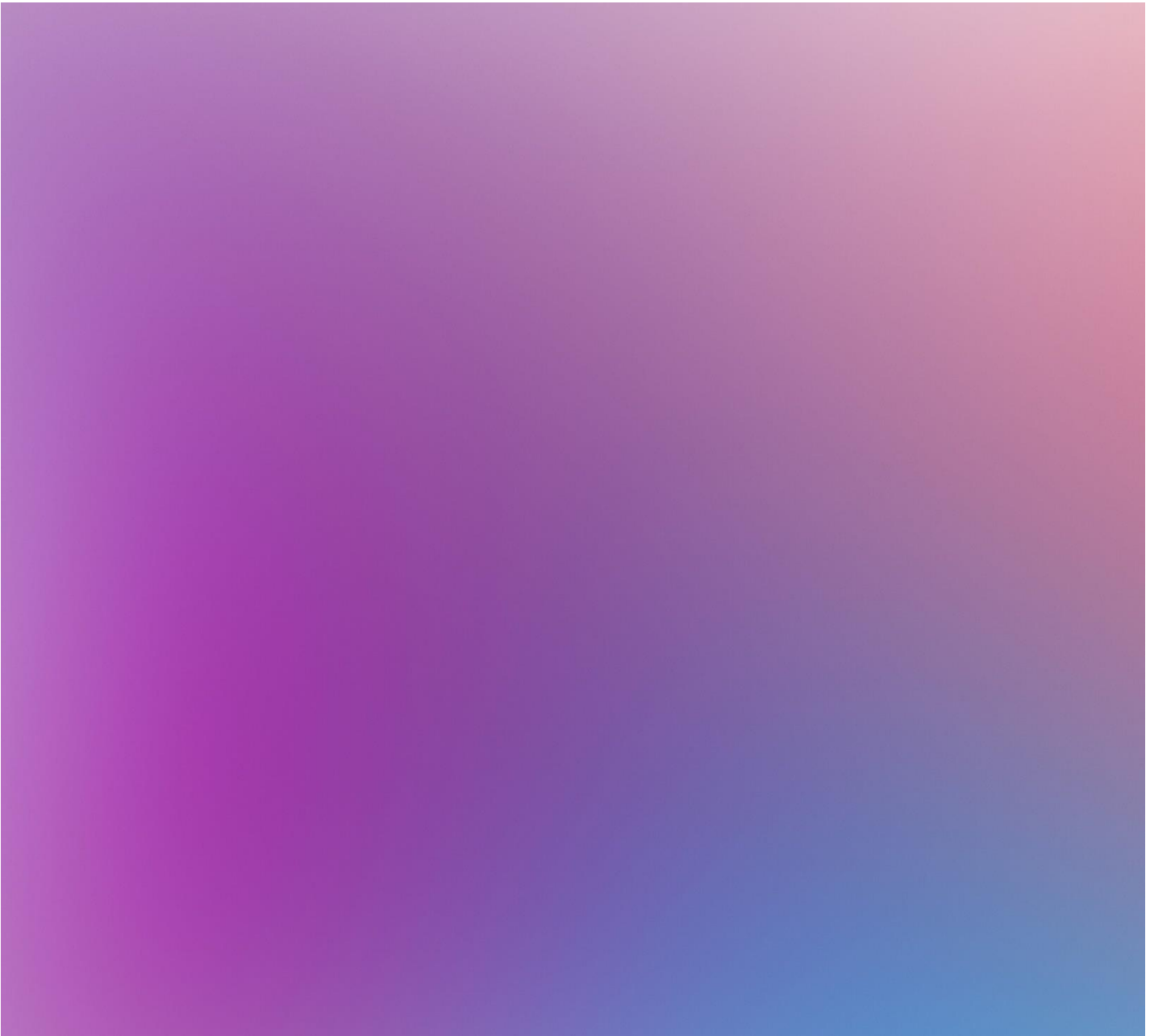




# **Consultation on the *Tobacco and Related Products Regulations 2016* and the *Standardised Packaging of Tobacco Products Regulations 2015***

Response submitted on behalf of JTI UK

19 March 2021



## About JTI

Japan Tobacco International (JTI) is part of the Japan Tobacco group of companies, a leading international tobacco and e-cigarette manufacturer.

JTI has its UK headquarters in Weybridge, Surrey, and has a long-standing and significant presence in the UK, with a national distribution centre in Crewe and a nationwide field-based Sales force. Its brand portfolio includes Benson & Hedges, Silk Cut, Mayfair, Sovereign and Sterling, as well as a number of other tobacco products including roll-your-own tobacco (RYO), also known as hand-rolling tobacco (such as Amber Leaf), cigars (such as Hamlet) and pipe tobacco (such as Condor). JTI sells nicotine pouches under its brand, Nordic Spirit. JTI is also a major player in reduced risk products with its brand, Logic, and heated tobacco brand, Ploom.

JTI's UK excise contributions on its tobacco products amounted to around £5.5 billion in 2020.

## The Tobacco and Related Products Regulations 2016

**Question 1: How far do you agree or disagree that the introduction of rotating combined (photo and text) health warnings on cigarette and hand rolling tobacco has encouraged smokers to quit?**

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- **Strongly disagree**
- Don't know

There is no credible evidence to suggest that the introduction of rotating combined (photo and text) health warnings on cigarettes and hand rolling tobacco has encouraged smokers to quit. Smoking rates were already in decline well before the introduction of such regulations with the most recent Smoking Toolkit Study showing that an estimated 14.8% of adults smoked in 2020, compared with a rate of 21.4% in 2010 and 18.0% in 2016 (1). There was no change in the trend.

