

## Tobacco and Vapes Bill: Call for Evidence

PML Response 14 January 2025

### Introduction

Philip Morris Limited (PML) is the UK & Ireland affiliate of Philip Morris International (PMI). Philip Morris International (PMI) is a leading international tobacco company working to deliver a smoke-free future and evolving its portfolio for the long-term to include products outside of the tobacco and nicotine sector.

Our vision is clear: to phase out the most harmful product – cigarettes – and replace them with better alternatives that have significantly lower levels of harmful emissions. With the right regulatory framework, and support from civil society, we believe cigarette sales can end within 10 to 15 years in many countries. The right regulatory framework is one that embraces all less harmful alternatives to smoking, is future proof, protects against unintended consequences such as youth use and illicit trade, and is enforceable.

We have developed and commercialise a portfolio of non-combustible, smoke-free alternatives to smoking, including e-vapour products (VEEV), oral smokeless products like nicotine pouches (ZYN) and heat not burn devices (IQOS) that heat tobacco sticks or nicotine infused plugs that release nicotine aerosol. These products do not involve combustion, resulting in significantly reduced exposure to toxic substances and making them a much less harmful choice than smoking. We believe that all smoke free products, such as heated tobacco products, e-cigarettes, and nicotine pouches, play a vital role in helping smokers switch from smoking and help meet bold ambitions for a smoke-free future.

Government and industry must work together if we are to achieve the ambition in becoming smoke-free and showcase the UK as a sustained leader in harm reduction. Regulation should be centred on helping existing adult smokers to quit or switch. We support a range of proportionate measures which include providing adult smokers with access to accurate information and embracing the range of less harmful alternatives to smoking while protecting against youth access and uptake.

### Executive Summary

- **Advertising Ban on Nicotine Products:** While we believe that nicotine product advertising regulation should be proportionate to the public health harm posed (with the most harmful product – cigarettes – subject to the most restrictions), Part 6 of the Tobacco and Vapes Bill, as drafted, seeks to harmonise vape and nicotine product regulation with existing combustible tobacco advertising restrictions. The proposed bans aim to reduce visibility and attractiveness of nicotine products to youth and non-smokers; however, these measures will likely have significant unintended consequences for adult smokers looking to switch to better alternatives. Banning all advertising of vapes and nicotine products will significantly limit the understanding of safer alternatives among adult smokers and increase existing confusion about combustible tobacco versus nicotine products by equating their treatment in this way.

- The proposed advertising ban on all nicotine products is far-reaching and seeks to amend complex areas of legislation. We propose that comprehensive consultation with industry should take place on any of the restrictive measures proposed, so that all relevant expertise can be collected and considered, and government can safeguard against unintended consequences and ineffective legislation.
- **Definition of ‘Tobacco Product’:** Regulating combustible tobacco and HTPs under the same legislation is disproportionate. HTPs do not involve combustion and produce significantly fewer toxic emissions compared to cigarettes. The generational sales ban should focus on the negative health outcomes caused by smoking, not include products like HTPs whose consumption does not qualify as smoking. The committee should look to remove HTPs from the definition of ‘tobacco products’.
- **Heated Tobacco Products (HTP) inclusion in the Generational Sales Ban:** Including less harmful alternatives like HTPs in the generational sales ban contradicts the governments Smokefree objective. This inclusion risks confusing adult smokers by equating smoke-free products with combustible tobacco, potentially leading them to continue smoking cigarettes instead of switching to less harmful alternatives. HTPs should be removed from generational ban structure.
- **Flavouring and Packaging:** proportionate and targeted regulation of nicotine products should be utilised to ensure they are not particularly and unduly appealing to those underage while still remaining acceptable alternatives to adults who would otherwise continue to smoke. As regards flavours, this means ensuring that predominantly adult appealing flavours such as mint, menthol and tobacco are available. Similarly, no aspect of product presentation including packaging should include youth appealing features or elements such as the depiction of toys, cartoons, sweets/desserts etc.

### **Advertising Ban on Nicotine Products**

We believe that the advertising bans as drafted in Part 6 of the Tobacco and Vapes Bill are an inappropriate and disproportionate measure, and government have failed to produce comprehensive evidence or impact assessment to demonstrate that these measures will achieve the desired objective of reducing youth access to vape and nicotine products, while maintaining vape products as a viable smokefree alternative for existing adult smokers. Nor has any assessment of potential unintended consequences on consumers ability to access accurate information on tobacco and nicotine containing products been made publicly available.

#### **Meeting Public Health objectives**

Effective advertising regulation should prioritise positive public health outcomes by ensuring effective communication of reduced harm alternatives to legal-age smokers, while reducing the risk of youth access – a blanket ban on all communications is a counterintuitive measure to tackle this. We believe that further research and consideration should be taken with regard to Part 6 of the Tobacco and Vapes Bill to ensure effective and proportionate measures can be taken to help drive public health objectives.

