



JTI's written evidence to Health & Social Care Committee's consultation on the Public Health (Wales) Bill

4 September 2015

Organisation name

Japan Tobacco International (JTI) is part of the Japan Tobacco group (JT Group) of companies, a leading international tobacco product manufacturer.

JTI has its UK headquarters in Weybridge, Surrey, and has a long-standing and significant presence in the UK. JTI manufactures a range of tobacco products for the UK market in Northern Ireland and other EU Member States (Germany, Romania and Poland). In the UK alone, JTI employs over 1,800 people. Gallaher Limited is the registered trading company of JTI in the UK.

In 2014 the JT Group acquired Zandera Ltd, one of the UK's largest electronic cigarette companies and integrated it into JTI. Zandera Ltd is best known for its E-Lites brand. With electronic cigarettes being an increasingly popular alternative to cigarettes among many adult smokers, E-Lites is a logical and important extension to JTI's portfolio and is its first non-tobacco, nicotine-containing product. The JT Group further expanded its portfolio of electronic cigarettes with the acquisition of Logic Technology Development LLC in 2015, one of the leading U.S. electronic cigarette brands. As part of JTI, the E-Lites and Logic brands have access to:

- JTI's extensive manufacturing expertise (enabling standards of product quality to be further enhanced);
- JTI's wider technological, research and scientific resources (facilitating compliance with future regulatory requirements, driving the development of next generation products to meet evolving consumer expectations, and delivering ever better electronic cigarette products); and
- JTI's global distribution network in over 120 countries.

Address

JTI, Members Hill
Brooklands Road
Weybridge
Surrey
KT13 0QU

Confidentiality

JTI has no objection to this response being made public.

Introduction

Under-18s should not smoke and should not have access to tobacco products or nicotine containing products. This belief is central to the way JTI does business.

JTI supports regulation that is proportionate, carefully defined, necessary and appropriate to achieve a clearly articulated and legitimate public policy objective. Regulation should be made in accordance with internationally-accepted Better Regulation principles, which are supported by the Welsh Government, UK Government and the European Commission. In essence, these principles require regulation to be transparent, accountable, proportionate, consistent and targeted at cases where action is needed.

JTI actively seeks dialogue, either written or oral, with government authorities around the world regarding the regulation of tobacco products and all other nicotine containing products that it makes and sells. JTI has a right – and an obligation – to express its point of view regarding regulation that affects its products and the industry. It is our belief that we have the responsibility, when engaging in a consultation process, to be open and transparent in our dialogue with government authorities, and to propose alternative, less restrictive and more targeted solutions that meet Better Regulation principles where we believe proposed regulations to be excessive.

JTI supports reasonable and proportionate regulation of electronic cigarettes. It believes that:

- Adults should be free to choose whether they wish to use electronic cigarettes, including as an alternative to tobacco products;
- All marketed electronic cigarettes should comply with all relevant regulations concerning general consumer product safety, electrical safety and consumer protection from misleading marketing claims;
- Regulation of electronic cigarettes should aim to keep electronic cigarettes out of the hands of under-18s and to remind users of the risks associated with their use; and
- Governments and regulators should avoid excessive regulation that prevents adult consumers from choosing these products.

JTI strongly supports the objective of preventing under-18s from having access to electronic cigarettes and other nicotine containing products. However, the Public Health (Wales) Bill (the Bill) contains various provisions relating to the use of cigarettes and electronic cigarettes by adult consumers with which we do not agree. We therefore welcome the opportunity to provide this written response.

Part 2: Tobacco and Nicotine Products

1. Do you agree that the use of e-cigarettes should be banned in enclosed public and work places in Wales, as is currently the case for smoking tobacco?

1.1. No, vaping (the use of electronic cigarettes) is not smoking and the two should not be conflated. Legal requirements to prohibit or restrict the use of electronic cigarettes in public places, workplaces or vehicles are unnecessary and unjustified.

1.2. There is no credible evidence that exhaled electronic cigarette vapour poses a health risk to bystanders.

- Public Health England's recent report has found that electronic cigarettes release negligible levels of nicotine into ambient air with no identified health risks to bystanders¹.
- A separate systematic review of the available evidence also concluded; "*... there is no evidence that vaping produces inhalable exposures to contaminants of the aerosol that would warrant health concerns by the standards that are used to ensure safety of workplaces. ... Exposures of bystanders are likely to be orders of magnitude less, and thus pose no apparent concern*²."

2. What are your views on extending restrictions on smoking and e-cigarettes to some non-enclosed spaces (examples might include hospital grounds and children's playgrounds)?

