



Javed Khan OBE  
Department for Health and Social Care  
39 Victoria Street  
London  
SW1H 0EU

10 March 2022

Dear Mr Khan,

### **Independent review of tobacco control**

We would very much welcome the opportunity to meet at a time convenient for you to discuss your review into tobacco control.

Japan Tobacco International (JTI) is the leading tobacco manufacturer in the UK with brands such as Benson & Hedges and Amber Leaf. JTI is also active in Reduced Risk Products<sup>1</sup> via our e-cigarette brand Logic, and our heated tobacco brand Ploom. In addition, we offer nicotine pouches as a smoking alternative under our brand, Nordic Spirit.

It is well known that the UK is already considered a world leader in tobacco control; the level of awareness in the UK of the risks associated with smoking is well documented and remains consistently high. Smoking rates have been in decline for a number of years with the most recent Smoking Toolkit Study showing that an estimated 14.7% of adults smoked in 2021, compared with a rate of 21.4% in 2010 and 18.0% in 2016<sup>2</sup>.

The UK has also taken a leading role in embracing the reduced risk potential of e-cigarettes.

The UK's exit from the EU, combined with your review feeding into the forthcoming Tobacco Control Plan and outcome of the Tobacco and Related Products Regulations 2016 (TRPR) review, presents the UK Government with a unique opportunity to forge its own path and further lead the way on tobacco harm reduction by supporting all potentially less harmful alternative products, including heated tobacco and nicotine pouches and by championing their potential tobacco harm reduction benefits.

Providing adult smokers with a wide range of appropriately regulated, quality products with the potential to reduce risk, along with the information they need to allow them to make an informed choice about the products they choose to consume, can result in positive empowered behaviour change.

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<sup>1</sup> Reduced-Risk Products are products with the potential to reduce the risks associated with smoking.

<sup>2</sup> UCL, Smoking Toolkit Study, Annual trends on smoking in England from the Smoking Toolkit Study, January 2022

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Key to this, is the ability to maintain a distinction in terms of regulatory treatment that further helps adult smokers understand the relative risk differentiation from combustible tobacco products, whilst addressing concerns such as youth access.

Our recommendations are outlined below:

## Heated Tobacco Products (HTPs)

HTPs offer an alternative to cigarettes for adult smokers in terms of taste, look and habits, presenting a viable and satisfying option for adult smokers.

HTPs are products in which tobacco is heated without combustion to create an inhalable vapour. Due to the absence of combustion, HTPs have the potential to reduce the health risks from smoking and can make a positive impact on tobacco harm reduction.

In a Westminster Hall debate, the Minister for Prevention, Public Health and Primary Care commented *“In our future tobacco control plan, we will consider further research on other emerging nicotine products that have the potential to help people quit—because there is no such thing as a safe tobacco product and all tobacco is harmful, including smokeless tobacco and other tobacco products that we have discussed today”*.<sup>3</sup>

But there is a rapidly emerging scientific consensus, reflected in reports<sup>4</sup> already published by UK authorities, that the absence of a combustion process in HTPs makes them a potentially less harmful choice for existing adult smokers:

- *‘The available evidence suggests that heated tobacco products may be considerably less harmful than tobacco cigarettes’*
- *‘The exposure to compounds of concern in using heat-not-burn tobacco products is reduced compared to that from conventional cigarette smoke. It is likely that there is a reduction in overall risk to health for conventional smokers who switch to heat-not-burn tobacco products’*
- *‘The emissions created from heated tobacco products generally contain lower levels of harmful ingredients than the smoke from regular cigarettes. However, that does not mean heated tobacco products are safe’*

It is clear that HTPs are different from combustible tobacco products, and consideration must be given to their potential to reduce the risk associated with smoking due to the absence of combustion, and to not be prejudiced by the inclusion of tobacco in the product itself.

Treating all tobacco products the same would be detrimental and prevent existing adult smokers from making an informed choice about considering switching to HTPs, therefore

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<sup>3</sup> <https://hansard.parliament.uk/commons/2021-03-23/debates/91BC767E-88A8-439C-850F-38E5034F114A/Smoke-FreeSocietyBy2030>

<sup>4</sup> See Public Health England (PHE) [report](#)

See [evaluation](#) and [statement](#) of UK Government’s independent advisory Committees on Toxicity, Carcinogenicity, and Mutagenicity in Food, Consumer Products and the Environment regarding heated tobacco products at [CDC information on HTP](#)

maintaining a distinction in terms of regulatory treatment would further help adult smokers understand relative risk differentiation from combustible tobacco products.