#### **Importance of responsible advertising – helping the adult smoker**

We support a regulatory framework that ensures vape and nicotine product advertising should always be targeted to existing adult smokers and adult nicotine users who are looking for less harmful

alternatives. Responsible advertising remains an important tool in ensuring adult smokers have access to scientifically substantiated and fact-based product information on the smokefree alternatives available to support them to switch away from cigarettes.

Studies have shown over recent years that a significant proportion of adult smokers incorrectly believe that vaping is as harmful or even more harmful than smoking cigarettes – increasing to 50% among all smokers, and 60% among smokers who have never vaped in 2024.<sup>1</sup> In order to encourage more adult smokers to quit or switch, it is crucial that this misunderstanding is corrected. Advertising, when deployed responsibly, can support the education and awareness of existing adult smokers on product information, as well as evidence about the relative harms of switching to vaping, or other smokefree products, relative to continued smoking.

This awareness and education will ensure that more smokers feel confident enough in the alternatives available to them to make the switch away from cigarettes – supporting the governments ambition to reduce smoking prevalence across the UK.

This is especially important at points-of-sale, such as gantries, which serve as key information touch points for adult smokers looking to find out more information about smokefree alternatives and how to switch away from cigarettes. For responsible manufacturers and retailers, points of sale (normally next to the tobacco gantry in a retail store) represent spaces targeted at adult smokers only. In order to preserve the ability for existing adult smokers and nicotine users to access smokefree information and products, these spaces should be protected, while ensuring strict enforcement measures are taken on irresponsible practices that may encourage youth use.

### **Tackling youth appeal**

There has been a rise in youth vaping over recent years and it is important that industry, government and enforcement authorities work together to correct this trend – nicotine containing products should never be used by minors.

Prior to taking far-reaching regulatory steps to impose blanket bans on advertising – which may have a disproportionate impact on the ability for adult smokers to switch – the Committee must ensure any regulatory interventions are targeted at the root causes of youth appeal and access to vape and nicotine products. We believe that further consultation should be considered to understand the available evidence in this area and ensure any regulation is sufficiently balanced so as to maximise efficiency whilst allowing existing adult smokers to have necessary access to information about smokefree alternatives available to them.

In the Impact Assessment published alongside the draft legislation, Norwegian and Australian advertising restrictions were cited as positive references for the intended advertising ban in the Tobacco and Vapes Bill. However, studies indicate that these blanket bans have not been as effective as intended in curbing youth appeal and access to vape and nicotine products. In Norway, despite a ban on advertising of vaping products in 2023, vaping rates remain greatest among young people, particularly young women.<sup>2</sup> Australia has taken a very restrictive approach to regulation in recent years<sup>3</sup> and the data is clear that this has been ineffective. Notably, the Australian Institute of Health and Welfare's own data suggests that in 2019, 1.8% of people aged 14 to 17 in Australia had ever used e-cigarettes; this percentage had increased fivefold by 2022–2023, to 9.7%.<sup>4</sup> The category of 18-24

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<sup>1</sup> [Use-of-vapes-among-adults-in-Great-Britain-2024.pdf](#)

<sup>2</sup> Statistisk sentralbyrå (SSB). (2024). E-sigaretter mest populært blant unge kvinner. Retrieved from <https://www.ssb.no/helse/helseforhold-og-levevaner/statistikk/royk-alkohol-og-andre-rusmidler/artikler/e-sigaretter-mest-populaert-blant-unge-kvinner>.

<sup>3</sup> Not only in relation to advertising, but also by opting for a 'prescription only' approach for e-cigarettes.

<sup>4</sup> [National Drug Strategy Household Survey 2022–2023, Tobacco and e-cigarettes/vapes - Australian Institute of Health and Welfare](#)

year olds has also seen an increase during this time period. In addition, the Institute for Health studies indicate that 87% nicotine e-cigarette users surveyed had obtained product without a prescription, suggesting these restrictive measures may not be effective in helping the Australian Government meet its public health objectives.<sup>5</sup>

Steps must be taken to tackle youth appeal and access to these products. However, it is unlikely that the comprehensive advertising ban outlined in Part 6 of the Tobacco and Vapes Bill will achieve this. Instead, alternative measures should be considered carefully, to ensure a proportionate regulatory framework which supports existing adult smokers choices, while protecting those underage and non-smokers, is achieved. Notably, [for smoke-free alternatives] this must include:

- Allowing flavours which are predominantly to adult smokers such as mint, menthol and tobacco, with the use of any additional flavours undergoing stringent scrutiny to guard against unintended use.
- Restrictions on product presentation to prevent the use of child appealing elements and features relating to toys, cartoons, sweets and desserts etc.
- Measures to ensure Trading Standards (TS) and other relevant competent authorities are sufficiently resourced. To support this, we recommend reviewing the notification fees per SKU for all nicotine containing products (and non-nicotine containing e-liquids). This should include the initial notification fee and the annual monitoring fee. Notably to assess whether the current fees are set at a level to effectively support TS, (and OHID and the MHRA more generally) in their surveillance and monitoring duties.
- The introduction of a proportionate license or registration scheme for the retail sale of nicotine containing products, similar to the scheme operating in Scotland.<sup>6</sup> In parallel, introducing specialised adult access only stores, such as in New Zealand, would ensure important product communications were accessible only by adult smokers and nicotine users.
- Proactive anti-smoking campaigns: studies indicate that proactive anti-smoking advertising and education are more effective than hiding product advertisements.<sup>7</sup>

### **Consultation Process requirement**

The governments steps in regulating advertising as proposed in the Tobacco and Vapes Bill and discussed in supporting documentation must be carefully considered.

The Impact Assessment published alongside the draft legislation indicates that the only two options properly considered were a 'full ban' or no change at all.<sup>8</sup> We believe there are effective measures which could be taken to limit youth and non-smoker appeal and access to vapes and nicotine products before a blanket ban needs to be considered.

As discussed above, we feel strongly that industry consultation should take place before any restrictive measures are introduced. A comprehensive consultation process is standard practice when considering new primary legislation, especially when such legislation looks to grant powers to restrict the freedoms of a legitimate industry in the way that the Tobacco and Vapes Bill Part 6 is drafted to do.

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<sup>5</sup> [National Drug Strategy Household Survey 2022–2023: Vaping and e-cigarette use in the NDSHS - Australian Institute of Health and Welfare](#)

<sup>6</sup> [Register of Tobacco and Nicotine Vapour Product Retailers - STRR](#)

<sup>7</sup> [Associations between tobacco control mass media campaign expenditure and smoking prevalence and quitting in England: a time series analysis - PMC](#)

<sup>8</sup> [Tobacco and Vapes Bill: impact assessment](#)

We feel that industry would be able to offer invaluable insights, evidence and expertise to ensure that the regulatory framework for vape and nicotine product advertising is effective and efficient in meeting government objectives for smoking prevalence, youth access and public health.

### **Heated Tobacco Product inclusion in the definition of ‘Tobacco Product’ and Generational Sales Ban**

Similar to vape products, HTPs are a smoke-free alternative to continued smoking. The Generational Sales Ban as drafted in the Tobacco and Vapes Bill (which effectively assimilate HTPs with combustible tobacco products) risks confusing adult smokers about the principles of a harm reduction approach and the better choices than cigarettes available to them where they would otherwise continue smoking. Fewer adult smokers may then try less harmful alternatives as an unintended consequence of including HTPs in this proposal, making it harder for government to hit their 2030 target on smoking prevalence.

We believe that regulation should be proportionate, evidence-based and follow objective criteria with the aim of maximizing the choices for adult smokers to move away from cigarettes. The focus must be on helping adult smokers to quit altogether or switch to a less harmful smoke-free alternative where they would otherwise continue to smoke. This means providing accurate information and access to the full range of less harmful alternatives, while at the same time robustly protecting against unintended consequences e.g., youth use.

Consequently, whilst we support the governments ambition to go smoke free, we do not support the extension of the definition of ‘tobacco products’ from the Tobacco Advertising and Promotion Act and other existing legislation to the definition within the Tobacco and Vapes Bill which would newly capture heated tobacco products (HTPs). While HTPs contain tobacco, they do not combust, making them significantly less harmful than combustible tobacco products. The connotations of including a smokefree alternative to combustible tobacco in the same regulatory definition as the most harmful products – cigarettes – will likely have unintended consequences on adult smokers and public health. This is discussed further below.

The Tobacco and Vapes Bill has extended the existing regulatory definition of ‘tobacco products’ to:

*“‘tobacco product’ means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed **or consumed in any other way**”*

Tobacco and Vapes Bill, November 2024, p.24, Part 1, Section 48 (highlight our own)

The addition of ‘or consumed in any other way’, as highlighted, now captures heated tobacco products in the definition of a ‘tobacco product’, and consequently, the Generational Sales Ban as detailed in Part 1 of the Tobacco and Vapes Bill.

While we are not opposed to further regulatory restrictions for combustible tobacco products, combustible regulations must not be extended to include non-combustible, less harmful alternatives such as heated tobacco products (HTPs). Combining less harmful alternatives, such as HTPs, in the same regulatory measure as combustible tobacco will communicate to adult smokers that there is no significant difference in harm between these products.

