

*Imperial Tobacco Limited Response to:*

# **Northern Ireland Assembly's Committee for Health, Social Services and Public Safety**

## **Call for evidence: The Health (Miscellaneous Provisions) Bill (NI)**

Submitted: 15 December 2015

*<http://www.imperial-tobacco.com>*

## Introduction - company background

Imperial Tobacco Group PLC (“ITG”) is a multi-national tobacco company, with international strength in cigarettes and world leadership in fine cut tobacco, premium cigars, rolling papers and tubes. The Group has 44 manufacturing sites, around 35,000 employees and our brands are available in over 150 countries worldwide.

Imperial Tobacco UK (“ITUK”) (together with ITG “Imperial Tobacco”) is the Bristol-based trading operation of ITG which distributes Imperial Tobacco’s products to the UK market. ITUK is market leader, holding over 40 percent market share. ITUK’s leading UK cigarette brands include Lambert & Butler, JPS, Richmond, Embassy and Regal.

Imperial Tobacco has its headquarters in Bristol, with manufacturing and distribution facilities in Nottingham. Imperial Tobacco directly employs over 1,600 people in the UK and last year collected over £6 billion for the UK Exchequer in duties and other taxes. Imperial Tobacco has around 26,000 shareholders with 53 percent of issued shares held in the UK.

Tobacco is a legal product, enjoyed by around 10 million adults in the UK. This equates to around 20 percent of the adult population. These adults make an informed choice to smoke. They smoke for many and varied reasons and, despite the continual stream of unreasonable and disproportionate tobacco control regulations imposed upon them, many do not wish to give up.

Our commercial focus is solely on gaining the custom of the remaining existing adult smokers – over 5 million adults - who currently do not choose our products, and maintaining the loyalty of those smokers who currently enjoy our products and wish to continue smoking.

Imperial Tobacco does not market its products to anyone under the age of 18. We distribute our products through responsible and trusted retailers, and apply a strict voluntary Code of Practice to ensure that none of our marketing and promotional activities are aimed at under-18s. We adhere to all legislation, and where none exists, to our International Marketing Standard available at:

[http://www.imperial-tobacco.com/assets/files/cms/2014\\_International\\_Marketing\\_Standard\\_FINAL.pdf](http://www.imperial-tobacco.com/assets/files/cms/2014_International_Marketing_Standard_FINAL.pdf)

Fontem Ventures is a wholly owned subsidiary of Imperial Tobacco Group, committed to developing and growing a portfolio of innovative non-tobacco products including Nicotine Vapour Products (commonly known as e-cigarettes). Fontem Ventures owns and produces the blu e-cigarette range, available online and in store from over 20,000 UK stockists, and adheres to stringent marketing standards which are available at: <http://www.fontemventures.com/marketing-standards/>

Imperial Tobacco welcomes the opportunity to respond to the Northern Ireland Assembly’s Health, Social Service and Public Safety Committee’s (the “Committee”) call for evidence on the draft *Health (Miscellaneous Provisions) Bill (NI)* (the “Bill”). We would invite the Committee to consider our earlier consultation response to the *Health (Miscellaneous Provisions) Bill: Proposal for a draft Bill (2014)* and the *Tobacco Retailers Bill (2013)*<sup>1</sup>.

Imperial Tobacco supports sound, evidence-based, reasonable and practicable regulation of tobacco products and encourage the Committee to respect the principles of adult choice, freedom of competition and domestic and international law when developing legislation.

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<sup>1</sup> <http://www.niassembly.gov.uk/Documents/Reports/Health/nia-137-11-15-Report-on-Tobacco-Retailers-Bill.pdf>

## 1. Part 1: Regulation of the sale of nicotine products and tobacco

### 1. Clause 1 – Prohibition of the sale of nicotine products to under 18s

Clause 1 of the Bill provides a regulation-making power for the Department of Health, Social Services and Public Safety (the “**Department**”) to prohibit the sale of nicotine products to a person under the age of 18. The clause provides an exemption for persons employed in the industry and a due diligence defence. In addition, the clause also includes a regulation-making power for the creation of an offence in relation to the proxy purchasing of nicotine products.

Imperial Tobacco agrees with the provisions set out in this clause and believes that nicotine products and tobacco should not be sold or marketed to under 18s.

We would like to draw the Committee’s attention to existing retailer programmes designed to discourage under-age sales to children such as the ‘No ID, No Sale’ retailer awareness campaign and the ‘CitizenCard’ proof-of-age scheme. We would encourage the inclusion of nicotine products, such as e-cigarettes, within these successful initiatives. Imperial Tobacco would be happy to meet with Committee officials to discuss how the use and take-up of such initiatives could prevent the under-age sales of e-cigarettes.

