Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill

Imperial Tobacco Limited

Introduction - company background

1. Imperial Tobacco Group PLC (“ITG”) is a FTSE top 30 company, the world’s fourth largest international - and second largest European – tobacco company. ITG manufactures and sells a range of cigarettes and other tobacco products. ITG has sales in over 160 countries worldwide and is the world leader in the premium cigar, fine-cut (roll-your-own) tobacco and rolling papers sectors.

2. 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 approximately 45 per cent market share. ITUK’s leading UK cigarette brands include Lambert & Butler, JPS, Richmond, Embassy and Regal.

3. 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 per cent of issued shares held in the UK. Over 34,000 individuals are members of the company pension fund, and it is estimated that the tobacco industry indirectly supports the livelihoods of over 70,000 people elsewhere in the economy via the supply chain, production and packaging, retailers and so on.

4. Fontem Ventures is a fully owned subsidiary of Imperial Tobacco Group. Fontem Ventures is committed to developing and growing a portfolio of innovative non-tobacco products including Nicotine Vapour Products (commonly known as e-cigarettes). Fontem Ventures produces the blu e-cigarette range, available online and in store from over 20,000 UK stockists.

5. Imperial Tobacco welcomes the opportunity to respond to the Health and Sport Committee call for written views on the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill. We support sound, evidence-based, reasonable and proportionate regulation of tobacco and nicotine vapour products (NVPs).

Sale and purchase of tobacco and nicotine vapour products

6. 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 Standards available at:
Age verification policy

7. We support the introduction of a requirement for retailers of NVPs to have an age verification policy in place but do not support a legal requirement to challenge the age of anyone they believe to be under the age of 25. We support retailer programmes designed to prevent under-age sales to children such as the ‘No ID, No Sale’ retailer awareness campaign and the ‘CitizenCard’ proof-of-age scheme. We wish to see NVPs included within these successful initiatives and other similar proof-of-age card schemes in Scotland, e.g. YoungScot and would be pleased to explain to the Committee how the use and take-up of such initiatives could prevent the under-age sales of NVPs.

8. We urge policymakers to ensure that if these provisions proceed as drafted, the ministerial guidance to which retailers must have regard does not undermine existing proof-of-age programmes.

Sale by persons under 18

9. We agree that young people under the age of 18 should be prohibited from selling non-medicinal NVPs and refills unless authorised by an adult. We believe that each sale made by an under-18 should be authorised by the holder of a premises licence, the designated premises supervisor or any individual aged 18 or over who is authorised by such a holder or supervisor.

Defence of due diligence for certain offences

10. As drafted the defence of due diligence appears consistent with other legislation.

Purchase of nicotine vapour products on behalf of persons under 18

11. Imperial Tobacco has long called for a ban on proxy purchase of tobacco products in order to reduce underage smoking and believes the same approach should be taken for NVPs. The Westminster Parliament has legislated to restrict the age of sale for all nicotine products to 18 years old, and to make it an offence to proxy purchase NVPs. We therefore welcome these measures which would bring the sale of NVPs into line with that legislation as well as other age-restricted products such as alcohol, tobacco and solvents.

Extension of vending machine prohibition

12. We do not believe that sales from vending machines should be banned. NVP devices and refills (e-liquids) should be available through a range of sales channels, provided points of sale ensure youth access prevention
through restricted access mechanisms and measures such as proof-of-age upon purchase.

13. In many countries, age verification technology is used to great effect and could easily be replicated in Scotland. For example, vending machines have not been self-service in Ireland since 2009, when a restricted access system was introduced. The system consists of consumers proving proof of their age at the bar to obtain a token which can then be used at the machine to purchase products. This is no different from a shop scenario where the product is requested. Building compliance with the vending sector rather than putting them out of business would seem a more obvious solution.

Register of tobacco and nicotine vapour product retailers

14. We do not believe that retailers selling NVPs should be required to register. In our view retailer registration has done little in itself to reduce youth access to tobacco. We believe the same will hold true for NVPs. Instead we are in favour of tough penalties for retailers who are found to have sold age-restricted products to children.

15. We believe that regulation should recognise the fundamental differences between NVP and tobacco products and should not ignore them for administrative convenience. Subjecting NVPs to tobacco-specific legislation is not appropriate. Any future questions linked to the regulation of NVPs should be supported by solid research and studies.

16. We are unconvinced by the logic put forward by the Scottish Government for the introduction of a banning order for tobacco and NVPs. If a retailer has been found to have failed in ensuring age restrictions are upheld, any ban should either extend to all age restricted products sold on the premises (including alcohol) or just to the specific product concerned. Again, we ask the Scottish Government to consider separate legislation to cover NVPs.

17. In the context of penalties for unlicensed sales of NVPs, however, we would consider it proportionate for NVP legislation to be in line with equivalent legislation for tobacco and alcohol products. All three product types are suitable exclusively for adult consumers, so the penalties for undermining this condition of sale should be comparable and reflect the age-restricted nature of the products to which they are applicable.

Advertising and promotion of NVPs

18. Imperial Tobacco opposes a ban on NVP advertising and promotion and so opposes the powers in the bill enabling such a ban to be introduced. We believe that the marketing and advertising of NVP, should be permitted so as to enable retailers to communicate information about products.

19. The powers included in the Bill would inhibit manufacturers’ ability to communicate clear information about their NVP products in such a way as
to enable consumers to make informed decisions, undermining consumer choice and restricting the category's ability to grow awareness of its products.

20. However, we support effective and proportionate regulation of the advertising and promotion of NVPs. To that end the CAP/BCAP rules provide an appropriate model for regulation and we have supported steps to develop and increase standards across the industry in terms of marketing, youth protection, manufacturing practices and product quality. In particular, we would like to see further measures in respect of event sponsorship. We believe that promotional activity in the form of event or sports sponsorship and product endorsement (e.g. via celebrity endorsement) should be socially responsible and of limited appeal and/or visibility to an under-18 audience. In the case of “brand-stretching” or “brand-sharing”, we support the continuation of the current position by ensuring that potentially well-known tobacco brand names are not used in the promotion and advertising of NVPs.

21. In summary, while opposing bans we would like to see a stringent application of all regulations relevant to youth protection, as well as further regulation to minimize appeal to underage audiences while allowing advertising and marketing to continue.

Smoking outside hospitals

22. Imperial Tobacco does not support the introduction of legislation to make it an offence to smoke on NHS grounds. We believe that designated smoking areas should be available for those who choose to smoke but are unable to leave NHS grounds. Those designated areas could convey smoking cessation messages to smokers who use them. There are significant questions about the ability to enforce a ban given the number and location of NHS grounds across Scotland and the costs involved. We also envisage the potential for numerous disputes as to where a perimeter ends and whether an offence has been committed, which would in our view inevitably lead to a blanket ban across all grounds rather than a limited designated area within them.

23. We are also of the view that effectively extending the indoor smoking ban to include an outside area only serves to stigmatize adult smokers who make an informed choice to use a legal product. As such we consider it to be an unjustified restriction on the freedom of individuals. The explanatory memorandum to the Bill makes clear that “the primary aim of these provisions in the Bill is to support the de-normalisation of smoking” and has nothing to do with the reasoning given for banning smoking in enclosed public places – limiting exposure to second hand smoke. We do not believe that de-normalising adult smokers through the introduction of bans and criminal offences is an effective or justifiable policy approach.

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