This message is harmful to the governments smoke-free ambition and will impact smoking rates across the UK. If adult smokers and vapers do not understand the principle behind less harmful alternatives relative to combustible tobacco, they are less likely to switch, and those who have already switched

may revert to cigarettes. For the reasons set out below, we would go further and suggest that the confusion caused around non-combustible products, and HTPs specifically, within the definition of a 'tobacco product' and any proposed generational ban will be counter-productive to the governments aims.

We note that the Explanatory Notes published alongside the Tobacco and Vapes Bill do not set out any government justification for including HTPs alongside combustible tobacco products in the proposed extension of definition and sales ban. We consider all of the available evidence supports HTPs being **excluded** from the relevant definition of a 'tobacco product' where, as proposed now, non-combustible product (HTP) is effectively equated with combustible products and the consequent age of sale ban. Instead, it should be regulated in the same manner as other non-combustible nicotine-containing products.

Indeed, HTPs should be excluded from the scope of the proposal on a harm reduction basis. The available evidence is clear that HTPs are significantly less harmful than combustible tobacco products. Notably, in July 2020<sup>9</sup> and March 2022<sup>10</sup> the U.S. Food and Drug Administration (FDA) authorized the marketing of two IQOS Tobacco Heating System variants in the US as Modified Risk Tobacco Product (MRTP), with a reduced exposure claim. The FDA has concluded that the IQOS system heats tobacco but does not burn it, that switching completely from cigarettes to IQOS significantly reduces your body's exposure to harmful or potentially harmful chemicals and they determined that the issuance of the MRTP orders with reduced exposure claims would be "appropriate to promote the public health and is expected to benefit the health of the population as a whole". Further, in January 2023, the U.S. FDA authorized the marketing of 3 new variants of HeatSticks to be used with IQOS device (supplemental PMTAs - supplemental Premarket Tobacco Product Applications), concluding among others: *"Based on FDA's review of the supplemental PMTAs, the agency determined that the marketing of these products should be authorized because, among other things, the net population-level benefits to adult smokers outweigh the risks to youth."*<sup>11</sup>

The potential of HTPs for harm reduction is evidenced by the case of Japan. In Japan, smoking reduced by -1 percentage point between 2013 and 2016. However, between 2016 and 2019, the Japanese smoking rate reduced by -5.2 percentage points, as almost three in every ten Japanese smokers stopped smoking. This coincided with the national roll-out of heat-not-burn products (another name for HTPs). A study by researchers at the American Cancer Society, published in the British 'Tobacco Control Journal' concluded: *"Cigarette sales begin to substantially decline at the time of the introduction of IQOS [heat-not-burn system] in each of 11 Japanese regions (...) The introduction of IQOS likely reduced cigarette sales in Japan"*<sup>12</sup>.

### **Flavour and Packaging Restrictions**

As mentioned throughout, proportionate and targeted regulation of smoke-free alternatives should be utilised to ensure they are not particularly and unduly appealing to those underage while still remaining acceptable alternatives to adults who would otherwise continue to smoke.

Specifically on flavours, we believe the focus of regulation should be on allowing flavours which are predominantly appealing to adult smokers (such as mint, menthol and tobacco) and can help them switch, with the use of any additional flavours undergoing stringent scrutiny to guard against unintended use. Indeed, the latest data indicates that overly sweet flavours such as fruit, dessert,

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<sup>9</sup> [FDA Authorizes Marketing of IQOS Tobacco Heating System with 'Reduced Exposure' Information | FDA](#)

<sup>10</sup> [Philip Morris Products S.A. Modified Risk Tobacco Product \(MRTP\) Applications | FDA](#)

<sup>11</sup> [FDA Authorizes Three New Heated Tobacco Products | FDA](#)

<sup>12</sup> Stoklosa, M. et al., 2020. Effect of IQOS introduction on cigarette sales: Evidence of decline and replacement. *Tob. Control.* 29, 381–387. Effect of IQOS introduction on cigarette sales: evidence of decline and replacement | Tobacco Control (bmj.com)

chocolate etc, or those which mimic energy drinks<sup>13</sup> over-index among minors as the preferred flavour (at c.81%), versus tobacco and/or menthol flavours (at 11.4%)<sup>14</sup>.

As mentioned above in relation to packaging, restrictions should prevent the use of child appealing elements and features for example, those relating to toys, cartoons, sweets, desserts, drinks including alcohol or energy drinks etc. These products are for adult smokers and adult nicotine users only, and they should be presented as such.

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<sup>13</sup> [Use-of-vapes-among-young-people-in-Great-Britain-2024.pdf \(ash.org.uk\)](#) (Fruit 58%, chocolate and desserts 16%, energy drinks etc 5.9%)

<sup>14</sup> Mint/menthol 6.9%, tobacco 2.7%, tobacco menthol 1.8%