



Pre-Legislative Scrutiny of the Public Health (Tobacco and Nicotine Inhaling Products) Bill 2019

JTI Ireland Limited Submission to Joint
Oireachtas Health Committee

11 June 2021

1.Introduction

As part of the ongoing Pre-Legislative scrutiny of the General Scheme of the Public Health (Tobacco and Nicotine Inhaling Products) Bill 2019, JTI Ireland Limited makes this submission to the Joint Oireachtas Committee on Health to raise serious concerns in relation to certain aspects (specifically Head 16) of the Bill.

JTI Ireland Ltd, a member of the Japan Tobacco Group of Companies, is Ireland's leading tobacco manufacturer. We market brands such as Benson & Hedges, Silk Cut, Camel and Amber Leaf. We are also a leading manufacturer of vaping products and market Ireland's number one e-cigarette brand, Logic, offering existing adult smokers an alternative to tobacco. We also sell Nordic Spirit, a nicotine pouch which is a tobacco free alternative for adults over the age of 18. JTI Ireland directly supplies over 3,200 retail outlets nationwide and employs more than 90 people locally.

As a responsible company, JTI actively seeks dialogue with government authorities regarding the regulation of tobacco products that it makes and sells. We are open and transparent in this dialogue, and we propose more proportionate and targeted alternative measures where we believe proposed regulations, such as a ban on the sale of tobacco products from temporary or movable premises, as outlined in Head 16 of the Bill, are flawed and are based on speculative evidence.

JTI would like to note that we welcome and support Head 21 of the Bill, the introduction of a prohibition on the sale of nicotine inhaling products to persons under the age of 18 years. In fact, it has been a long-standing JTI policy that our vaping products should only be sold to over 18s and this is made clear on all our product packaging and advertising.

The principle that children should not be able to access our products is central to JTI's Code of Conduct, our marketing practices, operational policies and the way we do business. In support of this principle, in 2010 JTI established the 'Show Me ID – Be Age Ok' programme. This is a responsible retailing programme designed to provide retailers with advice, support and leading practice on how to avoid the sale of age restricted products, including tobacco, to minors.¹

While a number of concerning measures are being proposed in the overall Bill, JTI is making a submission to the Committee specifically on the issue of tobacco sales from temporary or movable premises because of the direct impact it will have on us as a manufacturer.

In practice, a ban on the sale of tobacco products from temporary or movable premises would remove the ability of JTI to sell tobacco products at festivals where the majority of attendees are adults.

At the outset, it is important to be aware of key elements of JTI's existing approach to the sale of tobacco at festivals:

- JTI only facilitates the sale of our products at adult-oriented festivals at which the majority of attendees are over 18 years of age.
- JTI ensures that those who are responsible for selling tobacco products are fully trained and aware of the law, through intensive training sessions in advance of the festival season and further briefings on the day of the festival itself.
- Should a person wish to purchase tobacco at a festival, they must first approach a festival security guard who will check for ID in the event that the person appears to be Under 25. It is only when the security guard is satisfied that the person is over 18 that they can approach the counter. If the staff member has any suspicion around the person's age they will again ask for ID before a sale is made.
- Tobacco retailers at festivals maintain a refusals register, which records instances where a sale has been refused on the basis of age or other factors (eg; where the same person comes

¹ More information can be found at www.showmeid.ie.

back to buy more cigarettes within a short timeframe, thereby raising the suspicion that they are trying to purchase for someone else).

- The unit from which tobacco is sold at festivals contains no tobacco branding and the packs that are sold are of course plain packaging compliant.
- Tobacco retailers at festivals register with the National Tobacco Control Office and will also obtain the necessary Track & Trace codes prior to the event.
- The festivals in which JTI sells tobacco products are in the vast majority of cases annual events and are advertised to the public well in advance of the event taking place. Therefore, should the Department of Health wish to inspect these premises, there should be no added complication in doing so, other than there would be in inspecting a permanent retail outlet.

JTI is not aware of any clear and compelling evidence that banning the sale of tobacco products via temporary or movable premises would reduce smoking by minors. It is already the case that the sale of tobacco products to minors is illegal in Ireland. A HSE Report, “The State of Tobacco Control in Ireland,” shows that there is already a high compliance rate in relation to the sale of tobacco products to minors, with a compliance rate of 90% from a minor tobacco test purchases conducted.²

2. Executive Summary

This submission will outline the reasons why JTI believes that a ban on the sale of tobacco from temporary and mobile premises is unnecessary.