The level of awareness in the UK of the risks associated with smoking is also well documented and remains consistently high. It is therefore unsurprising that there is no tangible evidence to prove the positive impact of such health warnings.

Public information campaigns and education initiatives, reminding people that smoking is a cause of harm and highlighting the resources available to support them if they wish to quit, have been the mainstay of UK Government efforts to reduce smoking prevalence and are likely to have been the driver of the long-term decline in smoking.

(1) UCL, Smoking Toolkit Study, Top-line findings on smoking in England (2020), <http://www.smokinginengland.info/sts-documents/>

**Question 2: How far do you agree or disagree that the introduction of rotating combined (photo and text) health warnings on cigarette and hand rolling tobacco has deterred young people from smoking?**

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- **Strongly disagree**
- Don't know

The high levels of awareness of the risks of smoking remains high in the UK and make it impossible to determine whether the introduction of rotating combined (photo and text) health warnings on cigarettes and hand rolling tobacco has helped deter young people from smoking. There has been a steady decline in youth

smoking since 1996 with no statistically significant reduction in the years following the implementation of the Tobacco and Related Products Regulations 2016 (1).

Instead emphasis should continue to be placed on education, for example through the Personal, Social, Health and Citizenship Education (PSHCE) programme. International examples such as Japan, Germany, and the USA (2) (3) also show the power of sustained youth education campaigns which are focused on resisting peer pressure when it comes to smoking.

However, preventing under-age sales is the most effective way of reducing youth smoking. Increasing the resources made available to local Trading Standards departments – which in England have seen their budgets cut since 2010 - would enable them to commission more test purchasing of retailers. Stronger enforcement action against those retailers who choose to ignore the law and sell age-restricted products to young people would ensure that minors do not have access to such products.

JTI runs its own youth access prevention programme called IDentify where retailers are subjected to up to four rounds of test purchasing to ensure they are operating a “Challenge 25” policy. Retailers found to be at risk of selling tobacco or vaping products to minors are offered free of charge training and support. Those retailers found to be persistently at risk are reported to the local Trading Standards department by JTI (4). JTI also helps to fund the ‘No ID, No Sale!’ campaign, which provides retailers with materials and advice to prevent under age sales, and to remind shop staff and younger customers that valid proof-of-age is required when buying tobacco and vaping products.

- (1) NHS Digital, Smoking, Drinking and Drug Use among Young People in England 2018, <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2018/part-1-smoking-prevalence-and-consumption>
- (2) Bundesregierung, Drogen- und Suchtbericht der Bundesregierung 2015, (in German), [https://www.bundesregierung.de/Content/Infomaterial/BMG/\\_2827.html](https://www.bundesregierung.de/Content/Infomaterial/BMG/_2827.html).
- (3) FDA, Only in the first 2 years since its launch the US Food and Drug Administration’s “The Real Cost” campaign helped prevent nearly 350,000 teenagers from starting to smoke cigarettes, <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-significant-public-health-value-and-cost-savings>
- (4) JTI, Youth Access Prevention, <https://www.jti.com/europe/united-kingdom/youth-access-prevention>

### Question 3: Should all tobacco products have a combined (photo and text) health warning on their packaging?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- **Strongly disagree**
- Don’t know

As set out in our response to Question 1, there is no credible evidence that combined (photo and text) health warnings impact on smoking behaviours. Smoking rates had already been declining prior to the introduction of the Tobacco and Related Products Regulations 2016. With no evidence of the effectiveness of combined (photo and text) health warnings on cigarettes and hand rolling tobacco, there is no justification to extend the measure to other products.

At present the only tobacco products on the UK market that are not required to have combined (photo and text) health warnings are large cigars, individually wrapped cigars and cigarillos, and heated tobacco products (HTP), however written health warnings are required as set out in Regulation 9 and 10 of the TRPR respectively.

There is no credible evidence to support adding combined (photo and text) health warnings to these products. In addition, it would be impractical to add a photo health warning onto large cigars, individually wrapped cigars and cigarillos due to their size.

When considering HTP, consideration must be given to their potential to reduce the risks associated with smoking (1) due to the absence of combustion which occurs when lighting a cigarette. It would be illogical to

treat them the same as combustible tobacco products. Only by smokers moving away from combustible tobacco products to these potentially less harmful alternatives, can population harm reduction be achieved.

HTP should therefore continue to not be subject to the same regulations as tobacco for smoking. It should be clear to existing adult smokers looking for a potentially less harmful alternative (via regulatory treatment and communication about these products), that HTP are not the same as combustible tobacco products. Treating all products the same would be detrimental and prevent existing adult smokers from making an informed choice about considering switching to HTP.

This clear distinction is reflected in the current regulation in the area of labelling and such an approach should not be deviated from. With Public Health England (PHE) conducting a full review of the evidence on the safety of vaping products, which is due to be published by PHE next year in 2022, JTI calls on the Government to also consider HTP at the same time.

(1) Public Health England (PHE), E-cigarettes and heated tobacco products: evidence review, <https://www.gov.uk/government/publications/e-cigarettes-and-heated-tobacco-products-evidence-review>. See also evaluation (at: [https://cot.food.gov.uk/sites/default/files/heat\\_not\\_burn\\_tobacco\\_statement.pdf](https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_statement.pdf)) and statement (at: [https://cot.food.gov.uk/sites/default/files/heat\\_not\\_burn\\_tobacco\\_summary.pdf](https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_summary.pdf))

#### **Question 4: How far do you agree or disagree that the prohibition of characterising flavours has helped smokers quit smoking?**

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- **Strongly disagree**
- Don't know

There is no compelling evidence that smokers find it more difficult to quit cigarettes with a characterising flavour of menthol versus those that do not (1). Similarly, cigarettes with a characterising flavour of menthol do not encourage smokers to continue smoking. In any case, this ban was only introduced in May 2020 – it is therefore far too early to reach any meaningful conclusions around its impact on smoking behaviours.

