is very welcome. This is a measure with significant public support^{lxvi} and any efforts to circumvent its purpose in protecting children's health by the alcohol industry and their marketing agencies needs to be tackled robustly.

A significant emerging trend in this regard is the advertising of zero alcohol products using branding that is identical to the alcohol master brand. This effectively exposes children to alcohol advertising, whilst ostensibly promoting what would be regarded as a healthier product.

This is a tactic that has been highlighted in the past by researchers studying HFSS marketing – for example ads for McDonalds using carrot sticks to promote Happy Meals^{lxvii}.

In recent years the marketing of no and low alcohol drinks, known as NoLos, has been growing^{lxviii}. Although they have a small market share, NoLos are portrayed as a means for people to reduce their alcohol intake and as a harm reduction measure for heavy drinkers. However, the WHO has highlighted concerns on brand sharing of alcohol – advertising that associates zero alcohol products with normal strength brands – and has recommended restrictions on such marketing tactics to protect children, pregnant women and people trying to quit drinking^{lxix}.

Sports events are a particular issue. The PHAA permits ads on hoardings around pitches, but not on the field of play since late 2021. Even the introduction of this relatively minor rule was quickly undermined by the use of zero free products – resulting in alcohol branding on sports pitches being broadcast on TV in addition to the proliferation on stadium hoardings. Alcohol Action Ireland highlighted how the Guinness logo and name was displayed with an additional, barely visible 0.0, onto the pitch during Six Nations matches earlier this year^{lxx}.

Research from the University of Stirling found that alcohol brand references being shown at a rate of up to one every 13 seconds on the field of play during high profile rugby matches

after the PHAA restrictions came into place^{lxxi}. This high level of exposure to TV audiences with large numbers of children needs to be tackled through restrictions on alcohol ads on pitches and surrounding hoardings before the broadcast watershed in order to protect children from potential harm.

As an illustration of the tactics being employed, it's noteworthy that after restrictions under the PHHA came into force advertising in the outdoor space where restrictions under the Act are mainly focused, zero alcohol ads made up 25% of alcohol brands spend in 2022, although these products make up just 2% of the market^{lxxii}.

The notion that the alcohol industry is promoting these drinks because it wants people to stop drinking is therefore patently ludicrous. And there is an onus on Coimisiún na Meán to ensure that this obvious circumvention of the Codes is prevented on TV broadcasts. It is therefore necessary that Section 18 of the General Communications Code is amended to prevent brand sharing between zero and normal strength alcohol products.

Recommendations

- Zero alcohol advertisements that use the branding of alcohol producers should be subject to the same restrictions under the Codes as alcohol advertisements
- Alcohol ads on pitches and hoardings around pitches should not be broadcast to TV audiences before the 9pm watershed.

Question 7 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

Babies who are formula fed are twice as likely to die from Sudden Infant Death Syndrome than children who are breastfed^{lxxiii} and at 22% higher risk of obesity according to a 2014 meta analysis^{lxxiv}. Not being breastfed is also associated with an increased incidence of infectious morbidity, as well as elevated risks of childhood obesity, type 1 and type 2 diabetes and leukaemia. For mothers, not breastfeeding is associated with an increased incidence of premenopausal breast cancer, ovarian cancer, retained gestational weight gain, type 2 diabetes and myocardial infarction^{lxxv}.

Because of these health risks, and what has been characterised, including by international public health agencies, as aggressive marketing tactics, there are restrictions on the marketing of infant formula under national and EU law. According to EU food law, infant formula cannot be advertised for babies up to 12 months^{lxxvi}. However, the legislation allows so-called follow-on formula – for babies from six months onwards – to be promoted. Under

the Broadcast Codes, commercial communications are not permitted for infant formula for use by infants during the first 6 months of life.

This falls far below the standards set out in the WHO Code of Marketing of Breastmilk Substitutes^{lxxvii}, which is a set of recommendations to regulate the marketing of breast-milk substitutes, feeding bottles and teats. It represents a minimum requirement to protect and promote appropriate infant and young child feeding.

Although Ireland was an original signatory of the Code in 1981, it has never met the stipulation that breast-milk substitutes shouldn't be advertised or marketed for babies and toddlers up to 36 months.

Mothers/parents in Ireland are similarly exposed to an extensive range of infant formula marketing as their UK counterparts. UK research by UNICEF found that 84% of pregnant women surveyed reported they had been targeted by infant formula companies^{lxxviii}.

Whilst there is a continuing shift to online marketing of commercial milk formula, a joint WHO/UNICEF study from 2022 found that 68% of formula milk marketing in the UK is seen or heard by mothers on TV^{lxxix}.

Recommendation

- Protections should be extended under the Code to cover all Commercial Milk Formula, comprising all forms of breastmilk substitutes for children up to 36 months.

Question 12 – Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?

Sponsorship and product placement

Children are exposed to high levels of HFSS promotion during family viewing time. Complaints in 2018 over sponsorship of RTE's Big Big Movie^{lxxx} spot during family viewing time on Saturdays were rejected by the BAI because movies such as Cinderella and Santa Claus 1, 2 and 3 were not deemed to be children's programmes under the broadcast codes. This demonstrates again that the definition of children's programmes is not fit for purpose and that sponsorship by HFSS brands of programmes being watched by significant numbers of children should not be permitted during family viewing time.

Studies show that product placement increases children's brand recall as well as their disposition towards product categories and brands^{lxxxix}. And UK research suggests that product placement is a significant and growing means of promoting alcohol as well as HFSS products.

For example, research^{lxxxii} into all episodes of 20 UK reality TV shows broadcast over a one-year period to August 2020 found that alcohol content appeared in 5,167 intervals across 258 episodes. It was estimated that alcohol content was seen in these programmes 12.6 million times by children aged under 16. These included shows such as Love Island that are popular with young people in Ireland. The same study found that HFSS content that appeared in 1,752 intervals across 234 episodes was seen 21.4 million times by children.

Meanwhile, a US study^{lxxxiii} that measured brand placements in 10 popular shows found an average of over two alcohol brand placements per show episode, with some shows featuring more than 13 brand placements per episode.

Restrictions should apply on both sponsorship and product placement of HFSS products and alcohol from 5.30am-9pm daily.

Monitoring and adjudicating

Self-regulatory bodies should have no part in the monitoring and adjudicating of potential breaches of regulations in any instance, whether on broadcast media, online, or out of home advertising.

There is concern that Coimisiún na Meán may outsource regulation of the Codes to the Advertising Standards Authority. However, the Authority is funded by the advertising industry and therefore cannot be accurately described as independent.

As it currently operates, the ASA's complaints' procedure is neither timely nor transparent, its sanctions are ineffective, and because it only responds to breaches after they occur, cannot protect children from harmful advertising.

We contend that implementing effective policies in this sphere is the role of trusted public authorities. Any arrangement with a self-regulatory body would run a very significant risk of undermining public confidence in the Codes and the protection they offer to children.

There is also a need for robust and transparent monitoring of the Codes. The Statutory Report on the Effect of the BAI Children's Commercial Communications Code found that in 2019, ads for the multinational drinks firm, Diageo, were the fourth most seen by 4-17 year-old children in Ireland^{lxxxiv}. This yet again demonstrates that the Codes do not, and without changes, will not adequately protect children.

Penalties for breaches of the Code

We recognise that TV and radio broadcasters have been compliant with regulations in the past and do not doubt that they will continue to apply the rules rigorously. This is not the case on social media where most regulation is voluntary and without adequate sanctions. The extent to which e-cigarette companies have used influencers to promote vaping is just one example^{lxxxv}.

We believe it will not be possible to provide necessary protections to children's health online without regulators having significant powers to ensure compliance, such as financial penalties for repeated breaches similar to those available to the guardians of GDPR regulation.

In order to ensure a level playing field across all platforms and media, it will be necessary to adopt a coherent approach to penalties, requiring a review of sanctions relating to broadcast media.

Review mechanism

The fast pace of marketing innovation creates the requirement for trends in children's media consumption to be regularly reviewed, so that regulations can be quickly updated if weakness or loopholes are identified that compromise proper protections from harmful advertising.

Awareness and complaints process

Public awareness of the codes and complaints process is unclear and should be investigated. A rolling awareness campaign is also needed to establish and maintain high levels of awareness. There should also be ongoing public engagement to ensure the complaints mechanism is as user friendly and transparent as possible. All breaches of the codes should be made public.

Recommendations

- Sponsorship and product placement should not be permitted for HFSS products, or alcohol from 5.30am-9pm daily
- Coimisiún na Meán itself should be responsible for monitoring and adjudicating on breaches of Codes relating to all commercial communications across all platforms.
- Comprehensive monitoring of children's exposure to harms outlined in the Codes should be carried out by Coimisiún na Meán and published at least on an annual basis.

- Penalties for repeated breaches of regulations across all platforms and media should be developed to ensure compliance.
- A formal mechanism should be established to regularly review children's media consumption and the effectiveness of protections from potential harmful marketing and advertising set out in the Codes.
- Ongoing public awareness campaigns should be undertaken to ensure the complaints process is as user friendly and transparent as possible.

Conclusion

Children are not being adequately protected from advertising of HFSS products, alcohol, or commercial milk formula under existing and draft future Codes. The changes recommended by the Irish Heart Foundation are a proportionate response to the significant ensuing threat to their long-term health.

The fact that the worst impacts of such marketing may take years to manifest in potentially life-limiting chronic disease in no way reduces the urgency of the need for these Codes to be upgraded. Children are entitled to protection from harmful advertising and it's the duty of Coimisiún na Meán to provide it.

Ends

For further information, please contact Chris Macey, Director of Advocacy and Patient Support, Irish Heart Foundation:

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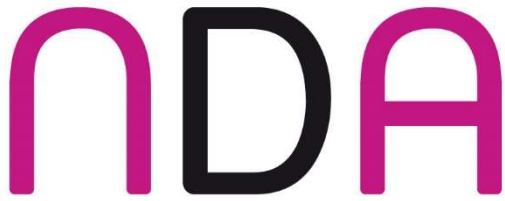
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Údarás Náisiúnta Míchumais
National Disability Authority

September 2024

NDA Submission to Coimisiún na Meán concerning the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs

Introduction

The National Disability Authority (NDA) is the independent statutory body with a duty to provide information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and to promote Universal Design. The NDA welcomes the opportunity to input into Coimisiún na Meán's ('the Commission') consultation on the revised Broadcasting Codes and Rules for radio and television broadcasters.

The NDA has primarily focused its comments on the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs. However, some of our observations are of wider applicability and will be relevant to the other Broadcasting Codes and Rules undergoing review.

Responses to Stage 2 Review Consultation Questions

The NDA notes that once the Stage 1 review is completed, the Commission intends to carry out a further review and consultation on the media service codes and media service rules relating to broadcasting, and is seeking submissions on matters relevant to the Stage 2 review.

In undertaking the Stage 2 review, the NDA recommends that the Commission considers how to engage with disabled people and Disabled Persons

Organisations (DPOs) as part of the consultation process.¹ This may require consideration on how to make such a process more accessible and inclusive.

The NDA also underscores the importance of information and communications being accessible to everyone, including information and communications connected to consultations. In this regard, the NDA notes that all public bodies are required to adhere to the **Code of Practice on Accessibility of Public Services and Information provided by Public Bodies**. This Code of Practice outlines how public bodies can meet their obligations under Part 3 of the Disability Act 2005. In addition, the NDA's Centre for Excellence in Universal Design has prepared a **Customer Communications Toolkit for Services to the Public – A Universal Design Approach** which provides guidance on written, spoken and signed communications, plus specific guidance on designing forms, documents and signage.²

Question 12 – Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?

The NDA advises that the Commission's revised Broadcasting Codes and Rules should be further amended to:

1. Take measures to increase the representation and promote the positive portrayal of disabled people in radio and television broadcasting, in particular news and current affairs programmes;
2. Reflect the requirements of the Assisted Decision-Making (Capacity) Act 2015 (as amended).

Take measures to increase the representation and promote the positive portrayal of disabled people in radio and television broadcasting, in particular news and current affairs programming.

The NDA has consistently underlined the need to both increase the representation and promote the positive portrayal of disabled people in the

¹ The NDA has produced guidelines, entitled Participation Matters, to support public officials at national and local level to meaningfully consult with and actively involve disabled people and their representative organisations in policy development and other decision-making processes to meet obligations set out under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The guidelines are available at the following link:

<https://nda.ie/publications/participation-matters-guidelines-on-implementing-the-obligation-to-meaningfully-engage-with-disabled-people-in-public-decision-making>

² The Customer Communications Toolkit is available at the following link:

<https://universaldesign.ie/communications-digital/customer-communications-toolkit-a-universal-design-approach>

media, in line with the provisions of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). However, despite advances, media coverage tends to categorise and portray disabled people as either the ‘hero’ – a person who is assumed to have ‘overcome’ their disability to accomplish great things – or the ‘victim’ – a person who is vulnerable and an object of pity.

The NDA opposes such narrow portrayal and stereotyping of people in radio and television broadcasting, including in news and current affairs programming. The NDA advises that the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs should be amended to caution broadcasters against the negative portrayal and stereotyping of diverse or under-represented groups, including ‘hero’ and ‘victim’ stereotypes concerning people with disabilities.

