

# Imperial Brands' submission to the Public Bill Committee: The Tobacco and Vapes Bill (TVB55)

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## Company background

1. Imperial Brands PLC (IMB) is a FTSE 100 headquartered in Bristol in the UK and parent company of a dynamic international business specialising in tobacco and non-tobacco brands.
2. Imperial Tobacco Limited (ITL) (together with Imperial Brands PLC) is the Bristol-based trading operation of Imperial Brands which distributes Imperial Tobacco's products to the UK market. Aligned with our purpose to forge a path to a healthier future for moments of relaxation and pleasure, we are also committed to building a sustainable Next Generation Product (NGP) portfolio. These NGPs offer several alternative choices for adult smokers who are looking to transition to a potentially less harmful alternative to traditional tobacco products. Included in our portfolio is blu, a pioneer in the UK vape category.

## Executive Summary

3. IMB welcomes the opportunity to contribute to the Public Bill Committee's call for evidence as it undertakes its important scrutiny of the Tobacco and Vapes Bill.
4. IMB advocates proportionate, effective, and evidence-based regulation in support of the Government's Smokefree 2030 objective of reducing smoking prevalence to <5%. However, echoing [our submission](#) to the DHSC consultation on "*Creating a smokefree generation and tackling youth vaping*" we urge ministers and parliamentarians to consider the unintended consequences of introducing a generational ban on tobacco products, which would be both unworkable and unenforceable, and would see an explosion of illicit trade in tobacco – not to mention increasing the number of abusive incidents against retailers. Furthermore, although there is no evidence that a generational smoking ban would reduce smoking rates, there is a wealth of evidence on the unintended negative impacts of a prohibitionist approach.
5. We agree about the need for regulations to adapt to the rising popularity of vaping and were encouraged to see many of the specific policies we have long advocated for – such as a ban on flavour descriptors with a specific youth appeal and the introduction of a low level of excise duty on vapes – included in the Department of Health and Social Care's response to *Creating a smokefree generation and tackling youth vaping* consultation and announced at the Spring Budget, respectively. Nevertheless, we are concerned that the Tobacco and Vapes Bill grants significant powers to ministers to regulate the vape category to such an extent as to risk undermining the UK's progress towards Smokefree 2030. Ill-considered vape regulations could result in former adult smokers returning to smoking, discourage adult smokers from transitioning to vaping, or encourage adult smokers/former smokers to access vapes from illicit sources.
6. Finally, we are gravely concerned that the Government's own impact assessment of the Tobacco and Vapes Bill gives inadequate consideration of the long-term consequences of introducing the generational smoking ban. We would, therefore, draw the Committee's attention to the Regulatory Policy Committee's assessment of the Bill. In particular, we are concerned by the impact assessment's reliance on datasets more than a decade old, by its unrealistic expectation of full retailer compliance with the generational ban, and its failure to provide an estimate of the additional costs required to enforce the generational smoking ban.

## Imperial Brands' response

### Increasing the age of sale for tobacco

#### Generational smoking ban

7. **Clause 1** (p.1) of the Tobacco and Vapes Bill introduces the generational smoking ban for “a tobacco product”, a “herbal smoking product”, and “cigarette papers”.
8. **Imperial Brands' position:** We advocate proportionate, effective, and evidence-based regulation in support of the Government's Smokefree 2030 objective of reducing smoking prevalence to <5%. There is **no evidence** to suggest the proposal to increase the age of sale each year for those born after 1<sup>st</sup> January 2009 will reduce smoking rates. There is, however, clear evidence from other countries where attempts at prohibition have exemplified the failure of this approach. For instance, the South African Government outlawed the sale of tobacco products to all adults during Covid, but the illicit tobacco market quickly flourished, with 93% of smokers purchasing tobacco despite the ban. It reversed the decision within five months.<sup>1</sup>
9. The enforcement of the generational smoking ban will fall on retailers who, by 2050, will face an impossible scenario of distinguishing between a 41-year-old, who cannot legally buy tobacco, and a 42-year-old, who can. ID checks in the retail sector are already a “key flashpoint for abuse, threats and violence against shopworkers”,<sup>2</sup> and the industry believes the policy will lead to “increased abuse from customers who are reluctant to be ID'd”, and in turn “inadvertently contribute to a rise in shoplifting cases.”<sup>3</sup>
10. Banning the sale of a legal product to adults represents an unprecedented intrusion on the public's freedom to make informed choices. Furthermore, it denies adults the agency to engage in private activities, and as it is based on date of birth, the policy is discriminatory.
11. The inclusion of “cigarette papers” in Clause 1 is also problematic. Cigarette papers are easy to counterfeit and their inclusion within the new legislation would open the door for even more enforcement challenges, [not the mention the health risks associated with the consumption of counterfeit products.]
12. Furthermore, the wide definition of a “tobacco product” means that products with the potential to reduce risk, such as heated tobacco products, are unreasonably captured by the legislation. Heating and not burning tobacco means substantially lower levels of chemicals are inhaled when compared to cigarette smoke. As heated tobacco is used by many ex-smokers as a cessation aid, we believe its inclusion sends the wrong message about its harm reduction potential, may discourage existing adult smokers from switching and would therefore be determinantal to the Government's 2030 smokefree objective.