The limited studies that have been carried out following the ban show that it has had little impact on smoking cessation levels. A survey conducted across 8 EU countries (including the UK) revealed that “...the menthol cigarette ban has resulted in limited impact on smoking prevalence in the EU. With few exceptions, post-ban survey responses mirrored the pre-ban counterparts” (2). The share of the UK cigarette market accounted for by cigarettes with a characterising flavour of menthol and capsule products rose from 8% in 2011 to 25% by the end of 2019. Smoking incidence fell from 21% to 16% over this same period.

The characterising flavour ban has seen organised crime groups become involved in the illicit trade of cigarettes with a characterising flavour of menthol. In October 2019, seven months prior to the implementation of the ban, Trading Standards alerted JTI to the existence of suspected counterfeit cigarettes with a characterising flavour of menthol in Stourbridge. An examination of these products confirmed they were counterfeit. In September 2020, Danish Customs seized 14 million cigarettes with a characterising flavour of menthol destined for the UK market (3). The cigarettes seized originated from Belarus and were branded ‘Queen Menthol’.

The prohibition of cigarettes and hand rolling tobacco with a characterising flavour delivers no public health benefits and only serves to boost the income of organised crime groups involved with the importation of illicit tobacco products.

As the UK Government reviews the implementation of the Tobacco and Related Products Regulations 2016, it should consider reversing this pointless, damaging ban on cigarettes and hand rolling tobacco with a characterising flavour and should not consider extending the same restrictions to other product categories. In addition, any purported health benefits of going further and implementing a ban on tobacco ingredients is entirely speculative. Ingredients do not encourage smoking or prevent smokers from quitting.

- (1) Tobacco Induced Diseases, Menthol cigarettes and smoking cessation behavior, <https://tobaccoinduceddiseases.biomedcentral.com/track/pdf/10.1186/1617-9625-9-S1-S6.pdf>; Nicotine and Tobacco Research, Do smokers of menthol cigarettes find it harder to quit smoking?, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3145377/pdf/ntq166.pdf>; American Journal of Preventive Medicine, Cessation outcomes among treatment-seeking menthol and nonmenthol smokers, [https://www.ajpmonline.org/article/S0749-3797\(12\)00539-9/pdf](https://www.ajpmonline.org/article/S0749-3797(12)00539-9/pdf); Tobacco Control, Mentholated cigarettes and smoking cessation: findings from COMMIT, <https://tobaccocontrol.bmj.com/content/tobaccocontrol/11/2/135.full.pdf>; Beiträge zur Tabakforschung International, Menthol cigarettes, time to first cigarette, and smoking cessation, <https://content.sciendo.com/view/journals/cttr/27/5/article-p4.xml>
- (2) Foundation For a Smoke-Free World, EU Menthol Cigarette Ban Survey, <https://www.smokefreeworld.org/eu-menthol-cigarette-ban-survey-2/>
- (3) Danish Customs, Press Release, <https://www.toldst.dk/nyheder/presse-og-nyheder/14-millioner-ulovlige-cigaretter-fundet-i-saettevogn/>

**Question 5: How far do you agree or disagree that the prohibition of characterising flavours has deterred young people from taking up smoking?**

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- **Strongly disagree**
- Don't know

JTI supports proportionate and effective measures to prevent youth smoking. Tobacco products are for adult consumption only and youth smoking prevention is one of JTI's six Core Principles (1).

There is no reliable evidence that characterising flavours encourage young people to take up smoking (2). Smoking rates amongst young people have been declining steadily since 1996 (3) so it is impossible to attribute any reduction in smoking rates to the prohibition of characterising flavours. This is not unexpected. Whilst the market share of cigarettes with a characterising flavour of menthol and capsule containing products had increased since 2012, smoking prevalence amongst young people has continued to decline (4). This suggests that the two points are not linked.

Instead, it is clear from the latest NHS data that there are other factors which can influence a young person's decision to smoke, with peer pressure usually being a significant part of that choice. Products with a characterising flavour are not even referenced as a factor (5). As smoking rates amongst young people are already on decline, it is unlikely that this ban will lead to any noticeable impacts on youth smoking rates. As set out in our response to Question 2, well-funded youth access prevention programmes are the most effective way of preventing young people from taking up smoking.