Relatedly, the NDA emphasises the importance of news and current affairs broadcasters using objective and inclusive language when covering stories connected to diverse or under-represented groups such as people with disabilities, and avoiding negative labelling, euphemisms and stereotypical language. The NDA has developed an advice paper which provides guidance on the use of language when speaking and writing about disability and may be instructive to broadcasters in this regard.³

In addition, the NDA advises that the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs should address the need to facilitate disabled people and voices in news and current affairs programming, beyond issues connected to their lived experience. The Online Safety and Media Regulation Act 2022 requires the Commission in performing its functions to endeavour to ensure that the broadcasting services and audiovisual on-demand media services available in the State are open, inclusive and pluralistic, and that the Commission’s policies in relation to those services best serve the needs of the people of the island of Ireland, bearing in mind their levels of participation in those services and their levels of representation in programmes on those services.

The NDA convenes an annual listening session with Disabled Persons’ Organisations (DPOs) and disabled people to listen to their views, experiences and expertise in relation to the chosen theme. In 2023, the listening exercise focused on **‘Raising Awareness (Article 8 UNCRPD)’** and the summary

³ The advice paper is available at the following link: <https://nda.ie/publications/nda-advice-paper-on-disability-language-and-terminology>

report of the session highlighted the importance of increasing and improving the representation of disabled people in the media.⁴

In a recent study by Dublin City University, entitled **RTÉ AND COVID-19: Diversity and inclusion and meeting public needs**, interviewees noted that some minority groups rarely appear in news and current affairs to speak about issues unrelated to the identity of their communities. This corresponds with the findings of the 2009 research undertaken by the NDA and the former Broadcasting Authority of Ireland on the representation and portrayal⁵ of people with disabilities in Irish broadcasting.⁶ The study highlighted that disability was rarely portrayed as incidental in the programme sample and there was little evidence of the kind of ‘mainstreaming’ developments similar to the UK, whereby disabled people feature in all varieties of programmes without necessarily drawing attention to their disability. Furthermore, a content analysis carried out as part of the same research found that people with disabilities are more likely to be present in drama, comedy and lifestyle programming and are less evident in news, sports and music programming.⁷

The NDA welcomes the recent publication of the **Gender, Equality, Diversity and Inclusion Strategy for the Audio and Audiovisual Media Sector**, which outlines actions to mainstream diverse groups across programming genres and to invite members of diverse groups or under-represented groups to participate in the media to discuss issues beyond their lived experience – as experts in other fields relevant to society as a whole. The NDA notes that the Strategy also recognises that best practice includes avoiding stereotyping of characters in drama and entertainment, however this does not explicitly extend to news and current affairs programming.

The NDA would like to see this good practice reflected in the Draft Code of Fairness, Objectivity & Impartiality in News and Current Affairs by encouraging

⁴ The report is available at the following link: [Annual Listening Session 2023: Article 8 Awareness Raising - National Disability Authority \(nda.ie\)](#)

⁵ For the purpose of this research, “representation” referred to the extent to which people with disabilities were present in the programmes, whereas “portrayal” referred to the nature of the representation (i.e. how individual or groups with disabilities were represented).

⁶ The study is available at the following link: <https://nda.ie/publications/the-representation-and-portrayal-of-people-with-disabilities-in-irish-broadcasting>

⁷ As part of the content analysis, 408 hours of programming (804 programmes) broadcast by Irish television and radio stations from February to July 2007 were analysed. The sample was drawn from prime-time television broadcasting (6-10pm), and from weekday and Sunday radio broadcasting, including national and local radio.

radio and television broadcasters to invite disabled people to participate in news and current affairs programming and discuss issues beyond their lived experience. The NDA is of the view that such measures, which will increase the visibility and representation of disabled people in news and current affairs programmes, could promote disability inclusion and equality in television and radio broadcasting and foster a media landscape that is more representative of the diversity of Irish society.

Capacity to make decisions following commencement of the Assisted Decision-Making (Capacity) Act 2015 (as amended)

The NDA advises that all the Commission's revised Broadcasting Codes and Rules must be updated to reflect the requirements of the **Assisted Decision-Making (Capacity) Act 2015 (as amended)** ('2015 Act'), including the presumption of capacity. The legislation establishes a new legal framework for supported decision-making for people whose capacity to make one or more decisions is, or may shortly be, in question.

Under the 2015 Act, there is a presumption that all adults have decision-making capacity, unless the contrary is shown. This presumption applies irrespective of any pre-existing disability or medical condition. Where a person's capacity is being called into question on a specific decision, the responsibility lies with the person who is questioning capacity to provide sufficient evidence that the relevant person does not have capacity to make the decision at this time. It is not the responsibility of the person to prove they have the capacity to make this decision.

Where a person's decision-making capacity is in question, or may shortly be in question, the 2015 Act requires a functional test to be used to assess their capacity. A person will be considered to have decision-making capacity if they can:

- Understand the information relevant to the decision;
- Remember the information long enough to make a choice;
- Use or weigh up the information to make a decision;
- Communicate their decision (this may be with assistance).

It appears that some elements of the Broadcasting Rules and Codes may not align with the 2015 Act, which was commenced on 26 April 2023. For example, paragraph 13.4 of the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs states that 'The consent of a parent, guardian or legal representative shall generally be obtained prior to the broadcast or availability of

any interview with a child less than 16 years of age or a vulnerable person, where the subject matter is of a sensitive or serious matter or where not to do so could be deemed unfair. A decision to broadcast or make available an interview in the absence of such consent must be justified in the public interest.’

The NDA advises that the above provision does not appear to align with the 2015 Act. Instead of a default position that all adults are presumed to have capacity to make decisions, paragraph 13.4 requires radio and television broadcasters to generally obtain consent from a parent, guardian or legal representative where an adult is considered a ‘vulnerable person’.

In addition, the NDA observes that there is no definition of ‘vulnerable person’ within the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs, although the separate Draft Code of Programme Standards defines vulnerable people as ‘individuals whose personal circumstances or well-being require that extra care be taken.’

In the absence of such a definition, the NDA is concerned that all people with disabilities may be considered ‘vulnerable’ and the consent of a parent, guardian or legal representative may be sought prior to a news or current affairs interview or broadcast. The NDA advises that the term ‘vulnerable person’ within the broadcasting codes and rules be replaced with ‘a person whose capacity to make one or more decisions is, or may shortly be, in question’ in line with the 2015 Act.

Conclusion

The NDA welcomes Coimisiún na Meán’s consultation on the revised Broadcasting Codes and Rules for radio and television broadcasters, in particular the Draft Code of Fairness, Objectivity and Impartiality in News and Current Affairs. Such a review is timely given recent changes in the legislative and regulatory landscape relevant to broadcasting. We would be happy to engage with the Commission on any of the points raised in this submission, including the Stage 2 review planned for early 2025.



Good food, Good life

Nestlé (Ireland) Ltd.

NESTLÉ IRELAND SUBMISSION

Coimisiún na Meán's consultation on the 'Stage 2 Review' of the revised Broadcasting Codes and Rules

Nestlé Ireland is a subsidiary of Nestlé SA, the world's leading nutrition, health and wellness company with over 70 brands across seven categories in the Irish market and a manufacturing site at Askeaton, Co Limerick. Nestlé employs almost 800 people in Ireland. We welcome the opportunity to respond to Coimisiún na Meán's consultation on the 'Stage 2 Review' of the revised Broadcasting Codes and Rules.

Nestlé Ireland recognises the importance of work being carried out globally to reduce the incidence of obesity. Nestlé also recognises that the causes of obesity are multifactorial and thus require a response that is proportionate and that achieves the stated public policy objectives without imposing unnecessary or disproportionate regulatory burdens.

We understand the public health challenges with overweight and obesity, especially among children. While advertising and its restrictions play a role in reducing children's exposure to food marketing, they supposed to be only part of a wholistic approach.

Policies to improve public health and reverse the worrying trend of obesity should include a wide range of measures to change food culture and diets overall incl. physical activity promotions, education on both nutrition as well as food preparation skills.

We take our role seriously in tackling this public health challenges, and we believe in establishing and maintaining a constructive dialogue with you and other policy makers striving for the best possible outcome. With our vast expertise and experience in food and drink product manufacturing and marketing, we hope to provide you with the necessary and helpful insights.

In summary, in response to the statutory review of the *Children's Commercial Communications Code (CCCC)* and *General Commercial Communications Code (GCCC)*, we believe that these codes continue to be relevant and provide effective and adequate protection to both children and adults from harmful exposure to advertising of HFSS products.



Beyond thriving for full compliance with existing advertising codes and rules, in 2023, we introduced our [updated Marketing to Children Policy](#) affecting, not only the targeting and placement of advertising of our products, but also the overall impression our marketing communications make.

We share the experience and the view of our industry federation, Food Drink Ireland as well as the findings of the *CCCC Statutory Review* in that the current Code is an example of an international best practice and “comprehensive in terms of themes addressed and products that are prohibited or restricted”.

- We support the definitions of the CCCC as they currently articulated, which, in our view, are unambiguous. The current definitions are now also well understood by relevant stakeholders.
- We recommend that, to identify whether a product is HFSS or not, the 2004/05 Nutrition Profiling Model (NPM) should continue to be applied. In our view, should any model other than this be considered, timing of its applicability and use in any policy instruments should be aligned across. This is essential to avoid confusion across the industry and consumers as well as errors in and significant additional resources needed for implementation. The use of an alternative NPM would also need to be consulted on in order to gain a full understanding of the implications of such a change.

In case of any potential changes to the Codes and Rules affecting HFSS advertising, should be subject to further consultations to make sure the guidelines are workable for all affected stakeholders, their potential impact is in response to the stated desired outcomes and implementation timelines are feasible.

We appreciate the opportunity to share our views in this consultation and will remain committed to constructive dialogue with Coimisiún na Meán on its work in this area.

ENDS

13th December 2024

Siobhán Molloy
Communications & Corporate Affairs
Nestlé Ireland

Consultation response form – Stage 2 Deadline 30th November 2024

This form lists the questions that Coimisiún na Meán is seeking submissions on in response to the stage 2 public consultation on draft revised Media Service Codes and Rules.

Please complete any or all sections of this form and return by email, by post or by hand to:

Post: Coimisiún na Meán, One Shelbourne Building, Shelbourne Road, Dublin 4, D04 NP20.

You do not have to respond to all questions in your submission to the consultation.

When preparing your response, please:

- refer to the full text of the Draft Codes and Rules and not the summaries provided in the consultation document, which are intended to be indicative only;
- clearly identify the specific section(s) or proposal(s) of the Draft Codes and Rules that are being addressed in the response;
- give reasons for your answer; and
- be concise.

Please note that this form is provided for your convenience only. Coimisiún na Meán accepts submissions in other formats or means should you prefer.

Respondents may wish to refer to Coimisiún na Meán's [Consultation Guidelines](#), which can be accessed on our website.

Important note on confidentiality:

It is Coimisiún na Meán's intention to publish submissions received in response to this consultation. If you wish to make all or any part of your submission on a confidential basis, please indicate this clearly at the start of your response to each relevant question.

Coimisiún na Meán will treat confidential information in accordance with its Consultation Guidelines.

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 30th November 2024
Full name	Alice-Mary Higgins
Contact phone number	
Representing	Self
Organisation name	
Email address	

Your response:

Please insert your response under each of the respective questions below.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

Yes. Please reference the recent report from the Climate Action Committee on the role of the media and communications, particularly the impact and regulations that promotes fossil fuels. One key recommendation of that report was that consideration should be given to the prohibition of advertising of fossil fuels and fossil fuel products.

In presenting to the Committee, Dr Ola Nordrum of Irish Doctors for the Environment cited research from Doctors for the Environment Australia that shows fossil-fuel pollution is now leading to more deaths globally than smoking. Given that tobacco products are prohibited under section 13.2 of the General Commercial Communications Code, I would suggest that fossil fuel products also be including under this subsection. Under the same Code, consideration should also be given to place regulations on sponsorship of fossil fuel products under section 16 as well as product placement of fossil fuel products under subsection 17.8.

The Climate Action Committee's most recent report recommended that Coimisiún na Meán undertake an examination to assess the feasibility of prohibiting or strictly regulating the advertising of fossil fuel products, including scrutiny of examples in France, where advertising of some fossil fuel products are banned, and The Hague, which recently banned all advertising of fossil fuel products and services. At the least, the report recommended that all advertising of fossil fuel products would be obligated to carry warnings that emphasise the danger to human health. This could be included in section 14.

That report also called for consistent language and standards to tackle greenwashing. It also called for measures to address tackle online targeting through streaming sites. That might include targeting of fossil fuel advertising and environmental disinformation. Again this could be included in section 14.

Consideration should also be given to including measures to address not only environmental impact of a broadcast message but environmental and carbon impact in relation to how the message is produced and promoted. Specifically, the Climate Committee's report recommended that Coimisiún na Meán consider measures to promote the use of the Albert Certification in relation to production, or similar standards, such as Ad Net Zero, in the advertising industry.



Question 2: Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science, and health?

