

BRITISH AMERICAN TOBACCO UK LIMITED
WRITTEN EVIDENCE TO TOBACCO AND VAPES PUBLIC BILL COMMITTEE

26 APRIL 2024

Introduction

- 1) British American Tobacco UK Limited ("**BATUK**") is a member of the British American Tobacco group of companies ("**BAT**") and is responsible for the importation, distribution and sale of tobacco and nicotine products in the UK.
- 2) We commend and support the Government's smoke-free 2030 ambition. However, in our view, the key to achieving this ambition is through smarter regulation. It is widely accepted that most of the harm associated with cigarettes is caused by inhaling the smoke produced by the combustion of tobacco, so the opportunity exists for significant tobacco harm reduction by eliminating the inhalation of cigarette smoke for people who continue to use smokeless tobacco and nicotine. To that end, BAT is at the forefront of the development of a range of nicotine and smoke-free reduced risk products ("**RRPs**")¹ which provide adult consumers with an alternative to smoking. We believe that smarter regulation should be evidenced based and should strike the right balance between harm reduction and avoiding unintended consequences in relation to underage access to vapes (and other RRP). We see a generational sales ban as the opposite of smarter regulation.
- 3) Instead, we believe it is crucial for the Government to reinforce its commitment to tobacco harm reduction through the availability of smoke-free alternatives to cigarettes for adult smokers who would otherwise continue to smoke.
- 4) We believe that regulators should adopt a three-pillar policy approach to the regulation of tobacco and nicotine products, that:
 - endorses the role of a wide range of reduced-risk alternatives to combustible tobacco products;
 - enacts regulation that actively encourages those who would otherwise start or continue to smoke to choose less risky alternatives; and
 - eradicates the illegal tobacco and RRP market through tougher regulations and enforcement to ensure compliance and that lower price cigarettes and RRP do not undermine tobacco control policies.
- 5) We acknowledge concerns regarding underage uptake and use of new category nicotine products, and we agree that these products should be restricted to adults only. However, by enacting smarter regulation, the Government can support the continued availability of vapes and other RRP for adult smokers who would otherwise continue to smoke, whilst mitigating against underage access to these products. It is also crucial to smarter regulation that the Government wields its enforcement powers to ensure that only adult consumers are buying compliant products and to suitably penalise those who fail to comply.
- 6) As explained below:
 - BATUK opposes a generational sales ban, as we believe it will not work. The inclusion of Heated Tobacco Products ("**HTPs**") within the scope of the generational sales ban is also irrational and unjustified.
 - BATUK supports the introduction of measures that reduce the appeal and availability of vapes to children whilst ensuring that they remain available for adult consumers who would otherwise continue to smoke. However, we believe action needs to be taken immediately. BATUK supports:

¹ Based on the weight of evidence and assuming a complete switch from cigarette smoking. These products are not risk free and are addictive.

- A ban on vape flavours that uniquely appeal to the underaged, such as confectionery, dessert and soft drink flavours; and a ban on flavour descriptors that are designed to appeal to the underaged.
- A requirement that vapes be kept behind the counter, but on display.
- A ban on child friendly imagery on vape packaging.
- BATUK supports the introduction of a regulatory regime for nicotine pouches that is commensurate to their risk profile.
- BATUK also believes that greater enforcement powers are urgently required to tackle illicit trade and non-compliant products for both cigarettes and vapes, including the introduction of a specific retail licence regime for any retailer selling vaping products, £10,000 fixed penalty notices, enhanced pre-market notification requirements, and increased the funding / strengthening the capacity for UK Border Force and Trading Standards.