### 2. Clause 2 – Prohibition of the sale of nicotine products from vending machines

Clause 2 provides a regulation-making power for the Department to prohibit the sale of nicotine products from automatic vending machines. We note that an amendment was made to Part 1 of the Bill following the consultation process yet the proposal to prohibit the sale of nicotine products from automatic vending machines was not formally included in the 2014 public consultation. It is disappointing to note that the Department has included an amendment without formal consultation on this issue.

Imperial Tobacco does not support this clause. We believe that by placing vending machines in over 18 establishments or limiting access to vending machines through interaction with staff first, the minimum age of vending machine users can be controlled.

Furthermore, during a recent Second Stage debate on the Bill (8 December 2015), the Minister for Health, Social Services and Public Safety stated that:

*“While there is no evidence of that happening at this stage [nicotine products being sold from vending machines], I believe that it is important that we have measures in place to prevent such an eventuality.”*

We call on the Committee to ensure that all clauses within the Bill are supported by evidence and are proportionate to the issue being addressed.

### 3. Clause 3 – Amendments consequential on sections 1& 2

No further comment.

#### **4. Clause 4 – Amendments of the order of 1991**

No further comment.

#### **5. Clause 5 – Interpretation of Part 1**

Clause 5 of the Bill defines a “nicotine product” as:

- a) a device which is intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body;
- b) an item which is intended to form part of a device within paragraph (a); or
- c) a substance or item which consists of or contains nicotine and which is intended for human consumption or otherwise to be delivered into the human body.

The Bill goes on to state that the following are not nicotine products:

- a) tobacco;
- b) cigarette papers;
- c) any device which is intended to be used for the consumption of lit tobacco.

Imperial Tobacco believes that the wording in the Bill does not cover new and emerging products sufficiently. A number of multi-national tobacco companies have launched and are promoting new tobacco products where the tobacco is reportedly “heated” rather than burnt. The current wording of the Bill creates ambiguity which may allow these so-called heated tobacco products to remain outside legislation in Northern Ireland.

Heated tobacco products use tobacco just like conventional cigarettes and some even use cigarette branding. Manufacturers claim these products work by heating tobacco sufficiently to release nicotine and aroma compounds into an inhalable vapour, but not sufficiently high enough to burn the tobacco. These products are available in a number of EU countries and are also available online, so could therefore conceivably appear in Northern Ireland.

Heated tobacco products contain less tobacco than conventional cigarettes and so smoke emissions from these products are reduced in comparison with conventional cigarettes; however, many of the harmful and potentially harmful constituents found in tobacco smoke, which have been reported to cause smoking-related diseases, are still produced.

It has been claimed by some manufacturers that heated tobacco products may offer a “reduced risk” of developing tobacco-related diseases and may be considered a “harm reduction” product. Such claims are yet to be demonstrated scientifically and have not been endorsed by any regulatory body. We believe society and regulators should keep a clear, distinct line between products that contain tobacco e.g. heated tobacco products and those which do not e.g. e-cigarettes.

Imperial Tobacco believes that heated tobacco products do not fit the description of “nicotine products” - as set out in Clause 5 of the Bill - as they contain tobacco. Neither do they fit the description of “lit tobacco” as these products are not “lit” if used as intended and are claimed to heat rather than burn tobacco. As heated tobacco products contain tobacco we believe the Committee should act in this area and ensure these novel heated tobacco products are regulated to the same standard as conventional cigarettes.

Imperial Tobacco has conducted research on these products and we would be happy to share the findings with the Committee. Our data shows heated tobacco products are similar to cigarettes in terms of chemical emissions including the presence of many harmful constituents, albeit at reduced levels, and display significant mutagenic and genotoxic activity.

In this regard, Imperial Tobacco proposes the following amendment to Part 1, Section 5(3) of the Bill:

Current clause	Proposed amendment
Interpretation of Part 1  Section 5(3) The following are not nicotine products for the purposes of this Part—  (a) tobacco; (b) cigarette papers; (c) any device which is intended to be used for the consumption of lit tobacco.	Interpretation of Part 1  Section 5(3) The following are not nicotine products for the purposes of this Part—  (a) <b>any product which contains</b> tobacco; (b) cigarette papers; (c) any device which is intended to be used for the consumption of lit.

## 2. Part 2: Miscellaneous provisions

No further comment.

## 3. Part 3: General (Clauses 12-16 & The Schedules)

Section 13(2) states that regulations and orders made by the Department under this Act may contain such incidental, supplementary, transitional, transitory or saving provisions as appear to the Department to be necessary or expedient.

Imperial Tobacco calls on the Committee to ensure that any such changes to the regulations and orders under this Act are evidence-based and subject to scrutiny of the Northern Ireland Assembly.

We note that the Department has committed to hold a further consultation on draft regulations relating to nicotine products and we welcome the opportunity to participate in these discussions.