Yes. Please reference the previously cited report from the Climate Action Committee. The submission from Purpose Disruptors Ireland outlined how “Advertising by Fossil Fuel Companies is Driving the Climate Crisis, as it not only promotes fossil fuels directly – it sows doubt, delays and distracts from the necessary action required to lead a low-carbon transition”. Laura Costello, of PDI, outlined how “environmental” advertising was driving disinformation. This is further reason to prohibit the commercial communications of fossil-fuel products.

There are welcome provisions in Code of Fairness, Objectivity and Impartiality in News and Current Affairs in relation to transparency for the audience regarding financial interests of anyone with an editorial involvement in news or current affairs in section 14. This section could be expanded to explicitly mention fossil-fuel products. Additionally, criteria relating to areas where there is overwhelming scientific consensus, such as climate, could be added to this section.

The report from the Climate Action Committee also recommended establishing a climate literacy programme for journalists as a means to increase the capacity of news media to provide informed and accurate climate coverage as well as the provision of media training to climate scientists in order to facilitate the presentation of research in a way that does not obscure findings. This could be included in section 14 of the Code of Fairness, Objectivity and Impartiality in News and Current Affairs.

I also believe that measures to address issues of disinformation should not only focus on content but also on the mechanisms of amplification. For example, measures in relation to recommendation algorithms and prohibition of the rewarding of disinformation. There should also be strict accountability for both platforms and publishers who accept, amplify or reward advertisements containing disinformation.

Question 3: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?

Question 4: Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?

Yes. At Committee Stage of the Online Safety and Media Regulation Act 2022, I submitted an amendment that would prohibit a broadcaster from broadcasting an advertisement which sought to promote speculative financial activities, including cryptocurrency trading. In this amendment, we grouped the promotion of cryptocurrency with the promotion of gambling. The UK Gambling Commission has established clear links between the two. They found that problem gamblers are much more likely to own cryptocurrencies than non-problem gamblers, and more likely to invest in crypto than in lower risk investments. 51% of those who had invested in cryptocurrency had done so because they think it's "fun and thrilling".

If we are to take this data seriously, it would seem sensible to prohibit the broadcast of commercial communications that promote cryptocurrency under subsection 13.2. If this amendment is not accepted, I would alternatively suggest that cryptocurrency be included in section 25 of the General Commercial Communications Code or be included under the definition of gambling in Appendix 1.

Question 5: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

I welcome measures to tackle the advertising of these products.

Question 6: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

It is important that advertising for such products should very clearly communicate that these products are alcohol free – simply including “zero” or “0.0%” somewhere in the ad is probably not enough. To do that, a new subsection could be included in section 18 of the General Commercial Communications Code that explicitly requires commercial communications to contain such clarity about such product where there is a similar alcoholic product sold by the same brand.

If any events are sponsored by a company advertising 0.0% alcohol products, then those products should be available at that event at any point where alcoholic products are sold. This could be included as part of subsection 18.4 of the same code.

Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

It is my view that no commercial communications relating to breast milk substitutes should be permitted. The WHO has clearly stated that if there is not adequate regulation of the advertisement of breast milk substitutes, then states are breaching the Convention on the Rights of the Child. The Lancet has estimated that 800,000 infant deaths could have been avoided internationally if the WHO's code had been respected and applied with respect to formula milk. Ireland has extraordinarily low levels of breastfeeding compared to other jurisdictions, with fewer than 6% of babies breastfed. 90% of babies will be fed formula within six months. Internationally, about 10% of global sales of breast milk substitutes, amounting to about \$6 billion, is spent on advertising these products. This is the equivalent to the entire budget of the WHO. Health services should not be up against that level that level of competition. There is a need for meaningful and impactful regulation.

I welcome the fact section 13.2 of the General Commercial Communications Code will ensure that a broadcaster does not broadcast commercial communications that are for infant formula for use by infants during the first 6 months of life, but I believe this does not go far enough. At Committee Stage of the Online Safety and Media Regulation Act 2022, I submitted an amendment that would prohibit a broadcaster from broadcasting advertisements that sought to promote breast milk substitutes outright. As such, I suggest that Section 13.2 (j) be amended to extend the timeframe to "the first 36 months of life", effectively addressing the core issues around commercial communications of breast milk substitutes and supporting the International Code of Marketing of Breastmilk Substitutes.

If an amendment to section 13.2 (j) is accepted, it would consequentially render sections 21.10 and 21.11 of the General Commercial Communications Code moot. It should be noted that subsection (d) of section 21.11 is particularly problematic. It suggests that commercial communications for follow-on infant formula shall be designed in a way that avoids risk of confusion with infant formula. However, given the fact that brands use similar branding for both products, this could create the potential for difficulties for parents being able to distinguish between different product advertising.

Additionally, section 17.7 of the General Commercial Communications Code, which prohibits commercial communications for HFSS food products in children's programmes, should include infant and follow-on formulas and be extended to post-watershed times as well as children's programmes.

Question 8: Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.

Consent of vulnerable parties is key, particularly where there is any issue of power imbalance. This could be outlined in subsection 4.6 of the General Commercial Communications Code.

Question 9: Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

I would favour additional guidance over excessive simplification.

It is also important that Stakeholder engagement initiatives are not too narrowly focused on those being regulated but also reflect and include those affected by or with expertise in the issues which are the subject of regulation – for example breastfeeding advocates, public health campaigners, children's rights groups etc. These provisions could be outlined in section 4 of the General Commercial Communications Code.

Question 10: Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

Question 11: Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?

I believe that measures to address issues of balance and false equivalence should not only focus on content but also on the mechanisms of amplification. For example, measures in relation to recommendation algorithms.



Coimisiún
na Meán

Question 12: Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?

I believe that there should be clear prohibition in respect of the advertisement of weapons or dual use goods included in subsection 13.2 of the General Commercial Communications Code.

From:
Sent: 20 December 2024 16:00
To: Codes
Subject: Ireland's Media Service Codes

To whom it may concern,
I wish to make a short submission to the Broadcasting Codes Public Consultation, focusing on Q7 in the Consultation Document: *Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula?*

The Online Media and Safety Regulation includes regulation that allows the codes to restrict advertising of infant and follow-on formulas and foods with high fat, salt and sugar content. This is not currently included in the draft Broadcasting Codes. The Broadcasting Codes should be amended to fully enforce the legislation as written.

Including the restriction on promotion, marketing and advertising on infant and follow-on formulas would ensure that Ireland is aligned with the WHO Code of Marketing of Breastmilk Substitutes (Known as The Code, for short). Enforcing the code does not imply that infant formula is a harmful product, but it does acknowledge and protect all parents from aggressive marketing methods that can undermine infant and maternal health.

Is mise le meas,
Dr. Aoife Long, Cork



To Whom it May Concern:

I am writing to you in response to your Stage 2 review of Ireland's Media Service Codes.

My name is Dr. Julie P. Smith, and I am an Honorary Associate Professor at the Australian National University (ANU). My research focuses on the economics of breastfeeding and the regulation of human milk markets, fields in which I have had the privilege to contribute extensively. With a PhD in Economics from ANU, I have led several Australian Research Council (ARC) funded projects, exploring critical issues such as maternal time use and the importance of breastfeeding support in workplaces and childcare settings.

My work emphasises the economic value of breastfeeding, advocating for its recognition in national food statistics and economic policies. Over the years, I have served as an expert advisor on breastfeeding economics to organisations including the World Health Organisation (WHO) and the U.S. Department of Health and Human Services. Additionally, I developed the 'Mothers' Milk Tool, which quantifies the volume and value of breastmilk to make its economic contribution more visible at national and global levels.

This tool is designed to make the economic benefits of breastfeeding more visible to policymakers, emphasizing its role in food systems and national productivity. For example, by including human milk in food production statistics, nations can better recognise and support breastfeeding as part of sustainable health and food security systems.

I strongly advocate for recognising human milk production in global food statistics, as seen in my collaboration with Norwegian researchers. Studies have shown that tracking breastfeeding can highlight its crucial role in achieving sustainable health outcomes and reducing reliance on formula, which often incurs additional economic and environmental costs.

As a researcher based in Australia, I am compelled to contribute to this consultation due to my focus on global breastfeeding practices and the urgent need for transformation in countries with especially low rates, such as Ireland. **Despite its status as a high-income country, Ireland has one of the lowest breastfeeding rates in the world.** My research demonstrates that increased breastfeeding rates could alleviate health system burdens by preventing illnesses in children and mothers while contributing to better developmental outcomes for infants. This underscores the need for improved policy support and investment in breastfeeding promotion and protection.

Aggressive marketing of commercial milk formula undermines breastfeeding by creating perceptions of formula as equivalent or superior to breastmilk. Research shows such marketing reduces breastfeeding initiation and duration rates by influencing parental infant feeding decisions. It also exaggerates claims of nutritional adequacy beyond scientific evidence, leading to misplaced reliance on commercial milk formula.

The Online Safety and Media Regulation Act of 2022 provides an unprecedented opportunity to address these issues by strengthening regulation of CMF marketing. Expanding legislative coverage to encompass

follow-on and toddler formulas, which are unnecessary and often misrepresented, would align with WHO recommendations and significantly improve breastfeeding outcomes.

In addition, amendments to the Broadcasting Codes must address digital media, the dominant platform for CMF marketing, and prohibit cross-promotion strategies that indirectly promote infant formula under the guise of other products. A robust framework for monitoring and penalising violations should be established to ensure adherence to regulations.

Ireland must seize this opportunity to protect children's rights, support maternal health, and prioritize public health over commercial interests. The adoption of transformational policies, such as banning the marketing of CMF entirely, would serve as a global exemplar of commitment to child and maternal well-being, sustainable development, and economic equity.

Thank you for considering my contribution to this public consultation.

Yours sincerely,

Dr Julie P. Smith

<https://orcid.org/0000-0001-9796-7629>

Honorary Associate Professor, Crawford School of Public Policy, Australian National University

Adjunct Associate Professor, Faculty of Medicine and Health, University of Sydney

Associate Professor, Health Research Institute, University of Canberra

<https://researchportalplus.anu.edu.au/en/persons/julie-p-smith>



Date: 20th December 2024

Re: Draft Media Service Codes and Rules

To whom it may concern,

My name is Dr Liz O’Sullivan, and I am a Lecturer in Nutrition at Technological University Dublin. I welcome the opportunity to provide feedback on the draft Codes recently published by Coimisiún na Meán. I would like to respond to Question 7 on page 25 of the draft document: *“Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?”*

Recommendation:

I am writing to urge you to modify the draft Media Service Codes and apply the most stringent restrictions on the advertising, marketing, and promotion of infant formula, and all commercial milk formula (all milk formula products targeted at children between the ages of 0 and 36 months). The advertising, marketing and promotion of all commercial milk formulae should be restricted across all media platforms, including but not limited to broadcast, digital, and any future communication technologies. The Media Service Codes related to infant formula and follow-on formula should be aligned with the WHO Code of Marketing of Breast-Milk Substitutes and its subsequent World Health Assembly Resolutions (World Health Organization, 1981).

Rationale:

Breastfeeding rates in Ireland are among the lowest worldwide and improving the prevalence of breastfeeding is a stated goal of the Department of Health and the Health Service Executive (Health Service Executive, 2016). Ireland is also obliged to ensure every child’s right to the highest attainable standard of health under the United Nations Convention on the Rights of the Child. This includes ensuring the protection, promotion, and support of breastfeeding.

There is unequivocal evidence that the advertisement of commercial milk formulae (i.e., breast milk substitutes) interferes with breastfeeding and undermines a mothers’ confidence in her ability to breastfeed. This is clearly highlighted in a 2022 report by the WHO (World Health Organization, 2022). In their report, the WHO describe how companies use manipulative marketing tactics that exploit parents’ anxieties and undermine their confidence. Commercial milk formula advertisements to the public use emotive language and imagery and are designed to induce sales of the product (Hastings et al., 2020; Rollins et al., 2023). These advertisements are also ubiquitous in Irish markets, both in-store and online (WBTi Ireland Core Group, 2023). The Global Breastfeeding Scorecard, published by UNICEF and the WHO, notes that implementation of the Code of Marketing of Breast-milk Substitutes is strongly associated with higher rates of breastfeeding (UNICEF & WHO, 2023). Thus, stringent restrictions on the advertising, marketing, and promotion of commercial milk formulae aligns with the Department of Health and Health Service Executive goals of increasing national breastfeeding rates.



My recommendation to restrict the advertising, marketing, and promotion of commercial milk formulae is not a value judgement or reflection on the behaviours of individual families who have chosen to use formula, or who have found it to be the most appropriate option for their family. I believe that formula should be available for families. However, it does not need to be advertised. The purpose of advertising is always to increase sales and drive industry profits. This is not beneficial for breastfeeding or formula-feeding families.

Please note, I am fully in support of the submission made by Baby Feeding Law Group Ireland in response to this open consultation. If you require further information, please do not hesitate to contact me.



Dr Liz O'Sullivan

Lecturer in Nutrition

Programme Chair, BSc Public Health Nutrition

Technological University Dublin

tudublin.ie

OT Baile Átha Cliath –

An Chearnóg Lárnach, Gráinseach Ghormáin, D07 ADY7, Éire.

TU Dublin - Central Quad, Grangegorman, D07 ADY7, Ireland.