Response to increasing the age of sale for tobacco section

- 7) BAT UK disagree with the proposed policy to ban the sale of tobacco to anyone born on or after 1st January 2009 as we believe it will be ineffective, unnecessary and impossible to enforce, including by:
 - handing over control of the tobacco product market to criminal organisations who supply illicit products, including to the underaged;
 - increasing the financial and administrative burden on retailers who will face enforcement challenges and be required to carry out impractical ID checks;
 - introducing egal inequalities and sanctioned age-discrimination, by creating a class of “under-age adult; and
 - unlawfully restricting protected rights.
- 8) Experience shows that prohibition does not work. There is no reason to expect that this new law would be any different.
- 9) We agree that the underaged should not use tobacco or nicotine products, but the proposed ban promotes that goal in an irrational manner: by applying the prohibition throughout the entire adulthood of those born from 1 January 2009 and thus dividing adults into two groups, one of which has fewer rights, based only on an arbitrary birth date.
- 10) A better approach to reducing smoking rates would be to continue to support smokers to switch to smoke-free alternatives, through the adoption of smarter regulation.
- 11) Independent evidence indicates that raising the age of sale of tobacco products to 21 would be as effective in reducing smoking initiation as a generational sales ban. For example:
 - A US Institute of Medicines (IOM) report, [Public health implications of raising the minimum age of legal access to tobacco products](#)² found that: “[t]he impact on initiation of tobacco use of raising the minimum age of legal access to tobacco products (MLA) to 21 will likely be substantially higher than raising it to 19, but the added effect of raising the MLA beyond age 21 to age 25 will likely be considerably smaller.”

² Bonnie RJ, Stratton K, Kwan LY, editors. [Public health implications of raising the minimum age of legal access to tobacco products](#). Washington (DC): National Academies Press; 2015. Available: <https://www.ncbi.nlm.nih.gov/books/NBK310412/>.

- The New Zealand Regulatory Impact Statement that is relied on in the Government's command paper published on 4 October 2023, states that: "Gradually increasing the purchase age to 25 is likely to have a more similar effect to the smokefree generation policy" (at para 64).
- 12) This makes clear that raising the age of sale of tobacco products would address the Government's stated concerns regarding underage uptake. Indeed, it would do so more effectively by applying to everyone (including those persons born before 1 January 2009, who are excluded from the scope of the proposed generational sales ban). It would also be less restrictive on the rights of adults and businesses.
 - 13) Additionally, the proposed ban cannot be lawfully implemented in Northern Ireland under the Tobacco Products Directive ("TPD")³, and would violate International Trade Agreements.
 - 14) Including HTPs in the proposed ban would deny smokers born after 1 January 2009 legal access to a less risky product. It would undermine public health rather than improve it. No doubt this is why HTPs were not included in the scope of the New Zealand generational sales ban.
 - 15) The Bill and accompanying Impact Assessment are devoid of any explanation or evidence regarding the inclusion of HTPs within the scope of the proposed ban and does not demonstrate that including HTPs is appropriate to promote public health and would in fact do so.
 - 16) The inclusion of HTPs within the ban is not rationally connected to the objective of stopping young people from smoking (even if the overall proposal could be justified). The available evidence shows that HTPs are reduced risk compared to combustible tobacco products, there has been no significant underage uptake of HTPs and HTPs have contributed to reduced smoking prevalence, suggesting that HTPs are competing with cigarettes among adult smokers rather than encouraging their use. See for example Cummings *et al.* (2020)⁴, [Caponnetto et al., \(2023\)](#)⁵ and Pesola F *et al.*, (2023)⁶.
 - 17) The inclusion of HTPs within the ban would also be discriminatory since it would treat different situations (combustible tobacco products and HTPs) in the same way.

Response to reducing the appeal and availability of vapes to children:

- 18) Whilst the Bill gives future powers to address the appeal and availability of vapes to the underage through future restrictions on flavours, packaging and point of sale, BATUK believes actions need to be taken immediately to restrict access to vapes for the underage.

³ Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

⁴ K. Michael Cummings, Georges J Nahhas and David T Sweanor., "What Is Accounting for the Rapid Decline in Cigarette Sales in Japan?" *Int. J. Environ. Res. Public Health* 2020, 17(10), 3570.