- (1) JTI, JTI's Core Principles, <https://www.jti.com/about-us/our-business/our-six-core-principles>
- (2) BMC Public Health, Menthol cigarettes and the public health standard: a systematic review, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5747135/pdf/12889\\_2017\\_Article\\_4987.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5747135/pdf/12889_2017_Article_4987.pdf); Tobacco Control, Changes in the prevalence and correlates of menthol cigarette use in the USA, [https://tobaccocontrol.bmj.com/content/tobaccocontrol/25/Suppl\\_2/ii14.full.pdf](https://tobaccocontrol.bmj.com/content/tobaccocontrol/25/Suppl_2/ii14.full.pdf); Regulatory Toxicology and Pharmacology, Measures of initiation and progression to increased smoking (...), <https://www.sciencedirect.com/science/article/pii/S0273230014001810?via%3Dihub>; Centers for Disease Control and Prevention, Trends in the prevalence of tobacco use National YRBS 1991-2015, [https://www.cdc.gov/healthyyouth/data/yrbs/pdf/trends/2015\\_us\\_tobacco\\_trend\\_yrbs.pdf](https://www.cdc.gov/healthyyouth/data/yrbs/pdf/trends/2015_us_tobacco_trend_yrbs.pdf); Food and Drug Administration (FDA), Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes, <https://www.fda.gov/media/86497/download>; Nicotine and Tobacco Research 8 (2006), Are menthol cigarettes a starter product for youth?, 8, 403- 413
- (3) NHS Digital, Smoking, Drinking and Drug Use among Young People in England 2018, <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2018/part-1-smoking-prevalence-and-consumption>
- (4) UK Smoking Toolkit Study, Monthly Tracker, <http://www.smokinginengland.info/sts-documents/>. Source of SOM: Nielsen 2011-2015, IRI 2016 onwards
- (5) NHS Digital, Smoking, Drinking and Drug Use Among Young People in England (2018), <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england>

**Question 6: How far do you agree or disagree that the current regulations on e-cigarettes have been proportionate in protecting young people from taking up use of these products?**

- Strongly agree
- **Agree**
- Neither agree or disagree
- Disagree
- Strongly disagree
- Don't know

The current regulations are for the most part proportionate in protecting young people from taking up e-cigarettes. However, the latest evidence from Public Health England (PHE) suggests that vaping levels amongst young people remain relatively unchanged (1). We agree with PHE's recommendation to improve the enforcement of age-related sales regulations as this is one of the most effective ways of tackling youth vaping. JTI's IDentify programme similarly aims to support retailers in their duty to prevent under-age sales. As a member of the UK Vaping Industry Association (UKVIA), we support their code of conduct which states that retailers must never sell vaping products to anyone under the age of 18, and should apply a "Challenge 25" policy in order to reduce the risk of selling to minors.

That said, there is a flaw in the current regulations on e-cigarettes under the Tobacco and Related Products Regulations 2016. Non-nicotine containing vaping products are currently less stringently regulated than nicotine-containing products, and the latest PHE study found that 17.3% of 11 to 18 year olds who were current and former vapers reported that they always used nicotine-free products (2).

JTI believes that all e-liquids should be regulated in the same way, which as well as ensuring consumers are better protected, will also reduce access by minors to non-nicotine e-liquids. We have addressed this further at Question 13.

(1) Public Health England (PHE), Vaping in England: 2021 evidence update summary, <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021/vaping-in-england-2021-evidence-update-summary>

(2) Idem

**Question 7: How far do you agree or disagree that the current regulations have ensured that e-cigarettes are available for those smokers who wish to switch to these products?**

- Strongly agree
- **Agree**
- Neither agree or disagree
- Disagree
- Strongly disagree
- Don't know

There is no evidence to suggest that the current regulations have impacted the availability of e-cigarettes for those smokers who wish to switch. The latest report commissioned by Public Health England (PHE) indicates little change in vaping prevalence amongst smokers since 2014. The report reinforces this view with 37% of smokers having not ever tried vaping products (1).

The same report also reveals the incorrect perceptions of harm caused by vaping products are increasing due to cases of EVALI in the USA. 38 % of current adult smokers believed that vaping was as harmful as smoking, 18% did not know whether vaping or smoking was more harmful, and 15% of smokers believed vaping was more harmful than smoking.

Adult consumers vary in their needs, demands and desires. They should be appropriately informed about the risks associated with the respective products they prefer to consume. The Government has a role to play in further raising awareness of the reduced risk potential of such products in the UK.

In addition, in order for these common misperceptions to be tackled effectively, regulation must ensure that all vaping products are regulated in the same way so that only e-cigarettes meeting product safety (2) and quality requirements are placed on the market. We have addressed this further at Question 13.



- (1) Public Health England (PHE), Vaping in England: 2020 evidence update summary, <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-march-2020/vaping-in-england-2020-evidence-update-summary>
- (2) Royal College of Physicians, Promote e-cigarettes widely as substitute for smoking says new RCP report, <https://www.rcplondon.ac.uk/news/promote-e-cigarettes-widely-substitute-smoking-says-new-rcp-report>

**Question 8: What effect do you think the regulations have had on smokers considering switching to e-cigarettes?**

- Encouraged
- **Neutral**
- Discouraged
- Don't know

It is difficult to assess the impact that these regulations have had on smokers considering switching to e-cigarettes. As Public Health England (PHE) notes in their recently commissioned report, vaping prevalence has shown little change since 2014, and the proportion of current smokers who have not tried e-cigarettes remained at 37% between 2018 and 2019 (1).

JTI believes it is the evidence from competent bodies such as PHE - who estimate that e-cigarettes are around 95% less harmful than smoking tobacco (2) – and the associated Government-backed public information campaigns rather than these regulations which encourages smokers to switch to e-cigarettes. JTI also supports the recommendation in this same report to place a greater emphasis “...on how best to communicate evidence of relative harm to smokers so that they can consider all the options available to them...” (3).

However, to support this, regulation must ensure that all vaping products are regulated in the same way so that only e-cigarettes meeting product safety (4) and quality requirements are placed on the market. We have addressed this further at Question 13.