**The Government should take action to acknowledge the reduced-risk potential of HTPs and the impact it could have on tobacco harm reduction by:**

- Extending the full review of the evidence on the safety of vaping products, which is due to be published by the Office for Health Improvement and Disparities in 2022, to HTPs and actively communicate their potential to be a less harmful alternative to existing adult smokers.
- Making clear to existing adult smokers looking for a potentially less harmful alternative, through public information campaigns and education initiatives, that HTPs are not the same as combustible tobacco products and do not carry the same level of risk.
- Maintaining the current legislative framework for HTPs which already ensures there is a clear distinction between HTPs and combustible tobacco products, recognising the reduced risk potential.

## **E-cigarettes**

An e-cigarette is a battery-powered device that heats e-liquid (nicotine-containing or otherwise) and turns it into vapour. E-liquids are used in all vape devices however, they are packaged in a variety of different forms including tips, capsules, pods, and bottles.

There are approximately 2.7 million adult vapers in England<sup>5</sup>. JTI believes this is due to the evidence from competent bodies such as PHE<sup>6</sup> - who estimate for example that e-cigarettes are around 95% less harmful than smoking tobacco<sup>7</sup> – and the associated Government-backed public information campaigns with their positive messaging on the category.

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.

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.

The TRPR ensures that nicotine containing e-liquids for use in vaping products are only placed for sale in the UK once the Medicines & Healthcare products Regulatory Agency (MHRA), which requires toxicological data and ingredients amongst others, has verified

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<sup>5</sup> <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021/vaping-in-england-2021-evidence-update-summary#:~:text=People%20who%20had%20vaped%20in,reported%20vaping%20to%20quit%20smoking>.

<sup>6</sup> Now the Office for Health Improvement and Disparities

<sup>7</sup> 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>

with the producer that required quality and safety standards have been met. However, there are flaws with these regulations:

1) Disposable vapes

A recent phenomenon in the vaping market has been the increase in disposable vape products. Disposable vapes are single use vape pens, which retail between £3-£6. Having entered the UK market last year, disposable vapes already represent approximately a 44% share of market.

Nicotine products should not appeal to anyone under 18, however we continue to see a vast range of disposable vapes for sale in the UK with inappropriate naming such as 'bubble gum' and 'cotton candy' and brightly coloured packaging that could appeal to children. Some even copy the branding of well-known confectionary or soft drink brands for example, 'MnM'z' and 'Fantasi'.

SCOTSS Trading Standards recently undertook a project<sup>8</sup> into the sale of single use disposable vapes in Scotland, which has startling findings on the appeal of such products to minors and lack of compliance with existing regulations, as well as clear recommendations to address the risks.

A key outcome is that there is no oversight of the actual product or packaging itself:

*The MHRA do not inspect the actual product, labelling, brand, or sub-brand name of a disposable vaping device. They inspect technical data provided within the submission of the product.*

*As the products and packaging are not part of the submission process, the labelling of disposable vaping devices is not a consideration of their publication and their entry into the market.*

***We consider that including inspection of the packaging and the disposable vaping devices as part of the notification process conducted by the MHRA would be a positive step in controlling this market.***

JTI adheres to strict marketing guidelines that prohibit wording (i.e. flavour names and descriptors) and imagery that can be linked with youth culture or depict situations, environments or objects that are typical of the world of children and youth (such as comic or cartoon characters, toys or sweets).

In addition to our own strict standards, we are members of the UK Vaping Industry Association (UKVIA) whose guidance also states "All vaping e-liquid flavours, flavour names and descriptors placed for sale on the UK market must not use flavour names or descriptors that are particularly appealing to persons under the age of 18 and are associated with youth culture, including popular language or expressions, or names which are reminiscent of confectionary disproportionately appealing to persons under the age of 18".

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<sup>8</sup> <http://www.scotss.org/press/vapeproject2022.pdf>

## 2) Non-nicotine containing vaping products

As noted above, the TRPR ensures that nicotine containing e-liquids for use in vaping products are only placed for sale in the UK once the MHRA has verified with the producer that required quality and safety standards have been met.

This only covers nicotine containing liquids though, not those that do not contain nicotine.

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. Additionally, 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).