⁵ Caponnetto P, Campagna D, Maglia M, Benfatto F, Emma R, Caruso M, Caci G, Busà B, Pennisi A, Ceracchi M, Migliore M, Signorelli M, Comparing the Effectiveness, Tolerability, and Acceptability of Heated Tobacco Products and Refillable Electronic Cigarettes for Cigarette Substitution (CEASEFIRE): Randomized Controlled Trial, *JMIR Public Health Surveill* 2023;9:e42628, doi: [10.2196/42628](https://doi.org/10.2196/42628). The study was supported by an investigator-initiated study award by Philip Morris Products SA (PMI.IIS.2016.006). The authors have declared that "Philip Morris Products SA had no role in the design of the study and will not have any role during its execution, data analysis, or data interpretation, or during writing of the manuscript."

⁶ Pesola F, Phillips-Waller A, Beard E, Shahab L, Sweanor D, Jarvis M, Hajek P. Effects of reduced-risk nicotine-delivery products on smoking prevalence and cigarette sales: an observational study. *Public Health Res (Southampton)*. 2023 Sep;11(7):1-39. doi: 10.3310/RPDN7327. PMID: 37795840.

- 19) BAT UK supports a ban on vape flavours that uniquely appeal to the underaged, such as confectionery, dessert and soft drink flavours; and a ban on flavour descriptors that are designed to appeal to the underaged.
- 20) However, the continued availability of an adult relevant flavour range is crucial. Flavours are critical for adult smokers wanting to switch to vaping and in considering vaping as a satisfying alternative to cigarettes.
- 21) This is supported by independent evidence which shows that many adults prefer fruit flavours (47%⁷). The evidence also shows that vape flavour bans will likely increase smoking, contrary to the Government's 'smokefree' policy (see e.g., Friedman et al (2024)⁸; Xue et al (2022)⁹; [Russell et al., \(2018\)](#)¹⁰, Pacek et al., (2017)¹¹, Gravely et al., (2022)¹², Posner et al., (2021)¹³.
- 22) BAT has also commissioned an expert report by Professor Mulligan, Professor of Economics at the University of Chicago, and former White House Chief Economist, who finds that flavour bans would overwhelmingly affect current or ex-smokers; and flavoured vapers are more likely to have tried to quit smoking than exclusive tobacco flavoured and non-flavoured vapers.
- 23) The UK Government and devolved administrations should also consider adopting similar restrictions on flavour descriptions to those that the New Zealand Government has recently implemented in the *Smokefree Environments and Regulated Products Amendment Regulations 2023*.
- 24) Under this regime manufacturers are required to use 1 or 2 of the flavour names listed in the regulations to describe the actual flavour of their vaping product. The regulations include permitted flavour names for the following categories of e-liquid flavours: tobacco, mint, nuts and grains, spice, coffee / tea, fruit, sweet and sour, and unflavoured. It is only permitted to notify and sell products that comply with the permitted flavour descriptors in New Zealand.

⁷ ASH, Use of e-cigarettes (vapes) among adults in Great Britain, August 2023 (available at <https://ash.org.uk/uploads/Use-of-e-cigarettes-among-adults-in-Great-Britain-2023.pdf?v=1691058248>).

⁸ Friedman, Abigail and Liber, Alex C. and Crippen, Alyssa and Pesko, Michael, E-cigarette Flavor Restrictions' Effects on Tobacco Product Sales (January 29, 2024). Available at SSRN: <https://ssrn.com/abstract=4586701> or <http://dx.doi.org/10.2139/ssrn.4586701>.

⁹ Xue et al. (2022), "The Impact of Banning Electronic Nicotine Delivery Systems on Combustible Cigarette Sales: Evidence From US State-Level Policies". The authors of this paper are associated with JUUL Labs, a manufacturer of e-cigarettes.

¹⁰ Russell, C., McKeganey, N., Dickson, T. *et al.* Changing patterns of first e-cigarette flavor used and current flavors used by 20,836 adult frequent e-cigarette users in the USA. *Harm Reduct J* **15**, 33 (2018). <https://doi.org/10.1186/s12954-018-0238-6>.