JTI is of the view that the current statutory rules which have an objective of preventing access to tobacco products by minors work successfully, whilst allowing adults 18 years of age and older who choose to smoke to purchase legal tobacco products.

JTI believes that any regulatory proposal should meet certain standards in line with the Organisation for Economic Co-operation and Development’s (OECD) ‘Better Regulation Practices across the European Union’ before being adopted.³

JTI is also of the view that restricting access to tobacco products will not change the demand for these products but will ultimately shift consumers to different sales channels.

Preventing children from having access is key in reducing youth smoking. This can best be achieved by enforcement of the existing minimum purchase age of 18, fines for proxy purchasing of tobacco by adults for minors and a greater focus on ‘responsible retailing’ programmes.

Retailers who repeatedly fail to comply with the law should be removed from the register of tobacco retailers.

² <https://www.hse.ie/eng/about/who/tobaccocontrol/tobaccofreeireland/state-of-tobacco-control.pdf>

³ <https://www.oecd-ilibrary.org/sites/9789264311732-en/index.html?itemId=/content/publication/9789264311732-en>

3. Better Regulation

In line with the internationally accepted principles of Better Regulation of the Organisation for Economic Co-operation and Development (OECD) that we support, a regulatory proposal should meet certain standards before being adopted:

- the proposed regulation must have a sound legal basis.
- the objective(s) of the proposed regulation must be legitimate and clearly defined.
- the nature and scale of the problem which the proposed regulation seeks to address must be clearly defined.
- there must be a clear and convincing evidence base to support the proposed regulation.
- the legislative and other consultative processes should incorporate a regulatory impact assessment (RIA) in relation to any significant measure.
- impact assessments must be accurate and complete and shall be used to inform the decision-making process.
- the regulator must review and evaluate existing legislation, including whether it is being effectively enforced and other options before regulating further.

The RIA accompanying the General Scheme of the Bill states that the purpose of the proposed ban on tobacco sales from temporary or movable premises is:

“to assist in the denormalisation of tobacco products by excluding their sale from certain events or locations especially those which are frequented by young people. The prohibition will ensure that the sale of tobacco products is not associated with music festivals or similar events which will contribute to reducing their appeal to children and young people. In addition, the prohibition of sale from temporary premises will mean that tobacco products can no longer be sold from places that are difficult to monitor for compliance with law owing to their temporary nature.”

JTI does not believe that the purpose of the proposed ban, as outlined above, meets the standards of Better Regulation.

Firstly, the RIA does not take into account that the sale of tobacco products to those Under 18 is already prohibited in Ireland.

Furthermore, since the dates or timing of the vast majority of festivals in Ireland remain the same annually, and indeed are advertised to the public well in advance, any issue of difficulty in monitoring compliance with the existing prohibition should not arise.

JTI does not agree with the assertion that the sale of tobacco products is currently associated with music festivals or similar events. We would argue, however, that in the absence of legitimate tobacco being available at such events, it is likely that some consumers would move to illegal channels.

It is worth noting that despite the introduction of Track & Trace regulations⁴ in May 2019, which provides for EU-wide systems of traceability and security features for tobacco products to address the issue of illicit trade, this system does not address the serious issue of counterfeit product which is not in scope for Track & Trace. The illegal trade is an issue JTI is continuously working with authorities across the world to address. The removal of the existing channel for consumers to purchase legitimate tobacco products at festivals (via temporary/moveable units) would only serve to increase the likelihood of the illegal trade targeting these events instead.

