Japan Tobacco International (JTI)

Organisation name

Japan Tobacco International (JTI) is part of the Japan Tobacco group (JT Group) of companies, a leading international tobacco product manufacturer.

JTI has its UK headquarters in Weybridge, Surrey, and has a long-standing and significant presence in the UK. JTI manufactures a range of tobacco products for the UK market in Northern Ireland and other EU Member States (Germany, Romania and Poland). In the UK alone, JTI employs over 1,800 people. Gallaher Limited is the registered trading company of JTI in the UK.

In 2014 the JT Group acquired Zandera Ltd, one of the UK’s largest electronic cigarette companies and integrated it into JTI. E-Lites is the main brand of Zandera Ltd. With electronic cigarettes being an increasingly popular alternative to cigarettes among many adult smokers, E-Lites is a logical and important extension to JTI’s portfolio and is its first non-tobacco, nicotine-containing product. The JT Group further expanded its portfolio of electronic cigarettes with the acquisition of Logic Technology Development LLC in 2015, one of the leading U.S. electronic cigarette brands. As part of JTI, the E-Lites and Logic brands have access to:

- JTI’s extensive manufacturing expertise (enabling standards of product quality to be further enhanced);
- The JT Group’s wider technological, research and scientific resources (facilitating compliance with future regulatory requirements, driving the development of next generation products to meet evolving consumer expectations, and delivering ever better electronic cigarette products); and
- JTI’s global distribution network in over 120 countries.

Introduction

Under-18s should not smoke and should not have access to tobacco products or nicotine containing products. This belief is central to the way JTI does business.

JTI supports regulation that is proportionate, carefully defined, necessary and appropriate to achieve a clearly articulated and legitimate public policy objective. Regulation should be made in accordance with internationally-accepted Better Regulation principles, which are supported by the Scottish Government, the UK Government and the European Commission. In essence, these principles require regulation to be transparent, accountable, proportionate, consistent and targeted at cases where action is needed.

JTI actively seeks dialogue, either written or oral, with government authorities around the world regarding the regulation of tobacco products and all other
nicotine containing products that it makes and sells. JTI has a right – and an
obligation – to express its point of view regarding regulation that affects its
products and the industry. It is our belief that we have the responsibility, when
engaging in a consultation process, to be open and transparent in our
dialogue with government authorities, and to propose alternative, less
restrictive and more targeted solutions that meet Better Regulation principles
where we believe proposed regulations to be excessive.

JTI supports reasonable and proportionate regulation of electronic cigarettes.
It believes that:

- Adults should be free to choose whether they wish to use electronic
cigarettes, including as an alternative to tobacco products;

- All marketed electronic cigarettes should comply with all relevant
regulations concerning general consumer product safety, electrical
safety and consumer protection from misleading marketing claims;

- Regulation of electronic cigarettes should aim to keep electronic
cigarettes out of the hands of under-18s and to remind users of the
risks associated with their use; and

- Governments and regulators should avoid excessive regulation that
prevents adult consumers from choosing these products.

- JTI strongly supports the objective of preventing under-aged
consumers from having access to electronic cigarettes and other
nicotine containing products. However, the Health (Tobacco, Nicotine
etc. and Care) (Scotland) Bill (the Bill) contains various provisions with
which we do not agree. We therefore welcome the opportunity to
provide this written response.

Chapter 1:
Sale and Purchase of Tobacco and Nicotine Vapour Products

JTI fully supports both the Scottish Government’s decision to make it an
offence to sell e-cigarettes to under-18s and the introduction of a ban on proxy
purchases. We believe that these measures could make a significant
contribution to reducing young people’s access to nicotine containing
products.

JTI does not market electronic cigarettes, or any other nicotine containing
product, to under-18s or to non-users of tobacco or nicotine-containing
products. In line with our core principle that children should not smoke, or
have access to tobacco products, we also believe that children should not
have access to electronic cigarettes or other nicotine containing products.

As such we support the proposal to introduce legislation that would make it an
offence to sell electronic cigarettes to under-18s. JTI also supports the
introduction of legislation making it an offence to allow a person under the age
of 18 to sell tobacco, unless specifically authorised to do so by a responsible person as laid out in Section 4C.