TU Dublin is a registered charity RCN 2024754

References:

- Hastings, G, Angus, K, Eadie, D and Hunt, K (2020) Selling Second Best: How Infant Formula Marketing Works. *Globalization and Health*, 16, 1-12.
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- UNICEF & WHO (2023) *The Global Breastfeeding Scorecard 2023*. Available.
- WBTi Ireland Core Group (2023) *World Breastfeeding Trends Initiative: Ireland Report 2023*. Available.
- World Health Organization (1981) *International Code of Marketing of Breast-Milk Substitutes*, World Health Organization.
- World Health Organization (2022) *How the Marketing of Formula Milk Influences Our Decisions on Infant Feeding*. Available at: <https://www.who.int/publications/i/item/9789240044609>

Consultation response form – Stage 2 Deadline 30th November 2024

This form lists the questions that Coimisiún na Meán is seeking submissions on in response to the stage 2 public consultation on draft revised Media Service Codes and Rules.

Please complete any or all sections of this form and return by email, by post or by hand to:

Post: Coimisiún na Meán, One Shelbourne Building, Shelbourne Road, Dublin 4, D04 NP20.

You do not have to respond to all questions in your submission to the consultation.

When preparing your response, please:

- refer to the full text of the Draft Codes and Rules and not the summaries provided in the consultation document, which are intended to be indicative only;
- clearly identify the specific section(s) or proposal(s) of the Draft Codes and Rules that are being addressed in the response;
- give reasons for your answer; and
- be concise.

Please note that this form is provided for your convenience only. Coimisiún na Meán accepts submissions in other formats or means should you prefer.

Respondents may wish to refer to Coimisiún na Meán's [Consultation Guidelines](#), which can be accessed on our website.

Important note on confidentiality:

It is Coimisiún na Meán's intention to publish submissions received in response to this consultation. If you wish to make all or any part of your submission on a confidential basis, please indicate this clearly at the start of your response to each relevant question.

Coimisiún na Meán will treat confidential information in accordance with its Consultation Guidelines.

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation) Deadline for Response – 30th November 2024
Full name	Laura Costello
Contact phone number	
Representing	Self & Organisation
Organisation name	Purpose Disruptors Ireland
Email address	



Your response:

Please insert your response under each of the respective questions below.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

Yes.

Under the General Commercial Communications Code (e.g. at 13.2),

due to reasons laid out clearly in the [“Joint Committee on Environment & Climate Action Report on the role of media and communications, particularly the impact and regulation of advertising that promotes fossil fuels”](#) report

and our *Purpose Disruptors Ireland Submission to the Oireachtas Joint Committee on Environment and Climate Action: Submitted October 2024* (provided as separate attachment),

there should be restrictions on advertising for fossil fuel companies and companies that heavily rely on fossil fuels. This is addressed under Recommendation 14 of the Oireachtas Committee report.

In addition, the Commission should consider reviewing the General Commercial Communications Code with regard to the other recommendations laid out in the [“Joint Committee on Environment & Climate Action Report on the role of media and communications, particularly the impact and regulation of advertising that promotes fossil fuels”](#) report such as Recommendations 10, 11, 12, 13...

From:
Sent: 20 December 2024 09:19
To: Codes
Subject: Coimisiún na Meán public consultation submission

Dear

As Chairperson and on behalf on the Regional Integrated Infant feeding committee for Sligo/ Donegal / Leitrim/ Monaghan, I wish to make the following submission to Coimisiún na Meán as part of the public consultation for revisions of the Broadcasting Codes and Rules. Our submission directly relates to the broadcasting rules relating to Commercial milk formula..

Question 7 of Question 7:

It is often the more vulnerable, uninformed audience that will be easily influenced by the CMF advertising. The CMF companies advertise in a way that show a perfect mother and baby which is completely unrelated to reality which is false advertising. This is backed up by Unicef /WHO 2022 report and the Lancet Breastfeeding Series 2023.

If these codes are not extended to include CMF used in infants up to 36 months, then it would be important to add in that CMF companies should put the mychild.ie logo and link on their advertising when they mention BF in their advertising to direct mothers to unbiased information on Infant feeding, both breastfeeding and formula feeding.

Kind Regards,
Fiola Murphy Chairperson RIIFC
Child Health Programme Development Officer
Health and Wellbeing | Donegal | Sligo, Leitrim | Cavan| Monaghan

Oifigeach Forbartha Chlár Salient Leanaí | Sláinte agus Liúntas | Dhún nan Gall | Shligigh | Liatroim | Chabháin, Mhuineacháin
Aras na mBríci Dearga | Páirc Gno Fhionasclainn | Finonasclainn | Sligeach | F91 H2VR



18 December 2024

Re: Phase 2 Review of the Codes

Dear Robert,

Firstly, RTÉ wishes to acknowledge the extension for submissions which was welcome given the demands of the General Election.

Please find below the RTÉ responses to the Questions posed by the Commission for this phase of the Codes review.

RTÉ is happy to engage further on any of the issues covered.

We would also take opportunity to convey our seasonal best wishes to you and colleagues at the Commission and also for 2025.

Yours Sincerely

Brian Dowling RTÉ Head of Editorial Standards & Compliance
Conor Mullen RTÉ of Strategy & Commercial Compliance

Phase 2 / Consultation Questions & RTÉ Responses

Sustainability

Question 1 - *Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?*

RTÉ Response -

As previously outlined in the phase one stage, while RTÉ understands the intent behind this, there are important factors in the context of a new statutory and regulatory framework, that require clarity, particularly for content that can be subject to statutory complaints. RTÉ wishes to reiterate its points in that note:

For example, there are those who take a view that not only advertisements or sponsorship by car makers, airlines etc but also interviews (in news and current affairs) with representatives of such companies, constitute the promotion of behaviour that is grossly prejudicial to the protection of the environment.

It is RTÉ view that any product or service that is legally available in the State, and particularly those in the transport sector, are legitimate sources of advertising, etc.

For instance, in responding to some complaints about such products/services, RTÉ has referenced the Government's climate strategy which outlines a legitimate role for airlines.

To take another example: the sale of diesel and petrol cars remain legal. There are those who would argue that the sale of such vehicles is grossly prejudicial to the protection of the environment.

In circumstances where products/services of this kind are legally permissible, RTÉ believes it is important that the Commission, again by way of a Guidance Note, would provide more detail and clarity in respect of what it believes may constitute behaviour that is grossly prejudicial to the protection of the environment.

A definition of 'greenwashing' or the promotion of products or services that undermine climate action would be beneficial in providing clarity to stakeholders.

Climate Change, Science & Health

Question 2 - *Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science and health?*

RTÉ Response -

During and after the Covid pandemic, the then BAI made a number of complaint decisions that extrapolated from the principle in the *Code of Programme Standards* (that broadcasters should give due weight to the consensus of contemporary scientific knowledge regarding environmental matters) and applied this in respect of vaccines and vaccine coverage. RTÉ believes that this broad principle should be applied across these areas in an explicit format.

RTÉ will deal with a related aspect under Questions 3 and 11.

Elections & Referenda

Question 3 - *Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?*

RTÉ Response -

There are two key areas that RTÉ believes should be addressed in respect of elections and referenda.

RTÉ welcomed the updated election guidance issued in April 2024 and believes the 'contextual factors' outlined should be included in a revised code.

Furthermore, while it may not have been possible to conclude this aspect of the work up to now, RTÉ believes there are strong grounds for the Commission to issue guidance on constituency reporting in an election and on the selection criteria for candidate/leader debate programmes.

Much of this is already contained in past decisions of the courts and decisions of the BAI Compliance Committee which are included in the Election Document issued to parties and published by RTÉ in advance of the Local/European Elections and the General Election. A copy was made available to the Commission.

RTÉ is happy to engage further on this aspect.

Regarding referenda, there is now an opportunity to address a feature of recent referendums.

There is, at times, a public perception that during a referendum a broadcaster is required to provide equal time to YES/NO.

While some referendums have provided a wide spectrum of views in political and civic society, others have not.

For example, the Good Friday Agreement and the Children's Referendum both enjoyed a very broad spectrum of political and civic support, and very little opposition.

In such circumstances, there is a genuine issue of broadcasters reporting and reflecting the consensus that exists and not seeking to misrepresent support or opposition to a particular proposal.

Broadcasters should not be required to create a false equivalence between YES/NO if there is an overwhelming political/civic consensus on one side, and guidance on this should be provided by the Commission.

Cryptocurrency

Question 4 - *Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?*

RTÉ Response -

The advancement of online and digital finance products can pose a challenge in terms of technical expertise of a broadcaster/media company as to the legitimacy and risk of a product being advertised to a consumer.

Advertising and promotional guidelines in terms of regulatory (e.g. Central Bank Code of Business Rules) and transparency requirements, for example, would go a long way to ensuring consumer protection and education around these new products.

High Fats Salts and Sugars

Question 5 - *Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?*

RTÉ Response -

In its Statutory Report on the Effect of the BAI Children's Commercial Communications Code, the review broadly found that the existing code had been effective. As with the conclusion, it would be worthwhile to consider the changes in media consumption patterns over time, to ensure its effectiveness is maintained.

Heroes of the Young

A guidance note would be beneficial in that there is an increasing amount of promotion by sporting personalities for products that, while not necessarily of interest to the young, are being supported by personalities who could be deemed 'heroes of the young', to provide clarity around what can/cannot be promoted.

Alcoholic and Non-Alcoholic Products

Question 6 - *Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?*

RTÉ Response -

As per the RTÉ response to Phase 1, RTÉ believes a consistent approach in the regulation of advertising of alcohol in audio-visual services is necessary, to avoid a potential disconnect between broadcast services and online services of similar programmes. Given the changes in media consumption patterns, a consistent approach across media platforms should be encouraged.

The Guidance Note issued by the Broadcasting Authority of Ireland on Non-Alcoholic Variant Products has been effective in determining the differential between products.

Infant Formula

Question 7 - *Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?*

RTÉ Response -

- A uniform guidance document as such existed with the GCCC would help provide guidance and education to advertisers, media owner and advertising agencies
- Further promotion of the codes would be of benefit overall in terms of highlighting the obligations of broadcasters, brands and to give confidence to the Irish audience that the areas are well regulated

Programme Participants

Question 8 - *Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.*

RTÉ Response -

As a matter of practice, RTÉ seeks the informed consent of our contributors; they are advised of the planned nature of the programme and their participation in it.

Consent is not uniform. There are differing levels and contexts for consent: a person may give consent to be interviewed in respect of a news or current affairs story and this more often occurs at short notice. Members of the public may provide consent when asked to be part of a vox pop.

When RTÉ engages in an investigation or a long-term production, and particularly on a sensitive matter and/or with vulnerable contributors, consent is generally an ongoing feature, as such productions may run for a long period.

Occasionally there may also be circumstances in which contributors give their verbal consent at the start of a project and their continued consent is implicit through their ongoing involvement in the making of the programme.

Individuals are provided with information on the context of their contributions, unless there is a public interest and editorial justification for proceeding without their consent.

RTÉ has experience of some circumstances in which audience participants, have been subject to online abuse, following a programme. This is a difficult area as in some instances there is a compelling public interest in highlighting certain issues and many people are courageous and willing to speak publicly. In such instances, RTÉ works to advise and prepare a person before they provide final consent to participate in a programme and to alert them to potential reactions after a broadcast.

Guidance from the Commission on the nature of informed consent and the level of due care appropriate to a contributor(s) given the subject matter, would be welcome. RTÉ notes the guidance published by Ofcom [[Statement: Protecting participants in TV and radio programmes - Ofcom](#)]

Other Measures

Question 9 - *Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.*

RTÉ Response -

An awareness campaign highlighting the new codes would be welcome, this is important in highlighting the work undertaken by Coimisúin na Meán, as well as highlighting the responsibilities of all parties involved in commercial communications.

Training/education seminars/online on-demand courses providing guidance and examples as well as national campaigns brings awareness to audiences and commercial entities alike.

Sponsorship and Advertising

Question 10 - *Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?*

RTÉ Response -

RTÉ believes the distinction between sponsorship and product placement is clear.

The new changes with respect to the removal of prop placement is acknowledged.

Balance & False Equivalence

Question 11 - *Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?*

RTÉ Response -

RTÉ has addressed aspects of this above and in general terms, would welcome either in the Code, but perhaps more appropriately in a Guidance Note, an elaboration of the notion of a 'false equivalence.'

For reference purposes, this is addressed in the RTÉ Journalism & Content Guidelines 2020 as follows:

We seek to maintain a balance of opinion that reflects the weight of the evidence, such as, the consensus of contemporary scientific knowledge at the time of the broadcast, where this is relevant. This does not exclude alternative views per se. However, we are not obliged to provide a false equivalence.

On a general note, impartiality does not always require that differing opinions be achieved within a single broadcast. There are times when it may not be possible to cover all views in a single broadcast. Impartiality can be achieved within a reasonable period by a balancing contribution which is clearly signposted as such. Fairness does not necessarily require that all options on a subject are addressed or that differing views receive equal time.

In addition, there is at times some confusion about the issue of ‘fairness’ in news reporting. There is a body of decisions from the BAI reflecting the position that there is no requirement for fairness in news.