Regulation of vaping products must be amended to address these issues, to ensure that only e-cigarettes which meet high safety, quality and packaging standards can be placed on the market and help to effectively tackle common misperceptions preventing those adult smokers considering making the switch to a less harmful alternative.

### **The UK Government should take action to continue to lead the way in supporting e-cigarettes as a less harmful alternative to combustible tobacco products by:**

- Extending TRPR to include all non-nicotine containing e-liquids which, as well as ensuring consumers are better protected, will also reduce access by minors to non-nicotine e-liquids.
- Ensuring through regulation and enforcement, that only all e-cigarettes (including non-nicotine containing and disposable vapes) which meet high safety, quality and packaging standards can be placed on the market.

### **Nicotine Pouches**

Nicotine pouches are a relatively new product category 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.

Similar to vaping products, JTI has seen a wide variety of nicotine pouches for sale in the UK with inappropriate naming and packaging that could appeal to children, including imitations of well-known soft drink brands and confectionary, for example 'Fanta', Capri-Sun' and 'Nerds'. These products should not be sold, marketed to or consumed by anyone under the age of 18.



At present nicotine pouches are only regulated by the General Product Safety Regulations 2005 and European Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures, as amended.

As noted, JTI adheres to strict marketing guidelines that prohibit wording (i.e. flavour names and descriptors) and imagery that can be linked with youth culture or depict situations, environments or objects that are typical of the world of children and youth (such as comic or cartoon characters, toys or sweets).

In addition, we have worked with the industry to implement a voluntary framework to guide the marketing, promotion and packing of nicotine pouches whilst recognising the supremacy of all relevant UK laws, a copy of which is attached to this letter.

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, product descriptors and permitted nicotine limits are in place.

One of the key principles in the industry voluntary framework is a maximum nicotine content per pouch of 20mg. Worryingly, we have seen nicotine pouches available on the market with nicotine contents of up to 150mg per pouch, including brands with youth appeal such as those mentioned above.

Introducing proportionate regulation in line with the voluntary industry framework would both protect consumers and address youth access concerns by ensuring appropriate age of sale restrictions are adhered to, instilling consumer confidence in potentially reduced harm alternatives.

**The UK Government should take action to recognise nicotine pouches as a smoking alternative by:**

- Extending the full review of the evidence on the safety of vaping products, which is due to be published by the Office for Health Improvement and Disparities in 2022, to nicotine pouches and actively communicate their potential to be a less harmful alternative to existing adult smokers.
- Adopting the voluntary regulatory framework established on the marketing, promotion and packaging of tobacco-free oral nicotine products into TRPR which, as well as ensuring consumers are better protected, will also reduce access by minors.

**Youth access prevention**

JTI is committed to ensuring minors do not have access to nicotine or tobacco products.

Through our on-going support of the 'No ID, No Sale!' scheme retailers are provided with the materials and guidance they need to prevent sales of tobacco and vaping products to under-18s. The scheme has been operating since 2004.



No ID, No Sale!, which is also supported by the Association of Convenience Stores, the National Federation of Retail Newsagents, the British Independent Retail Association, Retail NI and the Scottish Grocers Federation, is widely understood by retailers and consumers in setting an environment where challenging for ID when buying alcohol, tobacco, lottery tickets and other age restricted goods is the norm.

The gantry units we provide to retailers carry the statutory A3 notice alongside the No ID, No Sale! logo, and our salesforce remind retailers of their obligations in this area.

In addition, we operate Challenge 25 on all direct-selling activities.

However stronger enforcement action against those retailers who choose to ignore the law and sell age-restricted products to young people would better ensure that minors do not have access to such products. 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.

### **Tobacco control measures**

As noted, smoking rates have been in decline for a number of years. Some parties are actively pursuing further regulatory measures through the Health & Care Bill, which have all been rejected by the Government on numerous occasions on its passage through Parliament, most recently in the House of Lords<sup>9</sup>.

As we have outlined above, rather than looking to implement further punitive tobacco control measures that have no credible evidence to support them, the UK Government should instead focus its efforts on supporting the full range of potentially less harmful products that are available in the UK (such as HTPs, e-cigarettes and nicotine pouches) and champion their potential tobacco harm reduction benefits.

Yours sincerely,

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<sup>9</sup> <https://hansard.parliament.uk/lords/2022-02-04/debates/4E575108-AD20-4C30-9F49-00957E3A0294/HealthAndCareBill#contribution-EC6E15FD-F801-4275-9C7A-E6F93929490B>