**Age Verification policy**

JTI believes it would be inappropriate to legislate to make it a criminal offence for a retailer to fail to operate an age-verification policy when selling tobacco or electronic cigarettes which would require them to verify the age of a person they suspect to be under the age of 25 (or older).

JTI accepts that voluntary age verifications schemes, such as Challenge25, provide helpful guidance for retailers in preventing under-age sales; indeed we endorse the Challenge25 scheme as part of our Responsible Tobacco Retailing training programme for retailers, which is designed to support the trade in youth access prevention. There already exists a high level of recognition and familiarity with this scheme and JTI believes that, rather than introducing a criminal offence, the Scottish Government should work with retailers to expand it and other voluntary schemes.

However, any moves to put age verification with a target age of 25 on a legislative footing may be confusing for the retail trade because the law makes it clear that tobacco – and as per new legislation, e-cigarettes – are subject to an 18 or over age restriction. Retailers already operate within a burdensome regulatory operating environment, and there is a high demand from retailers for support in complying with the existing law surrounding age-restricted products. Legislating for it to be illegal to fail to carry out an age verification on someone who is legally entitled to purchase a product will exasperate this confusion.

An example of how the Scottish Government could support tobacco and electronic cigarette retailers is the ‘No ID No Sale’ campaign, which JTI has backed since 2004. The campaign aims to educate retailers and creates an expectation that customers will be asked for proof of age. Since 2004 more than 504,000 ‘No ID No Sale’ information packs, which include age display posters and guidance on how to respond when faced with customers who are unable to provide proof of age, have been distributed to retailers across the UK, including those operating in Scotland.

JTI’s emphasis is on supporting retailers and we think it would be inappropriate to create legislation that makes it an offence for a retailer to sell tobacco or electronic cigarettes without operating an age-verification policy. Therefore we advocate that this part of Bill is removed.

**Extension of vending machine prohibition**

JTI is fundamentally opposed to a ban on electronic cigarette vending machines. Adults who choose to use electronic cigarettes are entitled to be treated fairly and equally, and have the right to choose and the ability to obtain the products they prefer. We believe that under-18s should not be able to obtain electronic cigarettes either via vending machines or any other sales channels, and therefore access to vending machines should be strictly controlled.
In our opinion a very clear and convincing justification needs to be present before restricting the means by which adult users can access electronic cigarettes. In addition, the Scottish Government must show that there are no more proportionate methods of achieving the goal of preventing under-18s from accessing electronic cigarettes via vending machines. As no such justification has been presented, we do not support an extension of the vending machine prohibition to include electronic cigarettes.

Registration
JTI does not object to the expansion of the tobacco retailers register to include electronic cigarette retailers, though we strongly believe that there should be no fee to register and as limited an administrative burden on retailers as possible. As the Bill proposes to use the current tobacco register, which is available online and is free, we support this section of the Bill.

Chapter 2
Advertising and Promotion of Nicotine Vapour Products

JTI is opposed to all provisions within Chapter 2, as the ability to advertise and promote a product is an essential commercial freedom and is fundamental to any consumer goods company’s ability to build their brands and compete for market share. Prohibiting such advertisement and promotion would favour incumbent manufacturers over new entrants to the market. Advertising and promotion also benefits consumers, by promoting competition, increasing consumer choice and encouraging manufacturers to introduce new, better quality products. A prohibition on the advertising and promotion of electronic cigarettes may also have the unintended effect of reducing the number of adult smokers choosing to switch from tobacco products to electronic cigarettes.

We are committed to advertising and promoting our products responsibly. JTI’s advertising is only targeted at existing adult users of electronic cigarettes and existing adult smokers. JTI advertises and promotes its electronic cigarettes for three reasons: to maintain brand loyalty among our existing customers; to encourage existing adult users of electronic cigarettes to switch from competitor brands to our products; and to provide information about our electronic cigarettes to existing adult smokers and vapers.