#### Implementation period

13. **Clause 79** (p.42) mandates the Bill will come into force two months after being passed - with the

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<sup>1</sup> [“The temporary ban on tobacco sales in South Africa: lessons for endgame strategies”](#) British Medical Journal, 16 June 2023

<sup>2</sup> [“‘Damned if we do, damned if we don't’ - the shopworkers' experience of policing age-restricted sales”](#) Union of Shop, Distributive and Allied Workers, 18 January 2022

<sup>3</sup> [“Retail Association Warns of Extra Pressures Put on Retailers Under Proposed Smoking Ban”](#) British Independent Retailers Association, 6 October 2023

exception of provisions that state otherwise. The generational smoking ban will come into effect on 1 January 2027 - when those born in 2009 turn 18.

14. **Imperial Brands' position:** We are calling for the Government to change its approach and instead to raise the age of sale to 21. This is a simple, immediate, and proven alternative to the proposed generational smoking ban. Introducing this measure now will prevent hundreds of thousands of young people from ever trying a cigarette. This policy alternative would prevent a further increase in the illicit market, which under the generational ban, would grow each year as more and more adults are captured. It would also reduce losses to the Exchequer in excise duty as well as reducing the burden on retailers, who will have to navigate and enforce ever-changing age of sale restrictions. The Government estimated in its impact assessment that additional checks for age of sale restrictions will cost retailers in the UK £116.8 million (p.57).<sup>4</sup>
15. Furthermore, a generational smoking ban can only be enforced by age verification using authorised forms of ID. With a sizable proportion of the British population lacking a driver's licence or passport,<sup>5</sup> the Government could be forced to consider other means of identification, such as compulsory ID cards.

## Reducing the appeal and availability of vapes to children

### Stricter rules on vape flavours:

16. **Clause 63** (p.34) of the Tobacco and Vapes Bill states that future regulations may include provisions on “**the information provided on vaping products or nicotine products**”. This provision would allow the Government to regulate flavour descriptors.
17. **Imperial Brands' position:** We believe that flavour names that appeal to under-18s - such as ‘cotton candy’ - are unacceptable and should be banned. However, when marketed responsibly, flavours are an **important harm reduction tool**. Research shows that around 65% of adult vapers find fruit or sweet liquids preferable.<sup>6</sup> If only tobacco flavoured vapes are available – an option being explored by the Government – many ex-smokers may return to smoking. According to the Government's own impact assessment, restricting vape flavours would mean 87% of adults that vape could be affected in some way.<sup>7</sup> This is in line with recent evidence on the flavour bans that have been imposed in the US, which suggests that for every 0.7mL vape pod that is not sold due to the flavour bans, there is a trade-off resulting in the sale of 15 additional cigarettes.<sup>8</sup>

### Retail packaging of vaping products and nicotine products:

18. **Clause 61** (p.32) grants the power to regulate the retail packaging of vaping products, this includes external packaging, the wrapper, and internal packaging.
19. **Imperial Brands' position:** We support measures prohibiting packaging containing cartoon characters and child friendly imagery. However, 43% of smokers already **incorrectly believe** that

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<sup>4</sup> [“Tobacco and Vapes Bill: Impact assessment”](#) Department of Health and Social Care, 20 March 2024

<sup>5</sup> [“Voter ID: Key facts and figures”](#) House of Commons Library, 23 October 2019

<sup>6</sup> [“European survey: 80 percent of vapers stopped smoking completely”](#) Independent European Vape Alliance, 29 October 2020

<sup>7</sup> [“The impact of e-cigarette flavour restrictions on population smoking and e-cigarette use prevalence among youth versus smoking prevalence among adults”](#) medRxiv, 21 March 2023

<sup>8</sup> [“E-cigarette Flavor Restrictions' Effects on Tobacco Product Sales”](#) SSRN, 29 January 2024

vaping is equally or more harmful than smoking.<sup>9</sup> This is not the case, a fact asserted by Public Health England since 2015 and recently reaffirmed by OHID.<sup>10</sup> Introducing standardised packaging, similar to that which is used for tobacco products, will worsen the confusion, as it implies tobacco and vapes are equal in harm, and reduces the incentive for current smokers to switch. In any case, if the Government does decide to introduce pack changes, it must ensure that industry is given sufficient time to become compliant or otherwise risk the disrupting the availability of vapes to those who use them as an alternative to smoking as part of their journey to quitting.