The very nature of news is that it is evolving, and not all aspects of an event are known, or can be established, at a given time.

It would be appropriate for the Commission, in the context of a revised Guidance Note, to provide context for news reporting, including the fact that news reports are not required to be fair in their content. Accuracy, objectivity and impartiality are paramount.

Other additions / amendments

Question 12 – *Are there any other additions or amendments that you believe should be made to the Commission’s broadcasting codes and rules? In each question, we would ask that you make specific proposals and provide a rationale, and where possible any evidence, data or other supporting material for the proposal.*

RTÉ Response -

There is a further issue RTÉ wishes to address, and this concerns Section 12.2.5 in the Phase 1 Code of Fairness, Objectivity and Impartiality in News and Current Affairs, which states:

“Broadcasters shall ensure that practices and procedures adopted in the sourcing, compilation, production and presentation of news and current affairs are visible, open to scrutiny, robust and accessible. This is particularly the case where a decision to broadcast or make available certain content may impact on an individual’s privacy.”

While RTÉ acknowledges this was included as a principle in the previous Code, this wording is now included as a “General Obligation” on broadcasters in the revised Code. This significantly alters its impact.

As currently drafted and proposed in the revised Code, this wording when given its ordinary literal meaning, in effect means that any person/third party has an entitlement to secure access to the details and information regarding the “sourcing, compilation, production and presentation of news/current affairs item”. The drafting follows with an express reference to privacy. In a nutshell, this essentially encompasses the entirety of the basis of RTÉ’s editorial decision making process and programme making. In the context of the range of existing statutory obligations which RTÉ must comply with in relation to fairness, objectivity and impartiality (where redress is offered by RTÉ’s comprehensive complaints process) as well as the express statutory obligation with regard to privacy of third parties, it is clear that this additional “General Obligation” raises some very serious concerns.

It is not entirely clear that this was the intent behind the draft of Section 12.2.5 of the revised draft Code.

However, for the avoidance of doubt, RTÉ believes that it is essential that this obligation is explicitly linked to the complaints process and the relevant powers of the Commission. To that end, RTÉ would suggest the following wording for a Phase 2 version of the Code:

"In circumstances where the Commission appoints an Authorised Officer, broadcasters shall ensure that practices and procedures adopted in the sourcing, compilation, production and presentation of news and current affairs are visible, open to scrutiny, robust and accessible. This is particularly the case where a decision to broadcast or make available certain content may impact on an individual's privacy."

This would make clear that access and scrutiny of the “practices and procedures” adopted in news and current affairs, is to be understood in the context of the Commission’s regulatory powers of investigation and not as a general principle of routine public access.

Other Amendments /Health

Given the risk of unhealthy pressure on people, especially young people, to change how they look the rules on cosmetic services could be updated having regard to the evolution of these services, in particular cosmetic services and procedures as these services evolve.

Guidance around the availability of CBD products and their promotion would be welcome.

Safefood response to the public consultation on revised broadcasting codes and rules for television and radio

Consultation title	Revision Broadcasting Codes and Rules (Stage 2 Consultation)
Full name	Dr Charmaine McGowan
Contact phone number	
Representing	Organisation
Organisation name	Safefood
Email address	

Safefood response to the public consultation on revised broadcasting codes and rules for television and radio

Safefood, welcomes the opportunity to make a written submission to Coimisiún na Meán Stage 2 review of the broadcasting codes and rules for TV and radio.

Safefood recommends:

- No advertisements containing food products high in fat, sugar, and/or salt (HFSS) should be permissible at any point during times and programmes where children could potentially be subjected to them
- Fast food and confectionary products should be subjected to the same marketing rules as HFSS products and not separated
- A ban all commercial communications deemed as HFSS across broadcast and on-demand media from 5:30am to 9:00pm.
- Extension of the provisions and protections of the code to the online environment when this is considered.
- Move towards the WHO Nutrient Profile Model

Safefood

Safefood is an all-island implementation body with a remit to promote food safety and healthy eating on the island of Ireland. Safefood has been advocating for the protection of children's health from food advertising for the past 25 years including:

- Support for the development of the children's advertising code by the Broadcasting Commission of Ireland (2005) and review of the code in 2008.
- Commissioning research on the nature and extent of children's exposure to food advertising¹
- Facilitating the discourse on food advertising to children²
- Supporting the development of critical media literacy skills in the primary school setting³

¹ [Food marketing to preschool children | safefood](#); [Many in Ireland back ban on unhealthy foods | safefood](#); [Public RFT - Reducing the exposure of children and adolescents to digital marketing of unhealthy foods: \(eu-supply.com\)](#)

² [Tackling the marketing of unhealthy food to children | Event \(safefood.net\)](#); [Marketing unhealthy food to children | safefood podcast](#)

³ [MediaWise - Primary schools education resource | safefood](#)

- Respondent to the consultation on Online Safety Code for video-sharing platform services, intended to ensure that Video-Sharing Platform Services (VSPS)

In addition to this response, we are jointly submitting with both the Healthy Weight for Children Group and the National Intersectional Working Group on Restricting Marketing of Unhealthy Food to Children and Adolescents.

Response to Question 5

This response answers to question 5 of the stage 2 review, which is:

“Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?”

The marketing of High Fat, Salt and Sugar (HFSS) food and beverages products pose significant public health concerns, particularly for children. As dietary habits are shaped early on in children’s lives, exposure to persuasive marketing of unhealthy foods can have long-lasting effects on children’s health and nutrition. Safefood believes that broadcasting codes and rules need to be strengthened to protect children from the harmful effects of such advertising .

Rationale for defining marketing as harmful to children

“Globally, food and non-alcoholic beverage (hereafter, food) marketing is pervasive across multiple media and formats and predominantly promotes products high in fat, sugar, and/or salt (HFSS) and their associated brands. Food marketing influences children's eating and related behaviours such as purchase requests, purchases, and preferences. Evidence for a relationship between food marketing exposure and obesity meets epidemiological criteria for causality. It is thought to be the combination of salient food cues and creative content (e.g., branding, promotional characters, emotional appeals, and animation) in food marketing that produces such compelling commercial messages to influence children's behaviour and health

outcomes. In other words, the impact of food marketing is a function of both exposure to the marketing message and its persuasive power.”⁴

Inclusion of digital marketing

In addition to broadcast advertising exposure to digital marketing of unhealthy foods to children and adolescents is a major concern as food and beverage companies can target advertisements to specific children or adolescents based on their online profiles, personal characteristics, and previous browsing history.

Safefood recently commissioned the first European study monitoring digital marketing to children and adolescents that uses the WHO CLICK Framework (2019) in the EU and WHO European Region.⁵ This research shows the extraordinary extent of unhealthy food social media marketing exposure to children on the island of Ireland.

Research findings:

- Adolescents on the island of Ireland are exposed to huge volumes of unhealthy food marketing – they see an ad every 4 minutes, or 15-19 ads per hour, of clear-cut marketing of unhealthy food.
- Children of all ages understand advertiser persuasive intent, but they do not interpret influencer or brand content as advertising as they feel positively about it because it is relatable.
- Children of all ages respond to digital food marketing with hunger/thirst and often with pleasure and enjoyment.

This scale of unhealthy food messages to children show that upstream policy measures are urgently needed to protect children. So we believe that the provisions and protection of the code should be extended to online environment digital advertising.

⁴ As cited in Boyland, Emma, Lauren McGale, Michelle Maden, Juliet Hounscome, Angela Boland, and Andrew Jones. 2022. ‘Systematic Review of the Effect of Policies to Restrict the Marketing of Foods and Non-alcoholic Beverages to Which Children Are Exposed’. *Obesity Reviews* 23(8):e13447. doi: 10.1111/obr.13447.

⁵ Safefood (in press). CLICKBITE. Reducing the exposure of children and adolescents to digital marketing of unhealthy foods on the island of Ireland.

Implement WHO best practice

Given this evidence of impact, and with diet-related noncommunicable disease (NCD) risk and obesity prevention in children being public health priorities in many countries internationally, best-practice recommendations have been issued by the World Health Organization (WHO) and other authoritative bodies for governments and industry to restrict HFSS food marketing to children.

In May 2010, the World Health Assembly unanimously adopted the WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children through resolution WHA63.14⁶. The primary purpose of these recommendations was to guide Member States in the optimal design of new policies, or in strengthening existing policies, to maximize the achievement of public health goals. Also, in response to the mandate of that resolution, the WHO published a framework for policymakers to support the implementation of recommendations in individual territories⁷, and the WHO has led on the development of region-specific nutrient-profiling models to support policymakers in identifying products that should be restricted in marketing to children⁸.

Upholding children's rights

The WHO has emphasised that marketing of unhealthy food to children contributes to the growing epidemic of childhood obesity. The WHO published a guideline in 2023 entitled 'Policies to protect children from the harmful impact of food marketing'. These guidelines recognise that food marketing is increasingly becoming a children's rights issue and states that "Marketing of foods high in saturated fatty acids, trans-fatty acids, free sugars and/or salt negatively impacts several of the rights enshrined in the Convention on the Rights of the Child, including the rights to health, adequate and nutritious food, privacy, and freedom from exploitation"⁹.

⁶ World Health Organization. Set of recommendations for the marketing of food and non-alcoholic beverages to children. http://whqlibdoc.who.int/publications/2010/9789241500210_eng.pdf, 2010.

⁷ World Health Organization. *A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children*. World Health Organization; 2012. <https://apps.who.int/iris/handle/10665/80148>

⁸ Kraak VI, Rincón GPS, Sacks G. An accountability evaluation for the International Food & Beverage Alliance's Global Policy on Marketing Communications to Children to reduce obesity: A narrative review to inform policy. *Obes Rev*. 2019; **20**(S2): 90-106. doi:[10.1111/obr.12859](https://doi.org/10.1111/obr.12859)

⁹ [Policies to protect children from the harmful impact of food marketing](#)

Studies in Ireland and elsewhere^{10, 11} show that children are particularly vulnerable to HFSS advertising because they lack the cognitive ability to understand persuasive intent, which, combined with collaborations with celebrities and influencers in the online space, make them an easy target for marketers. As a result of this, exposure to HFSS advertisements can lead to the development of unhealthy dietary habits that can persist into adulthood, increasing the risk of obesity, diabetes and other diet-related non-communicable diseases.

Given this evidence, and the need to protect children and to support them through enabling a healthier food environment, Safefood strongly recommends the marketing of HFSS products be recognised as harmful to children, to align with the World Health Organization and as a first step in introducing robust codes to limit exposure.

Nutrient profile model

The current General Commercial Communications Code defines HFSS as “those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency as adopted by the Commission”. The WHO has developed a nutrient profile model, and we strongly recommend that consideration be given to using the WHO model in the context of reviewing the General and Children’s Commercial Communications Codes and would be happy to discuss this further.

Recommendation to change codes

Safefood believes that the current codes in both the General Commercial Communications Code (GCCC) and the Children’s Commercial Communications Code (CCCC) are not strong enough to protect children from the harmful effects of marketing of HFSS foods. The Children’s Commercial Communications Code defines children’s commercial communications as “a commercial communication that promotes products, services, or activities that are deemed to be of direct or indirect

¹⁰ Boyland, Emma, Lauren McGale, Michelle Maden, Juliet Hounscome, Angela Boland, and Andrew Jones. 2022. ‘Systematic Review of the Effect of Policies to Restrict the Marketing of Foods and Non-alcoholic Beverages to Which Children Are Exposed’. *Obesity Reviews* 23(8):e13447. doi: 10.1111/obr.13447.

¹¹ Safefood (in press). CLICKBITE. Reducing the exposure of children and adolescents to digital marketing of unhealthy foods on the island of Ireland.

interest to children and/or is broadcast in or around children's programmes." Section 17 of the CCCC refers to diet and nutrition, mostly regarding children's commercial communications that contain references to food.

Safefood believes is that this section is unfit for its purpose of protecting children from marketing of HFSS products. This section does not prevent commercial communications of HFSS products being aimed at children, only the way they can be targeted at children. The codes still allow for targeted HFSS ads for children, and only limit the amount of ads that can be shown and while there are criteria that the advertisements must meet in order to be aired on TV and radio, we are of the view that no advertisements containing HFSS food products should be permissible at any point during times and programmes where children could potentially be subjected to them.

The separation of codes for fast food/confectionary and HFSS products is also unnecessary as fast food, and confectionary products will in most instances fall under the auspices of HFSS products and so should be subjected to the same marketing rules as HFSS products.

In the GCCC, under Section 14 titled 'Provisions applying to all Commercial Communications', in the subsection titled 'Children' it is stated that "Broadcasters shall take appropriate measures to ensure that material contained in commercial communications that would be likely to impair the physical, mental or moral development of children is only made available in a way that children will not normally hear or see it".

Studies have shown that while HFSS marketing is not an immediate threat to children and their development, continued exposure to these communications can have a detrimental effect on the physical and mental health of children, as well as far-reaching, long-lasting effects on the health sector and on the economy. Under the current codes set out in the GCCC, Safefood believes that the children's subsection of Section 14 should be used to categorise the marketing of HFSS products to children across broadcast media (and digital marketing) as harmful.

