



Mick Antoniw AM  
Chairman  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

12 November 2018

Dear Mr Antoniw,

**The Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2018**

Japan Tobacco International (JTI) understand that this draft statutory instrument is to be considered by the Constitutional and Legislative Affairs Committee later today on Monday 12 November 2018 and would like to bring our serious concerns with the proposals to the attention of the Committee.

This SI stems from one of the 'no-deal' Brexit scenario papers published on 23 August which primarily concluded that, in the event of a no-deal Brexit, the Government would have to introduce new picture health warnings on tobacco products. Although a consultation was promised for September, with the aim of minimising disruption to the market, the Department of Health and Social Care (DHSC) launched a consultation on 8 October with a closing date of 21 October. The publication of the SI on 1 November, and the accompanying Explanatory Memorandum, revealed that the Government is continuing without any regard to the concerns that we and others have raised.

Whilst we have some concerns regarding the practicability of the lead-in time allowed for changes to the notification system of providing information on new tobacco and e-cigarette products, and note with some concern that the draft SI grants Ministers broad powers to introduce several sets of new regulations on various aspects of tobacco product ingredients, advertising and marketing that were not previously enshrined in UK law, our greatest concern is the more immediate impact of the proposals relating to the introduction of new picture health warnings and the proposed transitional arrangements (Part 5, Regulation 9).

The SI mandates that, in the event of a no-deal Brexit, tobacco products manufactured after 29 March 2019 (Exit Day) can no longer carry the images

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required by the EU Tobacco Products Directive, established in UK law at the Tobacco and Related Products Regulations 2016. Instead, the Government has reached an agreement with the Australian Government for the use of their health warning images in place of the EU images.

### **Timetable**

The timetable proposed is simply unworkable and would likely lead to a disruption in the supply of legal tobacco products to the UK. The lead-in time to prepare new packaging designs for manufacture from 29 March 2019 has already passed. A change in packaging design of the nature proposed by the Government in this case requires a minimum of 12 months to implement.

The supply chain of external printers and manufacturers involved in the production of tobacco packaging is complex; with the same producers used by multiple tobacco manufacturers. This means that it is simply not possible to change the images at such short notice because the design and production of new packaging materials begins around 12 months before manufacture. As an example, the Government already has legislation in place for the implementation of an EU-wide track and trace regime for tobacco products, which requires the production of new packaging materials for cigarettes and roll-your-own tobacco products manufactured from 20 May 2019. This change is already well under way with EU health warning images, the ordering process for the required materials having begun in May 2018.

In all previous instances of mandated changes to tobacco packaging designs, including the introduction of standardised packaging, the industry has been given at least 12 months to implement the changes. On this occasion, we are being given less than six months.

We raised these concerns in our response to the consultation on the proposed regulations and directly to HM Treasury in a pre-Budget meeting on 11 October 2018, and are disappointed that no attempt has been made to address our concerns.

With the proposed timetable logistically unachievable, unless the UK Government's approach changes, the UK tobacco market could be thrown into chaos by a no-deal Brexit; with out of stock products offering the organised criminal gangs behind the trade in illegal tobacco a huge opportunity. They, of course, do not care what health warning images (if any) are printed on their packaging, and they do not pay tax.

### **Incompatibility with Existing Changes**

Furthermore, the SI introduces a 12-month sell-through period for products packaged with the EU warning images. This is at odds with the process currently in place for the rotation of health warning images which derives from the EU's Tobacco Products Directive, which includes no provision for a sell through period. It would also be out of sync with the forthcoming track and trace legislation, which provides for a sell-through of products until 20 May 2020. This element of the proposed UK approach was not mentioned in the original guidance note published in August and would cause considerable, and unnecessary disruption to the supply of slower selling lines such as cigars.

## **Production of an Impact Assessment**

We deeply regret that a full Impact Assessment has not been prepared to assist deliberation on these regulations. The Explanatory Memorandum states that an Impact Assessment has not been prepared as (Para 12.3) *“the cost impact has been assessed as lower than the £5m threshold. The impact of this instrument on businesses will be low”*. It goes on (Para 12.4): *“Producers of tobacco products will need to amend production processes to incorporate new picture warnings for all tobacco packaging that is produced from exit day onwards. We estimate the impact on business will be small...”*.

We estimate that the total industry cost of producing any new packaging with changed health warning images is likely to be around £7.5 million, although the complex network of external suppliers involved in the tobacco supply chain could considerably increase this cost. We included this assessment in our consultation response, and strongly contest that the costs to industry have been underestimated and that a full Impact Assessment should have been conducted. We find no justification for the assertion that the costs would be less than £5 million.

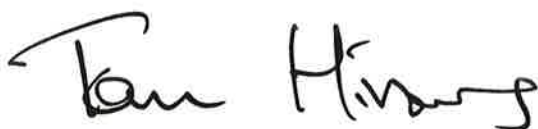
## **Finding a Solution**

We would strongly recommend that the Government agrees urgently a copyright licensing arrangement for the use of the EU health warning images effective until at least 20 May 2020, in order to provide a realistic timetable for compliance, to bring the change into sync with existing changes already legislated for, and to minimise disruption to the legal tobacco supply chain and the threat from criminal behaviour.

The issue at stake is the continuity of supply of legal tobacco products to the UK market in the event of a no-deal Brexit. Tobacco excise revenues could be severely disrupted unless the Government reconsiders this draft SI and works with the industry to find a workable approach now as a matter of urgency.

We hope that this correspondence is helpful to the Committee in its deliberations, assist in bringing these matters to the attention of the Welsh Government, the Senedd and the UK Government.

Yours sincerely,



**Tom Hiron**

Head of Government Relations, UK