## 4. Amendments and new clauses

Imperial Tobacco notes that a new clause and a number of amendments to existing clauses have been tabled by Members of the Legislative Assembly (MLAs)<sup>2</sup>. Below we set out our response to each.

<sup>2</sup> Notice of amendments tabled on 9 December 2015 for consideration stage:  
<http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2015-2016/health-misc-provisions/noa1---cs---09-12-152.pdf>

## 1. Smoking in vehicles with children present

During an Assembly debate on 8 December, the Minister for Health, Social Services and Public Safety confirmed his intention to bring forward an amendment to the Bill to ban smoking in cars with children present. Imperial Tobacco does not support this proposal. We do not agree that legislation is necessary to address the issues identified by the Minister.

We believe that tobacco products are for informed adults to enjoy. We do not want children to smoke or use tobacco products and we support effective measures to ensure tobacco products do not get into the hands of children. Adults who smoke should show consideration and courtesy to other people and in particular should exercise care to avoid smoking around children.

However, there is no justification for banning or regulating smoking in vehicles. The magnitude of the 'issue' of smoking in cars is also substantially overstated. The amount of adults who choose to smoke in their cars with children present is extremely low and does not justify bringing in legislation to prevent this.

We agree that in general matters of public health some individuals may require support in their decision making, and we agree with the government that the issue of smoking in cars should be approached in ways which educate and are enabling.

There is evidently scope for engagement with smokers to discourage smoking in cars with children present and reducing this rate out of consideration for others. The Scottish Government's *Take it Right Outside* campaign and the Welsh Government's *Fresh Start* campaign provide an examples of ongoing educational and awareness raising activity. The campaigns makes use of television and online advertisements, and offers support materials to adult smokers.

Given that the incidence of smoking in cars has been diminishing as awareness of the issue has increased; this points to education as the appropriate means of dealing with the concerns that have been raised. We also question how the proposal will be enforced given that senior police officers have stated that the enforcement of similar regulations in England<sup>3</sup> <sup>4</sup> and Scotland<sup>5</sup> would not be a priority for their police forces.

Imperial Tobacco supports tobacco regulation that is reasonable, proportionate and evidence-based. However, calls to ban smoking in areas that are considered 'private' are in no way reasonable, proportionate, or indeed enforceable.

## 2. Prohibiting the use of nicotine products in an enclosed vehicle

We also note that a number of MLAs have tabled amendments to clause 4 which would provide the Department with regulation-making powers to prohibit the use of nicotine products in an enclosed vehicle at a time when a person aged under 18 is in the vehicle. Imperial Tobacco does not support this amendment for the reasons outlined below.

There is currently no credible evidence to support a ban or further restrictions on the use of e-cigarettes in enclosed vehicles. Any proposed legislation concerning the effects of exposure of

<sup>3</sup> <http://www.derbytelegraph.co.uk/Policing-new-smoking-ban-cars-priority-police/story-27902929-detail/story.html>

<sup>4</sup> <http://www.kentonline.co.uk/medway/news/enforcing-smoking-ban-will-be-44079/>

<sup>5</sup> <http://www.scotsman.com/news/smoking-car-ban-won-t-be-police-scotland-priority-1-3803701>

other people to the vapour exhaled by an e-cigarette user must be based on robust evidence resulting from research and experimental studies. The proposed amendments should take account of the fundamental difference between ‘vaping’ and smoking conventional tobacco products. Smoke is not given off when an e-cigarette user inhales the vapour.

Furthermore, we believe that adults should retain the freedom to use e-cigarettes in a place of their choice. Further restrictions on ‘vaping’ will only serve to stigmatize adult smokers who make an informed choice to use a legal product and will extend the influence of the State into the private lives of individuals.

Imperial Tobacco believes that e-cigarettes are fundamentally different to tobacco cigarettes or other tobacco products. Any future questions linked to the regulation of e-cigarette use should be supported by solid, independent research or studies.

## **5. Conclusion**

In summary:

- We seek constructive dialogue with the Committee for Health, Social Services and Public Safety and other regulatory authorities in Northern Ireland and would be happy to provide further information in support of our submission, where appropriate.
- We support regulation that is reasonable, proportionate and evidence-based.
- We agree that the sale of nicotine products, such as e-cigarettes, should be restricted to persons over the age of 18. We agree that the proxy purchasing of nicotine products should be made an offence.
- We do not support the proposal to ban the sale of nicotine products from vending machines.
- We do not support amendments to the Bill to ban smoking and the use of nicotine products in enclosed vehicles with children present.
- We believe that clause 5 should be amended to take account of new and emerging product categories.

Should the Committee require further information, Imperial Tobacco would be happy to meet with officials to discuss the comments within this submission.

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