#### **Inclusion of non-nicotine vapes:**

20. **Clause 34** (p.16) defines a vaping product as a “vape or vaping substance” - extending the definition to include non-nicotine products, as well as nicotine-containing products.
21. **Imperial Brands’ position:** We strongly support equalising the regulations for non-nicotine vapes – products designed to circumvent regulation (such as “shortfills”). The absence of such regulation has led to an increase in nicotine-free products, including open system “shortfills”, and the Government must close this dangerous gap by including the term “non-nicotine e-liquid” in UK vaping regulations. Several European markets have captured nicotine-free products in their vape regulations and we encourage the UK Government to do the same.

## Strengthening enforcement around tobacco and vaping sales

#### **Restricted premises orders**

22. **Clauses 12 to 15 (p.6-8)** proposes a “restricted premises orders” scheme, which will mean persistent offenders of either the tobacco or vape restrictions may be prevented from selling any tobacco products, herbal smoking products, cigarette papers, vaping products, and any nicotine products, for up to 12 months.
23. **Imperial Brands’ position:** We strongly support the introduction of the proposed restricted premises orders and have long argued for a scheme akin to the retailer registration scheme in place in Scotland since 2017. A UK-wide scheme would be a common-sense alternative to significant restrictions on point-of-sale displays.

#### **Fixed penalty notices (FPNs)**

24. **Clause 24 (p.12)** introduces FPNs for a range of offences including the sale of tobacco to those born on or after 1 January 2009 and the sale of vaping products to under-18s. FPNs offer a person the opportunity to discharge liability and avoid prosecution, if they pay £100 within 28 days. This reduces to £50 if paid in 14 days. **Clause 25** (p.13) notes that processes for FPNs must be used in connections with functions under the Tobacco and Vapes Bill.
25. **Imperial Brands’ position:** We welcome these measures, but urge the Government to go further. The Bill proposes fixed penalty notices of £100 or £200 for retailers caught selling to under-18s. These fines should be much larger, to provide a significant deterrent – for example, the French Senate recently voted unanimously in favour of a ban on disposable e-cigarettes, with fines proposed of up to €100,000 for those found distributing them.<sup>11</sup> With the demand for cheaper, illicit

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<sup>9</sup> [“Use of e-cigarettes \(vapes\) among adults in Great Britain”](#) Action of Smoking and Health (ASH), August 2023

<sup>10</sup> [“E-cigarettes: an evidence update”](#) Public Health England, August 2015

<sup>11</sup> [“France moves closer to banning disposable e-cigarettes with Senate vote”](#) Radio France Internationale

tobacco and vaping products only likely to grow going forward, due to cost of living restraints, incoming changes to tobacco age of sale restrictions and the ban on disposable vapes, Trading Standards desperately needs more adequate resourcing. Additionally, we support proceeds from FPNs being ring-fenced for activities connected to enforcement.

## Economic and financial impacts of the Bill

26. As outlined above, IMB has significant concerns that the generational smoking ban could encourage adult tobacco users to access the illicit market. While smoking rates continue to decline, there is no evidence that the sequential rise in the smoking age will eliminate consumer demand for tobacco products. Purchase of illicit tobacco is not a victimless crime, and the revenues of illicit tobacco are often reinvested into more severe criminal activity such as human trafficking, arms, smuggling and even terrorism.<sup>12</sup>
27. Furthermore, illicit tobacco represents a significant loss to government tax revenue which, if collected effectively, can support enforcement measures and smoking cessation programmes. The Government's own Tax Gaps' analysis has indicated total foregone tobacco revenue of £2.2bn in FY21/22 or 18% of the total theoretical duty liability - driven by an illicit penetration of 35% on HRT and 11% on FMC.<sup>13</sup>
28. However, KPMG research suggests that, at least for cigarettes, this is a significant underestimate. In 2022, KPMG estimated that 27.9% of FMC consumption in the UK was not subject to UK duty with 21% being classified as counterfeit or contraband.<sup>14</sup> The tax gap from counterfeit and contraband factory-made cigarettes volumes alone translates to £2.8bn in forgone revenue.
29. Furthermore, independent research from IPOS suggests more than 36% of UK cigarette consumption is now non-duty paid - up from 21% in Q3 2021. This can be extrapolated to an annualised 'tax gap' of £4.2bn in revenue foregone (based on total cigarette receipts for the year 2022-23). A further £1.1bn is foregone annually from hand-rolling tobacco (HRT) receipts where an estimated 34% of the market is now captured by the illicit trade.<sup>15</sup> The generational smoking ban therefore risks exacerbating an already significant tax gap and will represent year-on-year losses to tax revenues.