- (1) Public Health England (PHE), Vaping in England: 2020 evidence update summary, <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-march-2020/vaping-in-england-2020-evidence-update-summary>
- (2) Public Health England (PHE), E-cigarettes around 95% less harmful than tobacco estimates landmark review, <https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review>
- (3) Public Health England (PHE), Vaping in England: 2020 evidence update summary, <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-march-2020/vaping-in-england-2020-evidence-update-summary>
- (4) Royal College of Physicians, Promote e-cigarettes widely as substitute for smoking says new RCP report, <https://www.rcplondon.ac.uk/news/promote-e-cigarettes-widely-substitute-smoking-says-new-rcp-report>

**Question 9: Do you consider the restrictions on e-cigarette advertising to be an effective way to discourage young people and non-smokers from using e-cigarettes?**

- Yes
- No
- **Don't know**

Under the already strict requirements of the Tobacco and Related Products Regulations 2016, promotional elements are not allowed on e-cigarette packaging and online promotion of e-cigarettes is prohibited. There is no evidence that the currently permitted forms of advertising have any influence on young people and non-smokers. As evidenced in the latest PHE-commissioned report, vaping prevalence remains low (1).

We agree with PHE's recommendation to improve the enforcement of age-related sales regulations as this is one of the most effective ways of tackling youth vaping. JTI's IDentify programme similarly aims to support retailers in their duty to prevent under-age sales.

That said, non-nicotine vaping products are currently less stringently regulated than nicotine-containing products and the latest PHE-commissioned study also found that 17.3% of 11 to 18 year olds who were current and former vapers reported that they always used nicotine-free products (2). JTI believes that all e-

liquids should be regulated in the same way which as well as ensuring consumers are better protected, will also reduce access by minors to non-nicotine e-liquids. We have addressed this further at Question 13.

- (1) Public Health England (PHE), Vaping in England: 2021 evidence update summary, <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021/vaping-in-england-2021-evidence-update-summary>
- (2) Idem

**Question 10: How far do you agree or disagree that the requirements of TRPR on novel tobacco products are proportionate?**

- Strongly agree
- **Agree**
- Neither agree or disagree
- Disagree
- Strongly disagree
- Don't know

Heated tobacco products (HTP) have the potential to reduce the risks associated with smoking (1). HTP offer an alternative to cigarettes for adult smokers in terms of taste, look and habits. These products therefore present a viable and satisfying option for adult smokers seeking a potentially less harmful product and can make a positive impact on tobacco harm reduction.

Regulation should be based on the science and ensure that there is a clear distinction between HTP and combustible tobacco products. If there is no such distinction in terms of regulatory treatment, adult smokers who are not fully acquainted with the characteristics of these novel tobacco products might get the wrong impression that HTP are the same as combustible tobacco products, and understandably assume they carry equal risks.

HTP should therefore continue to not be subject to the same regulations as tobacco for smoking. Treating all products the same would be detrimental and prevent existing adult smokers from making an informed choice about considering switching to HTP.

This clear distinction is reflected in the current regulations and such an approach should not be deviated from. With Public Health England (PHE) conducting a full review of the evidence on the safety of vaping products, which is due to be published by PHE next year in 2022, JTI calls on the Government to also consider HTP at the same time.

- (1) Public Health England (PHE), E-cigarettes and heated tobacco products: evidence review, <https://www.gov.uk/government/publications/e-cigarettes-and-heated-tobacco-products-evidence-review>. See evaluation (at: [https://cot.food.gov.uk/sites/default/files/heat\\_not\\_burn\\_tobacco\\_statement.pdf](https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_statement.pdf))

**Question 11: Do you agree or disagree that the penalties for a breach of the regulations are an effective deterrent to ensure compliance with the regulations?**

- **Agree**
- Disagree
- Don't know

We believe the penalties in place are a sufficient deterrent to ensure compliance by legitimate businesses with the regulations. JTI, as a legitimate business, complies with regulations regardless of the penalty for a breach.

The widespread breaches of regulations covering standardised packaging and health warnings, come as a result of criminals, often linked to serious and organised crime, flouting the laws by selling counterfeit products, illicit whites or products smuggled into the UK from other markets.



Given the ongoing high levels of illegal tobacco in the UK, which has seen the loss of tax revenue of more than £47 billion since 2000 (1), the penalties do not act as a deterrent. Therefore, we welcome the recent HMRC consultation on further sanctions to address the problem.

(1) HMRC, Measuring Tax Gaps (Table 3.3), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/907129/Measuring\\_tax\\_gaps\\_tables\\_2020\\_edition.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907129/Measuring_tax_gaps_tables_2020_edition.xlsx)

**Question 12: How far do you agree or disagree that there has been an economic impact of TRPR, either positive, negative or both?**

- **Strongly agree**
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree
- Don't know

It is difficult to apportion the costs associated with the introduction of the Standardised Packaging of Tobacco Products Regulations 2015 (SPoT) and the Tobacco and Related Products Regulations 2016 as both regulations came into force simultaneously. However, JTI faced a significant financial burden to comply with both sets of regulations including one-off investments that were required in order to adapt our manufacturing processes.

In particular, changes to packaging and labelling requirements across our portfolio meant that existing production lines had to be converted and new machinery purchased. The complexities involved with production also led to an increase in time and waste rates. It is apparent that a portion of these costs could have been reduced or avoided if more realistic timescales for implementing the changes were implemented.

There has also been a need to communicate such regulatory changes with retailers, the costs of which have been covered by individual tobacco manufacturers.

**Question 13: Is there anything you would like to share on negative or positive impacts the regulations have had on topics not covered above? If so, please explain and include any evidence and research you may have to back your response.**

JTI believes that all products positioned as smoking alternatives should be appropriately regulated.