¹¹ Pacek LR, Rass O, Sweitzer MM, Oliver JA, McClernon FJ. Young adult dual combusted cigarette and e-cigarette users' anticipated responses to hypothetical e-cigarette market restrictions. *Subst Use Misuse*. 2019;54(12):2033-2042. doi: 10.1080/10826084.2019.1626435. Epub 2019 Jul 15. PMID: 31305213; PMCID: PMC6764889.

¹² Gravely S, Smith DM, Liber AC, Cummings KM, East KA, Hammond D, Hyland A, O'Connor RJ, Kasza KA, Quah ACK, Loewen R, Martin N, Meng G, Ouimet J, Thompson ME, Boudreau C, McNeill A, Sweanor DT, Fong GT. Responses to potential nicotine vaping product flavor restrictions among regular vapers using non-tobacco flavors: Findings from the 2020 ITC Smoking and Vaping Survey in Canada, England and the United States. *Addict Behav*. 2022 Feb;125:107152. doi: 10.1016/j.addbeh.2021.107152. Epub 2021 Oct 14. PMID: 34695685; PMCID: PMC9094050.

¹³ Heather Posner, Katelyn F Romm, Lisa Henriksen, Debra Bernat, Carla J Berg, Reactions to Sales Restrictions on Flavored Vape Products or All Vape Products Among Young Adults in the United States, *Nicotine & Tobacco Research*, Volume 24, Issue 3, March 2022, Pages 333–341, <https://doi.org/10.1093/ntr/ntab154>.

- 25) In our view, this is a proportionate measure that mitigates concerns regarding flavour descriptions while still allowing for a range of factual flavour descriptions to suit the varying preferences of adult smokers who are looking to switch to vaping.
- 26) We also believe that all ingredients (including flavour ingredients) should also be subject to a thorough toxicological risk assessment. A risk assessment framework for flavouring compounds in vapes has also been proposed by the UK Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment¹⁴. This provides a framework that all producers should adhere to when conducting their scientific toxicological risk assessment.
- 27) We also believe that these issues should be policed by the implementation of an enhanced MHRA pre-market notification procedure that would prevent non-compliant products from being notified and placed on the market in the UK; and the establishment of a national vape enforcement team, which should be given a mandate to strictly enforce any measures aimed at limiting the marketing and / or promotion of vapes to the underaged.
- 28) We believe that requiring only adult-focussed product design and responsible marketing practices (including in relation to flavour names and product descriptors) are effective measures to limit the appeal of vapes to the underaged, whilst recognising the important role that flavours play for adult smokers switching to a reduced risk alternative.
- 29) BATUK reiterates its support for clearly defined vape packaging regulations which prohibit packaging designed to appeal to the underaged such as cartoons, characters, animals, inanimate objects, and other child friendly imagery, whilst continuing to allow adult appropriate brand design to ensure adult smokers looking to transition to vapes are fully aware of the range of products available to them.
- 30) BATUK also supports vapes being kept behind the counter, but on display, which is a proportionate approach, mitigating concerns around underage access to vapes, whilst still ensuring that adult smokers have awareness of the availability of vapes.
- 31) However, BATUK opposes both plain packaging for vapes and a retail display ban for vapes. Overly restrictive regulations on product communications, including restrictions on product display and packaging, restrict consumer information and awareness and thereby exacerbate existing misperceptions and discourage switching.
- 32) Overly restrictive regulations on product communications, including banning product displays and plain packaging, restrict consumer information and awareness and thereby exacerbate existing misperceptions and discourage switching.
- 33) BAT has commissioned an expert report from Professor Winer (Professor of Marketing, NYU) on the effect that stringent marketing regulations would have on the awareness and use of reduced risk products ("RRPs"), including vapes. Professor Winer states: "*[o]verly restrictive marketing regulations would undermine RRP's as a possible reduced risk alternative to smoking combustible cigarettes since existing*

¹⁴ Available at <https://cot.food.gov.uk/sites/default/files/2020-09/COT%20E%28N%29NDS%20statement%202020-04.pdf>.

adult tobacco and nicotine users will not be aware of these products, learn about their offerings, and be motivated to switch. In this case, the potential for harm reduction will be lost."