Ban foods high in fat, sugar, and/or salt

Safefood proposes that section 17 of the CCCC be amended to introduce codes like the legislation that is being introduced in the UK from the 1st of October 2025. The UK legislation will ban all commercial communications deemed as HFSS across broadcast and on-demand media from 5:30am to 9:00pm. Included in this legislation is also a total ban on paid for advertising of these products online. This comprehensive approach represents a significant step forward in reducing children's exposure to unhealthy food marketing. By creating a protected time window and restricting online advertising, the UK legislation addresses multiple channels through which children are exposed to HFSS marketing.

The UK legislation is set to be introduced across multiple platforms in the UK. We recognise that this consultation is currently limited to broadcasting codes across TV and radio. However, Safefood supports not only such changes to the broadcasting codes across TV and radio but supports similar codes to be introduced for online platforms.

All proposed changes would need to be accompanied by strong monitoring and compliance systems and the work done under Best-ReMaP would be able to be used to facilitate such changes (see Appendix). Furthermore, consideration will need to be given to the continued use of the UK/ROI Nutrient Profile Model or to move to the WHO Nutrient Profile Model.

The General Commercial Communications Code should be amended to reflect any such changes to the CCCC.

Legal basis for greater restrictions

The Coimisiún has the authority to introduce such codes through both Section 46(7) (for media service codes) and section 139K (5) (for online safety codes) of the OSMR, and to consult with public health authorities in doing so.

Section 46 (7) of the Online Safety and Media Regulation Act 2022 (OSMR) states that "Provision made for the purpose referred to in subsection (2)(d)(ii) may prohibit or restrict, in accordance with law, the inclusion in programmes of commercial

communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars.” Safefood proposes that this section should be the basis for introducing greater restrictions into the General Broadcast Codes and the Children’s Commercial Communications Codes.

Furthermore, Section 139K (5) of the OSMR Act, in relation to online safety codes, states “Without prejudice to subsection (2) or (4), an online safety code may prohibit or restrict, in accordance with law, the inclusion in programmes or user-generated content of commercial communications relating to foods or beverages considered by the Commission to be the subject of public concern in respect of the general public health interests of children, in particular infant formula, follow-on formula or foods or beverages which contain fat, trans-fatty acids, salts or sugars.”

Safefood proposes that this section should be the basis for introducing online safety codes that restrict commercial communications of HFSS products in digital settings, like the legislation being commenced in 2025 in the UK. It is imperative that significantly stronger mandatory codes be developed to properly address this issue as self-regulatory codes have already proven to not be strong enough. There is evidence that supports the idea that self-regulation is not a feasible monitoring tool. A 2013 systematic review^[2] found significant divergence between the reported impact of marketing regulation (including self-regulation by industry) provided in peer-reviewed journals, or industry-sponsored reports, showing the need for external monitoring. Moreover, of studies evaluating voluntary policies, significantly more studies showed undesirable effects than desirable effects on exposure to, and power of, food marketing. This was not the case for studies evaluating mandatory policies.^[3]

^[2] Galbraith-Emami, S. and Lobstein, T. (2013) ‘The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review’. *Obesity Reviews*.

^[3] Boyland, E, McGale, L, Maden, M, Hounsborne, J, Boland, A, Jones, A. Systematic review of the effect of policies to restrict the marketing of foods and non-alcoholic beverages to which children are exposed. *Obesity Reviews*. 2022; 23(8):e13447. doi:10.1111/obr.13447

International legislation on the marketing of HFSS foods to children

The UK is set to implement legislation from 1 October, 2025, that will ban all commercial communications for food products deemed as HFSS across broadcast and on-demand media from 5.30 am to 9.00 pm. Included in this legislation is also a total ban on paid for advertising of these products online. This comprehensive approach represents a significant step forward in reducing children's exposure to unhealthy food marketing. By creating a protected time window and restricting online advertising, the UK legislation addresses multiple channels through which children are exposed to HFSS marketing.

Portugal introduced legislation in 2019 and is seen as an early mover in introducing legislation in unhealthy food marketing to children. The legislation introduced is aimed at restricting the advertising of HFSS foods to children aged 16 and under. The law covers advertisements broadcasted in the 30 min before and after programmes targeted at children or for which a minimum of 25% of the audience includes children under 16 years old, and extends across television programs and services, on-demand audio-visual communication services, and radio, including advertising in the respective breaks of these programs, as well as digital marketing restrictions.

A study carried out in Portugal to assess the potential exposure and power of food advertisements aimed at children, broadcasted on Portuguese TV channels found that there is still a high percentage of food advertisements with potentially child-directed content on television. This can be attributed to limitations of the legislation introduced, including enforcement and age verification across platforms. The study found that among all food and beverage advertisements, 78.3% did not meet the nutritional profile outlined by the Portuguese Directorate-General of Health, and while advertising aimed at children had decreased since the introduction of legislation, most HFSS food/beverage advertisements were targeted at families, which means that children and adolescents are likely exposed to large numbers of unhealthy food advertisements on television.

The legislation set to be enacted in the UK is a more comprehensive approach that ensures children are not targeted during peak advertising hours. These stricter

standards provide a more robust and enforceable model that better protects children's health. safefood is advocating for similar restrictions to be implemented in Ireland. While we recognise that this consultation is solely focused on broadcasting codes and rules for TV and radio, we would strongly recommend that the UK legislation be considered both presently in relation to the codes for TV and radio, and also for future codes and rules relating to other broadcasting and on-demand media, including social media.

Conclusion

Safefood strongly recommends that the advertising of HFSS products represent significant health risks, especially for children. Evidence clearly supports the need for stricter regulatory codes to limit children's exposure to these harmful marketing practices. An overhaul of both the General Commercial Communications Code and the Children's Commercial Communications Code is necessary to protect children from the harmful marketing of HFSS products, and there is space to learn from international best practices, such as the upcoming UK legislation, which can lead to more effective strategies in addressing childhood obesity and promoting healthy dietary habits. Safefood would urge the Coimisiún na Meán to act decisively to protect the health of children by ensuring comprehensive and enforceable restrictions on the advertising of HFSS products are included in the upcoming revision of codes and rules for broadcasting on TV and radio.

Appendix A

After a three-year journey, the Best-ReMaP project, funded by the European Commission, has successfully concluded on the 30th of September 2023, leaving behind a trail of impactful policies and practices aimed at addressing childhood obesity in Europe.

Childhood obesity has emerged as a pressing health concern in Europe, with a staggering 20% of children and adolescents being overweight or obese. Projections suggested that by 2035, these numbers could rise by 61% for boys and 75% for girls, imposing significant economic and health burdens on society.

The Best-ReMaP project recognized the complexity of this issue, driven by factors like genetics, family, communities, and socio-economic status. To combat this problem, the project focused on three key areas:

1. **Food Reformulation for Healthier Diets:** By improving the nutritional content of commonly consumed food products, the project aimed to make healthier choices more accessible and appealing to children. This approach, involving the reduction of harmful ingredients such as sugar, salt, and saturated fat, has the potential to significantly improve the nutritional quality of foods.
2. **Combating Unhealthy Food Marketing:** Unhealthy food marketing significantly influences children's dietary choices. The project delved into methods to limit the exposure of children to these promotions, aiming to create healthier nutritional environments for them.
3. **Best Practices in Public Food Procurement:** Public food procurement, particularly in schools and kindergartens, was recognized as a powerful tool for shaping children's dietary habits. The project sought to enhance the quality of food served in these settings through transparent procurement practices.

As part of work under Best-ReMaP, Ireland co-led for part of the time on a work package called 'Best practices in reducing marketing of unhealthy food products to children and adolescents.' Best ReMaP concluded in September 2023 and the work package relating to marketing best practices developed a number of resources and guides that are aimed at addressing the issue of marketing of unhealthy foods to children going forward. Please see links to these resources and guides below.

[—► Policy Brief](#)

[—► Leaflet](#)

[—► An EU harmonised approach using the WHO nutrient profile model for the identification of foods not permitted for marketing to children – D6.1](#)

[—► Technical Guidance for codes of practice to reduce unhealthy food marketing to children – D6.2](#)

—► Piloting the EU-wide monitoring protocol for unhealthy food marketing – report from the Best-ReMaP Joint Action studies – D6.3

—► A coordinated EU Framework for Action on reducing unhealthy food marketing to children, within the scope of HLG-N&PA – D6.4

—► Establishment of the EU Expert Group and national intersectoral working group – M6.1

—► A workshop on how to use adapt and implement the EU harmonised nutrient profile model – M6.2

—► Regulation and legislation mapping report – M6.3

—► Workshop on how to implement Codes of Practice to reduce unhealthy food marketing to children – M6.4

—► Monitoring marketing of unhealthy foods to children: Comparison and evaluation of existing protocols, with stakeholder consultation



1/10/24

Aighneacht: Draft Media Service Codes and Rules Consultation

TG4 welcomes the opportunity to give feedback on the draft Media Service Codes and Rules dated 4 September 2024.

TG4 has the following comments in green:

Stage 2 Review - Consultation questions:

Question 1 - Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

See comments above. TG4 has no further comments.

Question 2 - Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science, and health?

See comments above. TG4 has no further comments.

Question 3 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?

See comments above. TG4 has no further comments.

Question 4 - Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?

See comments above. TG4 has no further comments.

Question 5 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

See comments above. TG4 has no further comments.

Question 6 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / nonalcoholic?

See comments above. TG4 has no further comments.

Question 7 - Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

See comments above. TG4 has no further comments.

Question 8 - Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.

See comments above. TG4 has no further comments.

Question 9 - Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

TG4 requests guidance documentation from the Coimisiún which would provide: information and guidance on the Codes; details of how the Codes will be implemented; information on the sanctions under the OSMR Act; guidance on the level of fines which the Commission would be likely to impose for particular types of breaches; and what the Commission would regard as an appropriate internal compliance system for the purposes of the OSMR Act.

TG4 requests the Coimisiún to give workshops to broadcasters and to the independent production sector which produces content for the broadcasters prior to the coming into effect of the Codes and to continue to give workshops on a regular basis to provide guidance on the above matters.

Question 10 - Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

See comments above. TG4 has no further comments.

Question 11 - Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?

See comments above. TG4 has no further comments.

Question 12 – Are there any other additions or amendments that you believe should be made to the Commission’s broadcasting codes and rules?

See comments above. TG4 has no further comments.

CRÍOCH

Submission on Broadcasting Codes and the Regulation of Infant Formula and Follow-On Formula Advertising

Prepared by UNICEF Ireland

Date: November 2024

To: Coimisiún na Meán

Subject: Response to the Consultation on Broadcasting Codes under the Online Safety and Media Regulation Act, addressing question 7 - Additions or Amendments to Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula.

Introduction

UNICEF Ireland welcomes the opportunity to contribute to the consultation on updates to the Broadcasting Codes under the Online Safety and Media Regulation Act (OSMR). Our submission underscores the urgent need for strengthened regulations to protect breastfeeding and ensure public health priorities are not compromised by the commercial interests of the breast milk substitute industry. Specifically, UNICEF Ireland recommends that Ireland's regulations:

1. Protect breastfeeding as the gold standard for infant nutrition.
2. Close existing regulatory loopholes that allow formula companies to exploit ambiguities.
3. Address evolving marketing strategies, particularly the interplay between broadcast and digital advertising.

Breastfeeding is recognised globally as the optimal form of nutrition for infants, providing unmatched health and developmental benefits for both children and mothers. As a signatory to the Convention on the Rights of the Child (CRC), Ireland has a responsibility to uphold children's rights to the highest attainable standard of health. This includes protecting breastfeeding from being undermined by formula marketing and ensuring parents have access to accurate, unbiased information.

While Ireland's current Broadcasting Codes include provisions to regulate the promotion of breastmilk substitutes, they fall short in addressing marketing practices for follow-on formulas, toddler milks, and the cross-promotion of these products. Additionally, the rise of digital marketing has created new challenges that require immediate and comprehensive regulatory responses.

Breastfeeding is not only a foundational health practice but also a vital public health priority. Stronger, more effective regulations are urgently needed to prevent misleading marketing tactics from eroding breastfeeding rates and undermining public health efforts. These objectives align closely with UNICEF's mission to advocate for the highest attainable health outcomes for children and the best interests of the child.

UNICEF Ireland's recommendations are firmly grounded in international frameworks, including the WHO International Code of Marketing of Breast-Milk Substitutes, relevant EU directives, and global best practices. Implementing these recommendations will strengthen protections for breastfeeding and ensure Ireland's compliance with its international commitments to public health and child rights.

Definitions and Terminology

To ensure clarity and consistency, this submission uses the following definitions:

- **Breast-Milk Substitutes (BMS):** Any food or beverage marketed or represented as a partial or total replacement for breast milk. This includes:
 - Infant formula, follow-on formula, and toddler milks.
 - Fortified plant-based milks marketed for infants and young children.
 - Complementary foods marketed for infants under six months of age.
 - Feeding bottles, teats, and related feeding implements.
- **Promotion:** Communication designed to persuade or encourage the purchase, use, or consumption of a product, or to raise awareness of a brand. This includes:
 - Advertising across all media (broadcast, print, digital, etc.).
 - Indirect marketing strategies such as free samples, gifts, and competitions.
 - Cross-promotion through similar branding, packaging, or advertising.
- **Digital Marketing:** Marketing conducted via digital platforms, including social media, search engines, apps, streaming services, and e-commerce platforms.
- **Cross-Promotion:** Marketing tactics that indirectly promote one product (e.g., infant formula) by using branding or advertising strategies associated with another product (e.g., toddler milk).