Heated tobacco products (HTP)

HTP have the potential to reduce the risks associated with smoking due to the absence of combustion which occurs when lighting a cigarette. It would therefore be illogical to treat them the same. Only by smokers moving away from combustible tobacco products to these potentially less harmful alternatives, can population harm reduction be achieved.

HTP should continue to not be subject to the same regulations as tobacco for smoking. It should be clear to existing adult smokers looking for a potentially less harmful alternative (via regulatory treatment and communication about these products), that HTP are not the same as combustible tobacco products.

Nicotine pouches

Since the introduction of the Tobacco and Related Products Regulations 2016 (TRPR), nicotine pouches have become more widely available in the UK. A nicotine pouch is a pre-portioned, tobacco-free consumer product that contains nicotine compounds, flavourings, and other ingredients. Nicotine and flavours are released by placing the pouch in the mouth, resulting in nicotine uptake via the oral mucosa. At present, nicotine pouches are only subject to the General Product Safety Regulations 2005.

As a responsible manufacturer and market leader in this category, JTI believes that these products should be regulated under the TRPR to ensure that notification systems, sensible labelling and product descriptors, and permitted nicotine limits are in place. Such regulations would protect consumers and address potential youth access by ensuring appropriate age of sale restrictions are adhered to. JTI adheres to a voluntary framework to guide the marketing, promotion and packaging of nicotine pouches whilst recognising the supremacy of all relevant UK laws. We would welcome the opportunity to discuss these proportionate measures further with officials.

#### Non-nicotine containing vaping products

The TRPR ensure that nicotine containing e-liquids for use in vaping products are only placed for sale in the UK once the required notification (including toxicological data and ingredients amongst others) has been processed by the MHRA, to determine the quality and that the required safety standards are met.

There is a need however to better control all vaping products on the market and improve communication with adult consumers, so they are properly informed before they choose an alternative among such a wide range of vaping products available in the UK.

Recent events relating to cases of EVALI (e-cigarette or vaping use-associated lung injury) in the USA showed that whilst most e-cigarettes conform to all required safety standards, some do not. This is particularly the case with customisable devices where e-liquids can be mixed, and devices modified with the addition of illicit substances. Regulation should address this issue to ensure that only e-cigarettes which meet high safety and quality standards can be placed on the market.

To continue to increase consumer confidence, all e-liquids – including non-nicotine containing e-liquids – should be regulated in the same way (1). This will ensure that manufacturers are deterred from adding unregulated ingredients into their non-nicotine containing e-liquids, and that consumers are better protected if they choose to mix their own products (e.g. short fills).

Through JTI's own test purchasing we have seen evidence of a number of non-nicotine containing e-liquids being marketed under well-known brands (e.g. well-known soft drink brands) likely in violation of that brand's intellectual property rights, or are inappropriately marketed with youth appeal. These unregulated products may also be dangerous to anyone consuming them. Extending the TRPR to cover all e-liquids would put a stop to this.

(1) Medicines and Healthcare products Regulatory Agency, Letter from Dr Ian Hudson, CEO, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/ecigarettes/written/80468.html> (See also research article on Inflammatory and Oxidative Responses Induced by Exposure to Commonly Used e-Cigarette Flavoring Chemicals and Flavored e-Liquids without Nicotine at: <https://www.frontiersin.org/articles/10.3389/fphys.2017.01130/full>)

## The Standardised Packaging of Tobacco Products Regulations 2015

**Question 14: How far do you agree or disagree that the requirements on the packaging and labelling of tobacco products have been an effective way to protect young people from taking up smoking?**

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- ***Strongly disagree***

There is no credible evidence to suggest that the Standardised Packaging of Tobacco Products Regulations 2015 contributed towards protecting young people from taking up smoking. As set out in our response to Question 5, smoking rates amongst young people had been on a steady decline for years (1).

Whether or not a tobacco product contains branded or standardised packaging has no impact on smoking initiation. It is completely unrelated to whether a young person would start, continue, or quit smoking. Other

well-documented factors, including the smoking behaviours of peers or family influence, play a key role in smoking experimentation.

Emphasis should continue to be placed on education, for example through the Personal, Social, Health and Citizenship Education (PSHCE) programme. International examples such as Japan, Germany, and the USA (2) (3) also show the power of sustained youth education campaigns which are focused on resisting peer pressure when it comes to smoking.

However, preventing under-age sales is the most effective way of reducing youth smoking. Increasing the resources made available to local Trading Standards departments – which in England have seen their budgets cut since 2010 - would enable them to commission more test purchasing of retailers. Stronger enforcement action against those retailers who choose to ignore the law and sell age-restricted products to young people would ensure that minors do not have access to such products.

JTI runs its own youth access prevention programme called IDentify where retailers are subjected to up to four rounds of test purchasing to ensure they are operating a “Challenge 25” policy. Retailers found to be at risk of selling tobacco or vaping products to minors are offered free of charge training and support. Those retailers found to be persistently at risk are reported to the local Trading Standards department by JTI (4). JTI also helps to fund the ‘No ID, No Sale!’ campaign, which provides retailers with materials and advice to prevent under age sales, and to remind shop staff and younger customers that valid proof-of-age is required when buying tobacco and vaping products.