- 34) Evidence also shows that regulating vapes in the same way as cigarettes conveys the misleading message that they confer similar risks to health, which discourages adult smokers from switching. This is underscored by the expert report commissioned by BAT from Professor Viscusi (Vanderbilt University), which examines the current literature regarding consumers' perceptions of the risks of vapes and presents an analysis of data from a survey conducted in 2020 in seven European markets. Professor Viscusi concludes that "*... it is possible that recent regulatory efforts that treat these alternative products in the same way as combustible tobacco products may have even increased the degree of misperception regarding non-combustible tobacco and nicotine products.*"
- 35) Plain packaging and a retail display ban would disproportionately restrict the rights of property (including intellectual property) and freedom of expression of manufacturers and consumers, and International Trade Agreements.
- 36) We believe that nicotine pouches should be regulated as a separate product category and commensurately to their risk profile which places them at the lowest risk level of tobacco and nicotine products on a model risk continuum. Given this, these products should not be made subject to the severe regulation placed on combustible tobacco products (including flavour restrictions and extreme advertising and packaging restrictions, which will frustrate their role in a tobacco harm reduction strategy). A balanced regulatory regime for nicotine pouches should ensure they are positioned as a viable alternative to tobacco products for adult smokers, who would otherwise continue to smoke.
- 37) We support the introduction of:
- A minimum age for sale of 18 years old.
 - A maximum nicotine limit of 20mg per pouch.
 - Strict standards for ingredients, including pharmaceutical grade nicotine and food grade flavours.
 - The requirement for a manufacturer to include a toxicological risk assessment.

Response to strengthening enforcement around tobacco and vaping sales section

- 38) BAT UK supports fixed penalty notices for breaches of the current age of sale legislation for tobacco products and vapes. However, we believe that the level of fixed penalty notice that should be given for an underage tobacco and vape sales should be £10,000. This level is necessary to act as a serious deterrent against underage tobacco and vape sales.
- 39) However, we reiterate that fines on their own will not be sufficient and urge the Government to consider other measures to boost enforcement, such as those we have proposed below.
- 40) We believe that the increase in non-compliant products within the vaping category needs to be urgently addressed. In January 2023, the Chartered Trading Standards Institute published a report showing that around 1 in 3 vaping products may be non-compliant.¹⁵
- 41) We are also aware of a recent report suggesting a concerning lack of enforcement in the form of prosecutions and penalties for illicit vapes (see <https://www.talkingretail.com/news/industry-news/new-study-shows-significant-lack-of-targeted-enforcement-fuelling-youth-vaping-15-11-2023/>).
- 42) We therefore urge the Government to also consider the following policies which would further enhance compliance and product standards:
- Strengthening how products are tested, notified, and brought into the UK, by:
 - Enhancing pre-market notification requirements, including mandatory 3rd party toxicological risk assessments and compliance spot-checks.
 - Increasing the cost of MHRA product notifications to £500 per product and £1,000 per year,
 - Requiring that products are fully tested by a recognised conformity assessment body before they are shipped to the UK.
 - Increasing funding / strengthening capacity for the UK Border Force and Trading Standards to remove non-compliant products and impose stricter penalties for anyone caught importing or selling illegal vapes.
- 43) BATUK supports the introduction of a specific retail licence regime for any retailer selling vaping products, similar to that currently in place for alcohol. BAT UK also supports the creation of a National Test Purchasing Scheme – ensuring retailers are held to account, with a requirement that they need to pass the test purchase scheme to retain their licence.
- 44) We strongly urge the Committee to consider our comments on the Bill. We would also welcome the opportunity to meet with the Committee in relation to its consideration of the Bill.

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¹⁵ Available at <https://www.tradingstandards.uk/media/3178685/ctsi-statement-on-vapes-1.pdf>.