## Impact Assessment

30. It is notable that the Regulatory Policy Committee determined that the Tobacco and Vapes Bill impact assessment was only "satisfactory" in its cost-benefit analysis, and even more concerningly, "weak" in its rationale and opinions, and analysis of wider impacts of the Bill.<sup>16</sup> It is incumbent on the Government to demonstrate how it will address these inadequacies. Imperial Brands shares the RPC's concerns regarding the Government's rationale contained within the impact assessment and outlines some further concerns below.

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<sup>12</sup> ["The link between illicit tobacco trade and organised crime"](#) The European Economic and Social Committee, 23 March 2018

<sup>13</sup> "Tax gaps: Excise (including alcohol, tobacco and oils)" HM Revenue & Customs, 22 June 2023

<sup>14</sup> ["Illicit cigarette consumption in the EU, UK, Norway, Switzerland, Moldova and Ukraine"](#) KPMG, 28 June 2023

<sup>15</sup> IPSOS study available on request

<sup>16</sup> ["Tobacco and Vapes Bill"](#) Regulatory Policy Committee, 4 April 2024

31. Firstly, the impact assessment estimates that four billion fewer factory-made packs of cigarettes will be sold between 2027 and 2056 (p.61). However, there are no estimates for reductions in the sale of other tobacco products including products which are captured in the definition of the generational smoking ban - such as heated tobacco products and “herbal smoking products” (p.14). Therefore, the impact assessment is incomplete as it does not adequately take account of the complete scope of the Tobacco and Vapes Bill.
32. Secondly, the impact assessment also uses estimates from entirely different policies, some from 12 years ago, to cite the expected impact of measures including the standardised packaging of tobacco (SPoT) impact assessment consultation (2012)<sup>17</sup>, and the impact assessment for prohibiting tobacco displays (2011) (p.125).<sup>18</sup> The full scope of assessment therefore cannot possibly be adequately estimated with data that is over a decade old.
33. Thirdly, modelling from New Zealand cited in the impact assessment which “assumed” full compliance with the generational smoking ban (p.21). Given illicit trade is already an issue for both the tobacco and vapes market, this seems unreliable. Independent research from IPSOS suggests more than 36% of UK cigarette consumption is captured by illicit trade, in addition to 34% of hand-rolling tobacco. Additionally, over the last two years, more than 27 million illicit cigarettes and 7,500kg of hand-rolling tobacco have been seized under Operation CeCe<sup>19</sup>, as well as more than 2.5 million illicit vapes across 125 Local Authorities in a three-year period.<sup>20</sup> Given the current market does not operate at 100% compliance, it is unrealistic to expect full compliance after the introduction of the generational smoking ban.
34. Finally, the Government fails to provide an estimate for enforcement costs and does not anticipate that the generational smoking ban will create additional work for officers. While the Government has announced £30 million to enforcement agencies<sup>21</sup>, this is spread over three agencies - HM Revenue & Customs, Border Force, and Trading Standards - and over five years, this is entirely insufficient. Proper investment in Trading Standards is key to ensuring compliance across the sector.

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<sup>17</sup> [“Standardised packaging for tobacco products”](#) Regulatory Policy Committee, 5 March 2012

<sup>18</sup> [“Prohibition of Display of Tobacco Products at the Point of Sale in England”](#) Regulatory Policy Committee, November 2011

<sup>19</sup> [“Stronger powers to combat illicit tobacco come into force”](#) HM Revenue & Customs, 20 July 2023

<sup>20</sup> [“Millions of illegal vapes seized in UK in three years, data shows”](#) The Guardian, 23 June 2023

<sup>21</sup> [“Tobacco and Vapes Bill: enforcement factsheet”](#) Department for Health and Social Care, 20 March 2024