Key Concerns with the Current Codes

The OSMR Act includes provisions for regulating infant and follow-on formula commercial communications within the Online Safety Code and Media Service Codes. However, the absence of explicit protective measures in the Online Safety

Code underscores the urgent need to incorporate robust regulations into the Media Service Codes to meet statutory obligations.

While the current codes prohibit advertising that discourages breastfeeding or suggests formula is superior, they fail to address the pervasive marketing of follow-on formulas. This oversight creates a significant regulatory loophole that companies exploit through branding, emotional marketing, and cross-promotion tactics, indirectly promoting their entire product range. These practices extend to products marketed for children up to three years of age, such as follow-on formulas and "growing-up milk" drinks, which are often framed as essential for young children despite being unnecessary and undermining public health objectives.

The 2016 Guidance clarifies that breast milk substitutes (BMS) encompass not only infant formula but also these follow-up milks and growing-up milk drinks. It is critical for countries to include these products within the scope of national laws, as international recommendations for optimal feeding stress exclusive breastfeeding for the first six months of life, followed by complementary feeding and continued breastfeeding for up to two years or beyond. Thus, protecting continued breastfeeding is essential to safeguarding the health of infants and young children.

Despite this, the baby food industry engages in cross-promotion, where similar branding, packaging, and advertising strategies are used across a range of products—infant formula, follow-up milks, and toddler milks. For example, some companies use identical packaging and brand names for their entire product range, promoting follow-up milks in a way that builds brand loyalty and indirectly promotes infant formula. This tactic is a clear violation of the spirit of breastfeeding promotion and circumvents national Code legislation.

The World Health Assembly (WHA) and the World Health Organization (WHO) have stated that follow-up milks are unnecessary. Allowing the promotion of these products undermines public health initiatives aimed at encouraging continued breastfeeding for up to two years and beyond. Breastfeeding should remain the first choice for meeting a child's milk requirements during the period of 6 to 24 months of age and beyond, as it offers significant health advantages for both mother and child, including immune protection that reduces the risk and severity of infections.

For instance, a leading formula company in Ireland uses identical branding and packaging designs for its infant, follow-on, and toddler formulas. Advertisements for follow-on formula are crafted to appear as part of a "natural feeding progression," subtly promoting the use of infant formula as well.

Example:

- the Cow & Gate Baby Club website states:

“Follow-on milk is only for babies over 6 months, as part of a mixed diet. It should not be used as a breastmilk substitute before 6 months. The decision to start weaning including the use of this product before 6 months should be made only on the advice of a doctor, midwife, health visitor, public health nurse, dietitian, pharmacist, or other professional responsible for maternal and childcare.”

While this statement seems to offer a cautionary note, it unintentionally implies that follow-on formula is a necessary part of weaning after six months, without clearly emphasising that breastfeeding remains the gold standard for infant nutrition. By presenting follow-on formula as a standard component of infant diets, these practices risk creating the perception that formula feeding is the default choice, thereby undermining breastfeeding efforts.

2. Interplay Between Broadcast and Digital Marketing

Broadcast advertising serves as a gateway to unregulated digital ecosystems. Television and radio campaigns often direct parents to websites or social media platforms, where marketing rules are weaker or non-existent.

Example:

- A compliant TV ad for follow-on formula might include a tagline like, “Visit [BrandName].ie to learn more.” On the website, parents encounter promotional materials, product reviews, and influencer endorsements that subtly idealise formula feeding and foster brand loyalty.

This interplay exploits gaps in the current codes, as digital platforms are not explicitly regulated, allowing companies to expand their reach with minimal oversight.

3. Insufficient Regulation of Digital Marketing

Digital marketing of breast-milk substitutes presents significant risks, particularly as it increasingly targets new and expectant mothers through personalised and persuasive strategies on social media platforms, websites, and mobile apps. These marketing tactics, including the use of social media influencers, targeted ads, and sponsored content, subtly promote formula feeding as an acceptable or even preferable alternative to breastfeeding. The highly tailored nature of these ads, often disguised as neutral advice or peer recommendations, can influence parental decisions without the transparency of traditional advertising.

The widespread use of digital marketing, particularly through apps, baby clubs, and online services, allows advertisers to collect personal information from parents, enabling them to send targeted advertisements and promotions for breast-milk substitutes. This method of marketing is especially effective at reaching vulnerable populations and can undermine public health campaigns that encourage breastfeeding, leading to confusion and ultimately reducing breastfeeding rates.

Given that breastfeeding is essential for infant nutrition, immune protection, and mother-infant bonding, the lack of regulation in this space poses long-term risks to infant health. Therefore, stricter regulations on digital marketing tactics are urgently needed to protect vulnerable parents from misleading and aggressive marketing practices.

Example:

- **Influencers:** In Ireland influencers frequently share paid posts promoting follow-on formula while blending the endorsement with parenting advice. Such content often lacks clear disclaimers and appears as authentic recommendations, undermining public health efforts to promote breastfeeding.
- **Social Media Algorithms:** BMS companies use data-driven advertising on platforms like Facebook and Instagram to target mothers, pregnant women, and caregivers based on life stage, interests, and online behaviours. Algorithms push tailored ads for formula products during critical times, such as late pregnancy or early postpartum periods, exploiting vulnerabilities.
- **Baby Clubs and Rewards Programs:** Baby clubs, operated by formula manufacturers, require parents to provide personal details like their baby's birth date or expected delivery date. In return, members receive "parenting tips" laced with subtle or overt formula promotions, coupons, and sample products, creating an ongoing relationship with the brand.
- **Virtual Parenting Events:** Virtual events and webinars advertised as parenting education often feature health professionals or influencers sponsored by formula companies. These events promote BMS products under the guise of offering unbiased advice.
- **Gamification and Apps:** Apps and online tools like pregnancy trackers or infant growth apps embed advertisements and content promoting formula feeding. For example, pop-up suggestions within these apps may advise parents to supplement breastfeeding with specific formula brands if they are "worried about milk supply."
- **YouTube and Video Content:** On YouTube, sponsored parenting channels integrate formula promotions into broader content, such as day-in-the-life videos or feeding tutorials. These endorsements are often subtle, framed as personal advice, and may not disclose their commercial nature.
- **Cross-border Digital Campaigns:** In regions where advertising regulations are stricter, companies use international influencers and platforms to disseminate ads, making enforcement challenging. For example, a multinational formula company might target a European audience through an influencer based outside the EU.

These examples underscore the need for robust, enforceable regulations to address the sophisticated and pervasive nature of digital marketing for BMS. The WHO guidance provides a critical framework for governments to implement comprehensive restrictions to protect families from these tactics. For more please refer to this summary of guidance and recommendations on [Regulating Digital Marketing of Breastmilk Substitutes](#).

4. Lack of Comprehensive Monitoring and Enforcement Mechanisms

Ireland faces challenges in monitoring and enforcing regulations to curb the promotion of breast-milk substitutes (BMS) across both digital and traditional broadcast media. While some measures align with the International Code of Marketing of Breast-Milk Substitutes (the Code), enforcement mechanisms remain inadequate to address evolving and sophisticated marketing tactics employed in these media environments. This leaves companies free to exploit regulatory ambiguities with minimal deterrence. WHO provides comprehensive guidance for [Governments to follow: Effective Regulatory Frameworks for Ending Inappropriate Marketing of Breast-milk Substitutes and Foods for Infants and Young Children in the WHO European Region](#). We would strongly recommend the Coimisiún follows this guidance in order to incorporate robust governance mechanisms into the laws.

Proposed Amendments to the Broadcasting Codes

Definition of Promotion:

For the purposes of these amendments, promotion includes the communication of any message, through any channel or medium, designed to persuade or encourage the purchase, use, or consumption of a product or to raise awareness of a brand. This encompasses advertising, public relations, and other marketing strategies, whether directly targeting consumers or indirectly through intermediaries such as influencers or health professionals. Promotion does not require explicit reference to a brand name and includes the following:

Traditional advertising (e.g., broadcast, print, and radio).

Digital marketing (e.g., social media ads, targeted ads, influencer partnerships, sponsored content, and website promotions).

Indirect strategies such as free samples, gifts, competitions, or using health systems to promote products.

This definition aligns with the WHO International Code of Marketing of Breast-Milk Substitutes and ensures that all forms of marketing—whether explicit or implied—are regulated effectively.

1. Prohibit the Promotion of all Breast Milk Substitutes (BMS)

Current Gap: While the current codes prohibit the promotion of infant formula, they allow follow-on and toddler formulas to be marketed under certain conditions. This creates a loophole that enables indirect promotion of infant formula through brand crossover and shared marketing strategies.

Proposed Amendment:

Implement a comprehensive ban on the promotion of all breast-milk substitutes (BMS) for children under 36 months, explicitly including infant, follow-on, and toddler formulas.

Replace Sections 21.10 and 21.11 with a unified clause that prohibits the promotion of all BMS, removing any allowances for follow-on or toddler formula marketing.

Rationale:

- Simplifies enforcement by eliminating distinctions between infant and follow-on formula.
- Aligns Ireland's regulations with the WHO Code and strengthens protections against marketing practices that undermine breastfeeding.
- Reduces consumer confusion and prevents companies from using cross-promotion tactics.

2. Regulate Digital Marketing and Cross-Channel Promotion

Current Gap: The codes do not regulate digital marketing or the interplay between broadcast and digital platforms.

Proposed Amendment:

- In accordance with the [WHO Guidance](#) on regulatory measures aimed at restricting digital marketing of breastmilk substitutes 2023, prohibit all digital marketing of BMSs, including influencer promotions, targeted ads, and sponsored content.
- Ban broadcast advertisements from directing consumers to websites, social media platforms, or other digital content related to BMSs.
- Require all online extensions of broadcast campaigns to comply with the same rules as traditional media.

Rationale:

- Prevents companies from using broadcast ads as a gateway to less regulated digital spaces.

- Ensures consistent messaging across platforms, protecting parents from misleading marketing.

3. Prohibit Cross-Promotion Tactics

Current Gap: While the codes require distinctions between infant and follow-on formulas, they fail to prohibit cross-promotion through unified branding or packaging. This allows companies to use branding and design similarities across product lines to indirectly promote infant formula, undermining breastfeeding.

Proposed Amendment:

- Prohibit the use of similar branding, logos, and mascots across formula products.
- Require companies to differentiate clearly between product lines to avoid consumer confusion.

Rationale:

- Prevents companies from leveraging follow-on formula, complementary foods or other baby foods to cross-promote BMS advertising or indirectly promote infant formula.
- Strengthening the regulation of breast milk substitute marketing, requires alignment with international standards and recent Irish legislative developments. Specifically, S.I. No. 490 of 2023, which amends Irish law to enforce the EU directive on the marketing of infant and young child feeding products, provides a critical framework for stricter regulations. This statutory instrument highlights the necessity of addressing marketing practices that undermine breastfeeding through misleading cross-promotion and related tactics.

4. Strengthen Monitoring and Enforcement

Current Gap: The monitoring and enforcement mechanisms for the marketing of breast-milk substitutes are currently insufficient, especially in the digital space and healthcare settings. Additionally, there is a lack of strong penalties for non-compliance, which limits the deterrent effect and reduces adherence to the International Code of Marketing of Breast-Milk Substitutes (the "Code").

1. Implement a Comprehensive, Independent Monitoring System

Focus: Establish an independent, systematic monitoring system to track all forms of marketing related to breast-milk substitutes across all sectors—traditional media, digital platforms, and healthcare settings.

Action: Ensure regular, transparent audits of marketing activities by third-party monitoring bodies, with data made publicly available to stakeholders and the general public.

Risk-Based Approach: Prioritise areas of highest risk, including digital platforms (e.g., social media, websites) and healthcare facilities, where marketing has the most direct impact on mothers, families, and healthcare professionals.

2. Mandate Transparent Reporting and Accountability

Focus: Require all stakeholders, including formula manufacturers, advertisers, and healthcare providers, to publicly report their marketing and promotional activities related to breast-milk substitutes.

Action: Develop clear, standardised reporting mechanisms that include details of all formula-related advertising (e.g., media outlets, digital platforms, influencers, sponsorships).

Public Disclosure: Make these reports publicly accessible to ensure accountability and allow for independent verification of compliance.

3. Impose Effective Financial Penalties for Non-Compliance

Focus: Establish a clear, tiered system of penalties for breaches of the marketing Code, with severity proportional to the nature and extent of the violation.

Action: Ensure that financial penalties are sufficiently high to act as a deterrent for violators. These fines should be linked directly to the scale of the violation, such as misleading advertising or targeting vulnerable populations.

Revenue Allocation: Allocate the funds raised from penalties to support breastfeeding promotion programs, including educational campaigns, lactation support services, and public health initiatives that promote optimal infant nutrition.