2.1. There already exists a high level of public awareness regarding the health risks associated with smoking. It is JTI's strong belief that since tobacco smoke is easily dispersed in the atmosphere and highly diluted in outdoor environments, there is no basis on which to regulate smoking outdoors. JTI notes that there is limited scientific literature on outside tobacco smoke. Even well-known anti-tobacco advocates have questioned the scientific basis for restrictions on smoking outdoors³. Considering these factors JTI considers that a smoking ban in outdoor spaces is excessive.

2.2. We recognise that cigarettes are a legal but controversial product; as such, we believe adults are entitled to make an informed choice about whether they want to smoke. More generally, it is not legitimate to seek to discriminate against or stigmatise existing adult smokers, or to treat the use of tobacco as abnormal, unacceptable, or tainted. Therefore we believe it is inappropriate for the Welsh Government to dictate how adult smokers behave when going about their everyday lives.

2.3. Users of electronic cigarettes should always consider other people around them before using the device in public places. JTI is opposed to any ban in public spaces for similar reasons to those put forward in response to Question 1. Such restrictions are unnecessary and unjustified.

3. Do you believe the provisions in the Bill will achieve a balance between the potential benefits to smokers wishing to quit with any potential dis-benefits related to the use of e-cigarettes?

3.1. No. JTI supports reasonable and proportionate regulation that aims to keep electronic cigarettes out of the hands of under-18s and to remind users of the risks associated with their use. The Welsh Government should avoid excessive regulation that prevents adult consumers from choosing these products.

4. Do you have any views on whether the use of e-cigarettes renormalizes smoking behaviours in smoke-free areas, and whether, given their appearance in replicating cigarettes, inadvertently promote smoking?

4.1. There is no credible evidence that the use of electronic cigarettes leads to future cigarette smoking. Surveys of the electronic cigarette market indicate that these products are predominantly used by adults who are smokers or ex-smokers⁴. The argument that electronic cigarette use could 'renormalize' smoking is highly speculative.

4.2. Public Health England's recent report was very clear that e-cigarettes are not 're-normalizing' smoking and the report noted that it's possible that e-cigarettes have contributed to further declines in smoking and the 'denormalization' of smoking.

4.3. The argument that there could be confusion between electronic cigarettes and conventional cigarettes does not stand up to scrutiny. While some types of electronic cigarettes may at first sight appear similar to conventional cigarettes, they tend to be made of different materials, such as plastic or metal. Furthermore, during use, such electronic cigarettes have an LED light at the distal end which lights up with each puff taken. This light is often coloured blue or green, making the distinction with lit cigarettes easy. Refillable (tank) electronic cigarettes typically do not have LED lights to indicate when puffs are being taken. Such products, however, typically do not look or smell like conventional cigarettes, making it easy to distinguish the two.

4.4. More broadly, public policy objectives that aim to 'denormalize' or prevent the 'renormalization' of smoking and/or vaping are not, and cannot be, a self-standing objective. It is not legitimate to seek to discriminate against or stigmatise users of electronic cigarettes, or to treat the purchase of electronic cigarettes as abnormal or unacceptable.

5. Do you have any views on whether e-cigarettes are particularly appealing to young people and could lead to a greater uptake of their use among this age group, and which may ultimately lead to smoking tobacco products?

5.1. We are not aware of any credible evidence that the use of e-cigarettes leads to future cigarette smoking. Surveys of the electronic cigarette market

indicate that these products are predominantly used by adults who are smokers or ex-smokers.

- A recent worldwide survey of 19,414 e-cigarette users found that only 0.4% were non-smokers before starting e-cigarettes⁵.
- In the UK, annual YouGov surveys, conducted between 2010 and 2014, consistently found that e-cigarette use among 'never smokers' was between 0.1 and 0.2% (circa 12,000 participants in each survey year) ⁶. The authors of the survey concluded that *"e-cigarettes are used almost exclusively by smokers and ex-smokers. Almost none of those who had never smoked cigarettes were e-cigarette users."*
- The same UK survey found that *"There is almost no evidence of regular electronic cigarette use among children who have never smoked or who have only tried smoking once."*
- This finding was echoed in a 2014 UK Government report which stated *"We could not identify any evidence to suggest that non-smoking children who tried e-cigarettes were more likely to then try tobacco."*⁷
- In a 2014 Ipsos MORI survey for the UK Government of Smoking Prevalence amongst 15 year olds in England⁸ it was found that 0% of non-smokers (tobacco) were regular (at least once a week) users of e-cigarettes and 1% of non-smokers reported using e-cigarettes occasionally (less than once a week).
- Public Health England has also recently stated that there is no evidence that electronic cigarettes act as a route into smoking for children or non-smokers⁹.