JTI’s ability to advertise and promote our products is protected under Article 10 of the European Convention on Human Rights (“ECHR”). Prohibiting the advertising and promotion of electronic cigarettes would amount to a deprivation and/or impairment of that fundamental right to freedom of expression. Any restriction on this freedom must be justified by one of the exemptions available under Article 10 of the ECHR, meaning that it must pursue a legitimate aim and be both necessary and proportionate.

JTI recognises that certain standards should exist for advertising electronic cigarettes and supports the existing UK Committee of Advertising Practice (CAP) code for electronic cigarette advertising. The CAP Code was introduced in 2014 and outlines various provisions for electronic cigarette advertising. The main points are:
• Adverts must be socially responsible and should not encourage non-smokers or non-nicotine users to use e-cigarettes;

• Adverts must contain nothing which promotes any design, imagery or logo that might be associated with a tobacco brand;

• Adverts must not contain health or medicinal claims unless the product is authorised for those purposes by the Medicines & Healthcare products Regulatory Agency;

• Advertisers cannot claim or imply that the product can act as a smoking cessation device unless the product is authorised for those purposes by the MHRA; and

• If the product contains nicotine, a statement to make this clear must be included in the advert.

We believe that the two advertising Codes produced by the CAP strike the right balance between allowing responsible advertising and preventing the targeting of under-18s and non-smokers, while also respecting companies’ rights to communicate with adult consumers of electronic cigarettes.

The revised Tobacco Products Directive 2014/40/EU (TPD2) is due to be implemented by May 2016, affecting electronic cigarettes which contain up to 20mg/ml of nicotine. Electronic cigarettes with a nicotine content above that level will need to be granted marketing authorisation as medicinal products. The measures outlined in Chapter 2 go over and above even the requirements of TPD2, which is currently under challenge in the EU courts. TPD2, if found to be lawful, will prohibit cross-border advertising, sponsorship and promotion of electronic cigarettes. Going further than this, as Chapter 2 does, will be disproportionate, further stifle competition and restrict consumer choice. We believe it would be premature to introduce domestic restrictions until the lawfulness of TPD2, and the existence of a proper evidence base, has been determined.

Finally, JTI notes that the proposed advertising restrictions will need to be subject to further, and more detailed, enabling legislation. If the Scottish Government is minded to proceed with such legislation, which would represent a fundamental restriction on JTIs rights, we expect there to be a full public consultation.

Chapter 3
Smoking Outside Hospitals

JTI believes that it would be inappropriate for the Scottish Government to introduce smoke-free legislation that covers NHS grounds and considers that this chapter should be removed from the Bill.

We recognise that cigarettes are a legal but controversial product; as such, we believe adults have a fundamental right to make an informed choice about whether they want to smoke. More generally, it is not legitimate to seek to
discriminate against, stigmatise or ostracise existing adult smokers, or to treat the use of tobacco as abnormal, unacceptable, or tainted.

Therefore we believe it is inappropriate for the Scottish Government to prohibit adult smokers from undertaking a lawful activity when going about their everyday lives. It is JTI’s strong belief that since tobacco smoke is easily dispersed in the atmosphere and highly diluted in outdoor environments, there is no basis on which to regulate smoking outdoors. JTI notes that there is limited scientific literature on outside tobacco smoke. Even well-known anti-tobacco advocates have questioned the scientific basis for restrictions on smoking outdoors¹. Considering these factors JTI considers that any smoking ban in outdoor spaces is excessive.

There already exists a high level of public awareness regarding the health risks associated with smoking, particularly amongst those who work in the healthcare profession. Nevertheless, JTI supports public health authorities’ efforts to continue to inform the public about those risks.

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Note: 1. Jordan Raphael, in his discussion of American municipal outdoor smoking bans, indicated that outdoor smoking bans go “beyond what is justified by the scientific findings on ETS” (Raphael, 2007). Researchers also caution that it is premature to draw policy conclusions from their findings: Cameron et al. (2010) “do not advise that the present results are used to advocate for outdoor smoking restrictions at the expense of other tobacco control policies known to reduce smoking prevalence”.