- (1) NHS Digital, Smoking, Drinking and Drug Use among Young People in England 2018, <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2018/part-1-smoking-prevalence-and-consumption>
- (2) Bundesregierung, Drogen- und Suchtbericht der Bundesregierung 2015” (in German), [https://www.bundesregierung.de/Content/Infomaterial/BMG/\\_2827.html](https://www.bundesregierung.de/Content/Infomaterial/BMG/_2827.html).
- (3) FDA, Only in the first 2 years since its launch the US Food and Drug Administration’s “The Real Cost” campaign helped prevent nearly 350,000 teenagers from starting to smoke cigarettes, <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-significant-public-health-value-and-cost-savings>
- (4) JTI, Youth Access Prevention, <https://www.jti.com/europe/united-kingdom/youth-access-prevention>

**Question 15: How far do you agree or disagree that the requirements on the packaging and labelling of tobacco products have helped existing smokers quit?**

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- **Strongly disagree**
- Don’t know

There is no reliable evidence that the requirements introduced on packaging and labelling of tobacco products have had any measurable impact on the behaviour of existing smokers. As we have outlined in our response to Question 1, there is a historic pattern of smoking rates being on a steady decline which cannot be attributed to one specific policy measure.

The fact that standardised packaging does not change smoking behaviour i.e. the decision whether to start, continue, or quit smoking is further reinforced by the evidence emerging in other countries with similar policy interventions in place. For example, Ireland (1), New Zealand (2) and Australia (3) also have not seen an accelerated decline in smoking rates following the introduction of standardised packaging.

In addition, a study commissioned by JTI (4) highlights the statistically insignificant impact on tobacco consumption in France following its implementation of standardised packaging. It is therefore not surprising that even the French Health Minister has publicly acknowledged that this measure does not change smoking behaviour: “We know that [plain packaging] doesn’t lead smokers to stop smoking...” (5).

- (1) Irish Government, Healthy Ireland Summary Report 2019, <https://assets.gov.ie/41141/e5d6fea3a59a4720b081893e11fe299e.pdf>

- (2) New Zealand Ministry of Health, Smoking Prevalence Data, [https://minhealthnz.shinyapps.io/nz-health-survey-2018-19-annual-data-explorer/\\_w\\_d7225d99/#/explore-topics](https://minhealthnz.shinyapps.io/nz-health-survey-2018-19-annual-data-explorer/_w_d7225d99/#/explore-topics)
- (3) Australian Government, National Drug Strategy Household Survey 2016, <https://www.aihw.gov.au/reports/web/180/ndshs-2016-key-findings/contents/highlights>
- (4) Europe Economics, TPD2 and standardized tobacco packaging –What impacts have they had so far?, December 2018, (commissioned by JTI), <https://www.jti.com/sites/default/files/TPD2-and-standardised-tobacco-packaging-impact-update-May-2018.pdf>
- (5) French Parliament, French Health Minister Agnès Buzyn's November 2017 statement during a parliamentary debate on the Social Security Finance Bill and in response to a Member of Parliament, who questioned her on the efficacy of plain packaging, <http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp>

**Question 16: SPoT regulations apply to cigarettes and hand rolling tobacco. How far do you agree or disagree that SPoT regulations should be restricted to cigarettes and hand rolling tobacco (and not other tobacco products)?**

- **Strongly agree**
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree
- Don't know

There is no credible evidence that the implementation of standardised packaging for cigarettes and hand rolling tobacco resulted in reduced initiation or increased quitting in the UK, or any other country that has implemented similar measures.

Despite calls by some groups, there is no justification to extend this policy to other products which make up a small section of the overall tobacco market.

Cigars and cigarillos for example accounted for just 1.6% of total tobacco products purchased (in £) in 2020 (1). Heated tobacco products (HTP) meanwhile accounted for just 0.3% during the same period (2).

HTP have the potential to reduce the risks associated with smoking (3) due to the absence of combustion which occurs when lighting a cigarette. It would therefore be illogical to treat them the same. Only by smokers moving away from combustible tobacco products to these potentially less harmful alternatives, can population harm reduction be achieved.

HTP should continue to not be subject to the same regulations as tobacco for smoking. It should be clear to existing adult smokers looking for a potentially less harmful alternative (via regulatory treatment and communication about these products), that HTP are not the same as combustible tobacco products. Treating all products the same would be detrimental and prevent existing adult smokers from making an informed choice about considering switching to HTP.

This clear distinction is reflected in the current regulation in the area of labelling and such an approach should not be deviated from. With Public Health England (PHE) conducting a full review of the evidence on the safety of vaping products, which is due to be published by PHE next year in 2022, JTI calls on the Government to also consider HTP at the same time.

Hard evidence and common sense should prevail instead of extending the scope of ineffective measures. The Government should focus on reinforcing existing youth access prevention measures and expanding public information campaigns to increase awareness of potentially reduced risk alternatives. This could also be achieved via long-term education initiatives which dispel some of the misconceptions around alternative products.

- (1) IRI
- (2) Idem
- (3) Public Health England (PHE), E-cigarettes and heated tobacco products: evidence review, <https://www.gov.uk/government/publications/e-cigarettes-and-heated-tobacco-products-evidence-review>. See evaluation (at: [https://cot.food.gov.uk/sites/default/files/heat\\_not\\_burn\\_tobacco\\_statement.pdf](https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_statement.pdf)) and statement (at: [https://cot.food.gov.uk/sites/default/files/heat\\_not\\_burn\\_tobacco\\_summary.pdf](https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_summary.pdf))

**Question 17: How far do you agree or disagree that the introduction of a minimum pack size or weight is an effective way to protect young people from taking up smoking?**

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- ***Strongly disagree***
- Don't know

Some tobacco control groups stated that the introduction of minimum pack size and weight requirements would eliminate "child-friendly packs" from the market. There is no evidence that this measure has helped to prevent youth smoking uptake in the UK, or that such packs were ever appealing to young people.