6. Do you have any views on whether restricting the use of e-cigarettes in current smoke-free areas will aid managers of premises to enforce the current non-smoking regime?

6.1. As stated above in paragraph 4.2 the use of electronic cigarettes and smoking are different. Such products typically do not look or smell like conventional cigarettes, making it easy to distinguish between the two.

7. Do you have any views on the level of fines to be imposed on a person guilty of offences listed under this Part?

7.1. We do not support the proposed restrictions in the Bill and so it would be inappropriate to comment on this.

8. Do you agree with the proposal to establish a national register of retailers of tobacco and nicotine products?

8.1. JTI agrees with the rationale underlying this proposal; that under-18s should not smoke or have access to tobacco products or nicotine products. JTI believes that smoking and vaping is, and should be, an adult choice. This is central to our Code of Conduct, and the way that JTI does business.

8.2. JTI does not oppose a national retailer register if this would help improve compliance with the ban on sales to under-18s. However, JTI strongly believes that any regulation in this area should result in the minimum feasible

burden upon retailers – many of whom are small, independent businesses already working hard to deal with large swathes of regulation. To that end, we are especially concerned that the proposal under consideration here allows the Welsh Government to charge retailers a registration fee – we remain strongly opposed to any such additional financial burden upon retailers.

8.3. In Scotland, which operates a similar national register, registration is free and compliance has been high. In Scotland retailers are also permitted to make their application online, which helps to minimise the administrative burden. As such, JTI would like to encourage the Welsh Government to ensure that registration is free and easily accessible, including online, in order to maximise compliance.

9. Do you believe the establishment of a register will help protect under 18s from accessing tobacco and nicotine products?

9.1. As stated above (in answer 8) JTI does not oppose a national retailer register if it helps to improve enforcement of under-age sales legislation, but remains concerned that registration fees and complex bureaucratic applications may undermine compliance.

10. Do you believe a strengthened Restricted Premises Order regime, with a national register, will aid local authorities in enforcing tobacco and nicotine offences?

10.1. JTI agrees that including a broader range of tobacco offences in the Restricted Premises Order regime is an effective way of supporting the work of local authorities in enforcing tobacco and nicotine laws. JTI believes strongly that retailers who repeatedly break the law – including by selling tobacco products to under-18s, selling smuggled or illegal tobacco, or committing any other offence – should have their right to sell tobacco products removed.

11. What are your views on creating a new offence for knowingly handing over tobacco and nicotine products to a person under 18, which is the legal age of sale in Wales?

11.1. JTI has fully supported legislation to make it an offence to sell tobacco and electronic cigarettes to under-18s and to buy these products on behalf of under 18s. We believe that these measures could make a significant contribution to reducing young people's access to tobacco and nicotine containing products from legitimate retailers and therefore would support this measure.

12. Do you believe the proposals relating to tobacco and nicotine products contained in the Bill will contribute to improving public health in Wales?

12.1. Tobacco products carry risks to health and JTI believes that appropriate and proportionate regulation of the tobacco sector is both necessary and

right. We believe that more can be done to reduce smoking by under-18s, such as voluntary youth access prevention programmes, but have a number of concerns with the legislative proposals contained in the Bill. We question whether the measures relating to public place use are evidence-based, proportionate and/or likely to achieve their stated aims.

12.2. JTI believes that some of the measures included in the Bill relating to nicotine products are unnecessary, particularly the introduction of a ban on vaping in public and work places. There is no credible evidence that exhaled electronic vapour poses a health risk to bystanders, it would be unjustified to introduce such a ban.

References:

1. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454516/Ecigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England.pdf
2. <http://www.biomedcentral.com/1471-2458/14/18/abstract>
3. Jordan Raphael, in his discussion of American municipal outdoor smoking bans, indicated that outdoor smoking bans go “*beyond what is justified by the scientific findings on ETS*” (Raphael, 2007). Researchers also caution that it is premature to draw policy conclusions from their findings: Cameron et al. (2010) “*do not advise that the present results are used to advocate for outdoor smoking restrictions at the expense of other tobacco control policies known to reduce smoking prevalence*”.
4. <http://www.mdpi.com/1660-4601/11/4/4356>
5. <http://www.mdpi.com/1660-4601/11/4/4356>
6. http://www.ash.org.uk/files/documents/ASH_891.pdf
7. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311491/Ecigarette_uptake_and_marketing.pdf
8. <http://www.hscic.gov.uk/catalogue/PUB17984/what-about-youth-eng-2014-smok-rep.pdf>
9. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454516/Ecigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England.pdf