4. Enhance Enforcement Capacity and Transparency

Focus: Strengthen enforcement mechanisms to ensure that violations are detected, investigated, and addressed promptly.

Action: Strengthen the capacity to oversee and enforce the Code. This should include the ability to impose sanctions, monitor compliance, and report on enforcement efforts transparently.

Collaboration: Engage with civil society, healthcare professionals, and international bodies to ensure a collaborative and coordinated approach to enforcement and monitoring.

Rationale:

- **Comprehensive and Independent Monitoring**

Ensures that marketing practices are systematically and consistently reviewed, particularly in high-risk sectors such as digital marketing and

healthcare facilities. Independent monitoring guarantees objectivity and public trust in enforcement mechanisms.

- **Transparency and Public Accountability**

Public disclosure of marketing activities and penalties ensures accountability, enabling civil society, regulatory bodies, and the public to monitor the actions of formula manufacturers and advertisers. This enhances transparency and encourages voluntary compliance.

- **Effective Deterrence through Financial Penalties**

Substantial fines for non-compliance, with funds redirected to breastfeeding promotion programs, create a clear financial incentive for companies to comply with the Code. The allocation of these funds to public health initiatives ensures that penalties serve a constructive purpose in promoting breastfeeding.

- **Strengthened Enforcement Capacity**

A robust enforcement system with dedicated resources and clear enforcement authority ensures that violations are swiftly addressed. The involvement of a range of stakeholders—including civil society organisations, health professionals, and international agencies—will foster a collaborative and effective regulatory environment.

Conclusion

To protect public health and uphold the rights of parents and children, it is imperative that Coimisiún na Meán strengthens its regulatory approach. While existing EU and Irish legislation provides a strong foundation for regulating formula marketing, it does not address modern marketing practices, including digital platforms, cross-promotion, and monitoring gaps. The proposed recommendations will better safeguard vulnerable populations from misleading marketing practices, promote breastfeeding, and ensure that parents have access to accurate, unbiased information. By adopting these measures, Ireland will not only improve compliance with global standards but will also reinforce its commitment to the health and well-being of its citizens.

UNICEF and WHO colleagues stand ready to provide technical assistance in drafting and implementing regulations that align with international best practices.



Virgin Media Television response to:

Consultation Document: Media Service Codes and Rules,
Chapter 3 (Stage 2 review).

Non-Confidential

20 December 2024



Virgin Media Television Response to Stage 2 Consultation on the Media Service Codes and Rules.

Virgin Media Television welcomes the opportunity to respond to the consultation on the Media Service Codes and Rules (stage 2), focusing on the future review and consideration of discretionary measures for the Broadcasting Codes and Rules.

Virgin Media Television would like to take the opportunity to thank Coimisiún na Meán for the significant work completed so far in updating the Broadcasting Codes and Rules documents in line with the obligations of the AVMSD.

Virgin Media Television would be supportive of the inclusion of some of the proposed themes (outlined below) under consideration by Coimisiún na Meán which (i) are of importance to society (ii) aim to ensure/promote the continued trust and confidence in broadcast media and (iii) provide more scope for commercial content, for example:

- Environmental sustainability and climate change matters particularly around “greenwashing”/ claims in commercial communications.
- Reporting of science-based facts for claims in commercial communications and news and current affairs.
- The promotion of balanced gender representation to optimise potential and contribution and the development of guidelines supporting gender parity in news and current affairs programming.
- The adopting of a more liberalised approach to sponsorship to provide further scope for commercial content.

When considering future discretionary changes or additions to Broadcasting Codes and Rules, it is vital that Coimisiún na Meán strikes the right balance and does not add unnecessary regulatory burdens for commercial public service broadcasters. We would strongly recommend that any new discretionary measures adopted in Broadcasting Codes and Rules take a principle or guidance-based approach.

Virgin Media Television would be very interested to review the feedback arising from the consultation and would welcome the opportunity to provide further input on any proposed future changes or additions to the Codes and Rules.

Wireless Ireland's response to Coimisiún na Meán's consultation on the Broadcasting Codes and Rules Stage 2 Review

Introduction

Wireless Ireland welcomes the opportunity to respond to Coimisiún na Meán's public consultation on the Stage 2 Review of the Broadcasting Codes and Rules. Wireless Ireland is the largest operator of local radio in the Republic of Ireland, with stations in Dublin (FM104 and Q102), Cork (96FM and C103), Limerick (Live95), and Louth and Meath (LMFM), as well as our sales house urbanmedia. Our radio stations reach 785,000 adults in Ireland every week.¹ Wireless Ireland is wholly owned by News UK & Ireland Ltd.

We submitted a short response in October to Coimisiún na Meán's review of the Broadcasting Codes and Rules, which covered both the Stage 1 and Stage 2 reviews at a high-level. This response expands that initial response to the Stage 2 review.

Wireless Ireland's overarching view

Radio is a highly trusted and well-regarded medium. Eighty percent of Irish adults listen to radio daily, tuning in for an average of 4.1 hours of each day.² It is highly regulated - as it has been for a long time - and has a good compliance record. Instances of audience harm are low and Wireless itself has a good record of compliance. As O&O's report on the viability of Irish radio found, while the sector is in a relatively healthy place, profitability is likely to be squeezed in the coming years with standalone stations likely to bear the brunt of that impact.³

As we set out in our earlier response submitted in October, Wireless Ireland supports responsible, proportionate regulation. We want the Irish radio sector to maintain high editorial standards and high levels of audience trust, and to be a dynamic sector that thrives commercially. It is crucial that the Coimisiún supports this via a modern regulatory framework which is mindful of the reality that Irish radio broadcasters are competing with a much wider competitive set than ever before. Simple and proportionate guidance is essential to help level the playing field between radio broadcasters and other mediums.

In light of this market context, it is important that any additional regulation is proportionate to the risk of audience harm and the likely business impact. We note that the Stage 2 review starts from the point of additionality, considering whether new clauses need to be added to

¹ JNLR, weekly reach from October 2023 to September 2024.

² Radiocentre Ireland, [The latest JNLR / Ipsos report shows that the daily radio audience is over 3.4 million, growing by 71,000](#), accessed on 16 December 2024.

³ O&O, March 2023, [The economic viability of commercial radio in Ireland](#), p. 9.

the Broadcasting Code and Rules. It would be appropriate to also consider whether any aspect of the Broadcasting Code could be removed or refined.

As a principle, we encourage the Coimisiún to only adopt additional editorial and commercial regulations where there is clear evidence of actual audience harm, or evidence of the likely risk of serious audience harm.

It is also important that the Coimisiún is mindful of the business impact of new editorial and commercial regulation, including the financial impact of additional compliance or lost commercial income. We suggest that the Coimisiún should undertake economic impact assessments to understand the financial impact of any proposed new regulations or policies on the range of stakeholders it regulates before introducing new regulations. We note that many of the Coimisiún's stakeholders - particularly in the independent radio sector - operate as SMEs and so regulatory changes risk having an outsized impact on those smaller media companies.

Answers to specific consultation questions

To avoid repetition, we have grouped answers to some questions below.

Question 1: Are there any additions or amendments you believe should be made to the Broadcasting Codes to address the issue of environmental sustainability, particularly in the areas of commercial communications and news and current affairs reporting?

Question 2: Are there additions or amendments you believe should be made to the Broadcasting Codes to promote objectivity, accuracy, and factual reporting, particularly in the coverage of matters relating to climate change, science, and health?

Question 11: Are there additions or amendments you believe should be made to the Broadcasting Codes to address the issues of balance and false equivalence in news and current affairs reporting?

We do not consider that additions or amendments need to be made to the Broadcasting Codes with regards to the issues raised in Questions 1, 2 and 11. It is unclear to us what the evidence-base is for suggesting tighter editorial and commercial regulations. These are not issues that we receive audience complaints about and we are not aware of audiences raising these issues with the Coimisiún.

Our radio stations produce objective, accurate and factual reporting about climate change, science and health issues - perhaps best evidenced by our responsible reporting throughout the Covid-19 pandemic, as well as throughout elections. We report on climate change, science and health issues regularly across our news bulletins and programming. As regional stations, our reporters are often first on the scene to report on the impacts of climate-related events to local audiences, such as reporting on the impact of Storm Darragh recently.

We would be concerned about any further restrictions on commercial communications, sponsorship and advertising. Radio advertising is already highly regulated. We also note the government's introduction of successive legislative restrictions on the advertising of both alcohol and gambling in recent years, which will have a tangible commercial impact on the media sector. As a principle, we are concerned about advertising restrictions being seen as an easy solution to very complex public health and social problems.

Question 3: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the coverage of news and current affairs during elections and referenda but not including the moratorium (which is currently the focus of a separate review process)?

While the moratorium is not in the explicit focus of this review, we note that the Coimisiún changed the moratorium rules in November and the General Election subsequently took place in December.⁴ This consultation therefore provides one of the first opportunities to provide feedback on the recent change and our experience implementing the moratorium during the election.

In our view, the change has not helped broadcasters manage the period around polling day. In particular, bringing the period of additional care forward to 2pm on the day prior to polling day and not providing sufficient guidance as to content which broadcasters ought to have known would cause confusion or mislead audiences is not helpful. In practice, this meant that we applied the old moratorium rules across our network to minimise our regulatory and legal risk.

Like others across our sector, we encourage the Coimisiún to re-consider removing the moratorium. At the very least, we encourage the Coimisiún to engage with stakeholders to understand how the changes to the moratorium in November impacted general election coverage and whether further changes are required. Wireless Ireland would welcome engagement with the Coimisiún on this issue.

Question 4: Are there additions or amendments you believe should be made to extend the scope of the Broadcasting Codes to cryptocurrency and related financial products and services?

Question 5: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of High Fat, Salt, and Sugar products?

Question 6: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of alcohol products and products advertised as 0.0% alcohol content / non-alcoholic?

⁴ Coimisiún na Meán, 1 November 2024, [Coimisiún na Meán removes traditional broadcast moratorium for election coverage](#).

Question 7: Are there additions or amendments you believe should be made to the Broadcasting Codes in respect of the advertising of infant formula, including follow-on formula?

We do not consider that additions or amendments are required to the Broadcasting Code with reference to the specific products outlined above. It is unclear what the evidence base is to support any additional restrictions.

We note that the advertising of certain products is already tightly regulated under legislation and the ASAI Code, including the advertising of alcohol products, HFSS products and infant and follow-on formula. We do not consider that additional regulation is required at this time, and we are not aware of serious instances of non-compliance across our sector.

On cryptocurrency specifically, we cannot see that there is a pressing need to broaden the scope of the Broadcasting Code to cover cryptocurrency and related financial products and services on radio at this time. If the intention is to prohibit the advertising of potentially fraudulent schemes or scams on radio, we consider that existing regulation would safeguard against this. In addition, it would appear to us that most cryptocurrency advertising takes place online, rather than on traditional, regulated media platforms like radio, so the risk of harm from editorial or commercial content about cryptocurrencies on live radio is low.

Question 8: Are there additions or amendments you believe should be made to the Broadcasting Codes to enhance the protection afforded to participants in programming where such participation carries a risk of harm following broadcast? Such measures may include enhanced rules on privacy, identification, and consent, relating to programme participants.

Wireless Ireland takes the welfare of all contributors to our programmes seriously. As our stations primarily operate as music driven services, the participation of members of the public in programming is limited. For example, while members of the public may broadcast live on air to request a song or to take part in a competition, they rarely discuss issues that could be considered very sensitive or private. The exposure of members of the public is low, given that our stations are regional in reach.

We therefore consider that if the Coimisiún were to consider introducing a 'duty of care' provision to the Broadcasting Codes, it should be proportionate to factors such as the nature of participation and the nature of the programme. It could potentially only apply to national broadcasters or TV broadcasters, where the risk to programme participants is likely to be higher than on independent regional radio stations.

Question 9: Are there any measures you believe could be undertaken by the Commission to enhance support for the implementation of the Broadcasting Codes? Such measures may include consolidation and / or simplification of the regulations, stakeholder engagement initiatives, or the publication of additional guidance documentation.

Question 10: Do you believe that the current distinctions between advertising, sponsorship, and product placement, in the Broadcasting Codes are sufficiently clear? If not, are there additions or amendments you believe should be made to provide greater clarity?

Question 12: Are there any other additions or amendments that you believe should be made to the Commission's broadcasting codes and rules?

As we set out in our October response, we encourage the Coimisiún to consider how the Codes and Rules could be modernised, rationalised and made more proportionate to support a plural and dynamic radio sector in Ireland. We encourage the Coimisiún to consider some key changes that would have a positive, tangible impact on the commercial radio sector by making the sector more attractive to advertisers without causing audience harm or reducing editorial standards.

These include:

1. **Allowing integrated commercial messaging in live radio broadcasts**, accompanied by appropriate transparency requirements. In our experience operating our six local radio stations, audiences understand the difference between commercial and editorial content and are very familiar with integrated commercial messaging given its heavy use on other channels (e.g. presenter live reads in podcasts and advertorial content in social media posts).
2. **Take a more proportionate approach to commercial sponsorship on radio.** To reflect changes in audience expectations and media literacy, we would welcome a liberalisation of the rules relating to commercial sponsorship, accompanied by transparency requirements.