As we have set out throughout this response, youth smoking prevalence was on decline well before the implementation of this and other tobacco control measures. It is obvious that the shape, weight and also the appearance of the packaging is unrelated to whether someone starts, continues or quits smoking.

**Question 18: How far do you agree or disagree that the requirements on the appearance of cigarettes are proportionate?**

- Strongly agree
- Agree
- ***Neither agree or disagree***
- Disagree
- Strongly disagree
- Don't know

There is no evidence that restricting the appearance of a cigarette stick has led to any health benefits, either in the UK, or elsewhere in the world where such measures have been implemented. In the UK cigarettes are sold in standardised packaging containing combined (photo and text) health warnings. The pack itself is hidden from sight behind a gantry door. A would-be smoker makes a conscious decision to smoke, despite the health warnings on the pack or the appearance of the packaging. The appearance of the cigarette stick is not a relevant factor in making this decision.

A high level of public awareness about the health risks of smoking already exists in the UK. Adults who choose to smoke, do so despite knowing these risks. There is no reason to think that adding new and even more disproportionate measures will have any lasting effect on public awareness, let alone any impact on smoking prevalence. As we have set out throughout this response, any efforts to reduce smoking prevalence should be focused on targeted public information and education campaigns.

**Question 19: Do you agree or disagree that the penalties for a breach of the regulations are an effective deterrent to ensure compliance with the regulations?**

- Agree
- Disagree
- ***Don't know***

Legitimate businesses will always comply with the regulations, so whether there are penalties or not is irrelevant. However, there are many breaches of the Standardised Packaging of Tobacco Products Regulations 2015 committed by organised criminal gangs through the sale of counterfeit tobacco products which continue to copy branded packaging. Stronger enforcement is needed in this area to discourage such groups from operating within the UK.

**Question 20: How far do you agree or disagree that there has been an economic impact of SPoT, either positive, negative or both?**

- ***Strongly agree***

- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree
- Don't know

It is difficult to apportion the costs associated with the introduction of the Standardised Packaging of Tobacco Products Regulations 2015 and the Tobacco and Related Products Regulations 2016 as both regulations came into force simultaneously. However, JTI faced a significant financial burden to comply with both sets of regulations including one-off investments that were required in order to adapt our manufacturing processes.

In particular, changes to packaging and labelling requirements across our portfolio meant that existing production lines had to be converted and new machinery purchased. The complexities involved with production also led to an increase in time and waste rates. It is apparent that a portion of these costs could have been reduced or avoided if more realistic timescales for implementing the changes were implemented.

There has also been a need to communicate such regulatory changes with retailers, the costs of which have been covered by individual tobacco manufacturers.

It should also be noted that the introduction of standardised packaging coincided with an increase in the illicit trade (1)(2). There is also clear evidence that organised crime groups adapted quickly with the first counterfeit cigarettes in standardised packaging appearing in shops just one month after the measure was introduced (3). This trend continues, with criminals doubling their profits by selling fake plain packs at full price (4). As has been acknowledged by Oxfordshire County Council: "...these counterfeits are a public health menace, deviously disguised as legitimate products" (5).

It is also notable that downtrading to cheaper cigarette brands accelerated in the years following the implementation of standardised packaging reducing tax receipts paid to the Government (6).

- (1) KPMG, Project Stella: A study of the illicit cigarette market in the EU, <https://marketing.kpmg.co.uk/stella/UK.pdf>
- (2) Euromonitor International, Passport: Tobacco in the United Kingdom, [www.euromonitor.com](http://www.euromonitor.com)
- (3) Better Retailing, First fake plain packs discovered, rogue retailers making "small fortune", <https://www.betterretailing.com/legislation-competition/illicit-trade/exclusive-first-fake-plain-packs-discovered-rogue-retailers-making-small-fortune>
- (4) Sunderland Echo, Thousands of counterfeit cigarettes found in Washington shopkeeper's garage, <https://www.sunderlandecho.com/news/thousands-counterfeit-cigarettes-found-washington-shopkeepers-garage-352541>
- (5) Oxfordshire County Council, Menace of fake cigarettes, sold alongside legitimate brands in Oxfordshire, <https://news.oxfordshire.gov.uk/menace-of-fake-cigarettes-sold-alongside-legitimate-brands-in-oxfordshire/>
- (6) Euromonitor International, Passport: Tobacco in the United Kingdom, [www.euromonitor.com](http://www.euromonitor.com)

**Question 21: Is there anything else you would like to share on negative or positive impacts the regulations have had on topics not covered above? If so, please explain and include any evidence and research you may have to back your response**

The UK has taken a leading role in embracing the reduced risk potential of e-cigarettes. The Government similarly has an opportunity to encourage the transition to heated tobacco products (HTP) and champion their potential tobacco harm reduction benefits.

HTP have the potential to reduce the risks associated with smoking due to the absence of combustion which occurs when lighting a cigarette. It would therefore be illogical to treat them the same. Only by smokers moving away from combustible tobacco products to these potentially less harmful alternatives can population harm reduction be achieved. HTP should continue to not be subject to the same regulations as tobacco for smoking. It should be clear to existing adult smokers looking for a potentially less harmful alternative (via regulatory treatment and communication about these products), that HTP are not the same as combustible tobacco products. It would be a mistake to hamper the development of this new category by extending existing TRPR and SPoT regulations.



With Public Health England (PHE) conducting a full review of the evidence on the safety of vaping products, which is due to be published by PHE next year in 2022, JTI calls on the Government to also consider HTP at the same time.