There has also been a huge growth in counterfeit production with several illegal factories located on mainland Europe. In Ireland, 3 illegal production facilities were seized on the island⁵ (2 in ROI and 1 in NI) between March 2018 and March 2019⁶. We know that criminal gangs dealing in illicit tobacco

⁴ https://ec.europa.eu/health/tobacco/tracking_tracing_system_en

⁵ <https://www.revenue.ie/en/corporate/press-office/press-releases/2018/pr-150318-illegal-cigarette-factory-jeninstown-louth.aspx>

⁶ <https://www.independent.ie/irish-news/drugs-and-tobacco-worth-75m-seized-38097521.html>

products respond to consumer demand and would likely view the removal of legitimate tobacco sales at festivals as an opportunity for the sale of their black-market products. This likely scenario has not been adequately addressed or considered in the RIA, aside from a reference to the Track & Trace system already in place, which we do not believe would prevent the sale of illicit tobacco products, in particular counterfeit products which are not captured by Track & Trace, at festivals and events.

4. Consumer Access

JTI opposes disproportionate regulations that restrict the rights and the ability of adult smokers, who have made an informed choice to smoke, to access legitimate tobacco products. It is already unlawful to sell tobacco products to minors in Ireland, regardless of the introduction of a ban on the sale of tobacco products from temporary or mobile units/containers.

JTI is not aware of any clear and compelling evidence that the proposed ban would generate any health benefits, including the reduction of smoking prevalence amongst minors and adults.

Similarly, it would interfere with adult smokers' rights and ability to access tobacco products from existing legitimate channels.

Reducing the means by which adult smokers can access tobacco products in Ireland amounts to inappropriate state interference with distribution channels. Restricting access to tobacco products will not change the demand for these products but will ultimately shift consumers to different, possibly illegal, sales channels.

Tobacco products carry risks to health, and everyone should be appropriately informed about these risks. Indeed, as mandated by law, all of our cigarette products carry a pictorial health warning on the front and back of packs covering 65% and a text health warning covering 50% on the side of all packs. However, adult smokers who are aware of the risks associated with smoking but choose to smoke are entitled to be treated fairly, equally and have the right to access and consume the legal products they prefer.

5. Responsible Retailing

Children should not smoke and should not access tobacco products.

This belief is central to JTI's Code of Conduct, our marketing practices, operational policies and the way we do business.

In terms of JTI's approach to the sale of tobacco at festivals, we ensure that those who are responsible for selling product are fully trained and aware of the law. This is done through intensive training sessions in advance of the festival season and further briefings on the day of the festival itself.

Should a person wish to purchase tobacco, they must first approach a festival security guard who will check for ID in the event that the person appears to be Under 25. It is only when the security guard is satisfied that the person is over 18 that they can approach the counter. If the staff member has any suspicion around the person's age they will again ask for ID before a sale is made.

Tobacco retailers at festivals maintain a refusals register, which records instances where a sale has been refused on the basis of age or other factors (eg; where the same person comes back to buy more cigarettes within a short timeframe, thereby raising the suspicion that they are trying to purchase for someone else).

Tobacco retailers at festivals register with the National Tobacco Control Office and also obtain the necessary Track & Trace codes prior to the event.

The festivals at which JTI sells tobacco products are in the vast majority of cases annual events and are advertised to the public well in advance of the event taking place. Therefore, should the Department of Health wish to inspect these premises, there should be no added complication in doing so than there would be in inspecting a permanent retail outlet.

It is also worth noting that the unit from which tobacco is sold contains no tobacco branding and the packs that are sold are of course plain packaging compliant.

Preventing children from having access is key in reducing youth smoking. This can best be achieved by enforcement of the existing minimum purchase age of 18, fines for proxy purchasing by adults for minors and a greater focus on 'responsible retailing' programmes. It is worth noting that of the 36 retailers convicted in 2018 and 2019 combined under Section 45 of the Public Health (Tobacco) Act (sales of tobacco products to minors under the age of 18) , none of those were retailers at festivals.⁷

6. Recommendations

There are less restrictive, more targeted and proportionate alternative measures rather than a ban on the sale of tobacco from temporary or mobile premises. These solutions have been adopted in other jurisdictions with the goal of reducing the prevalence of smoking by minors and address the key methods by which minors access tobacco products. They are likely to be effective when evaluated against Better Regulation principles and studies exist which support their efficacy:

- Effective enforcement of the minimum legal purchase age of 18
- Reinforcing responsible retailing, through programmes such as the 'Show Me ID' campaign
- Focused public information campaigns
- Criminalisation of proxy purchasing by adults for minors
- Retailers who repeatedly fail to comply with the law should be removed from the register of tobacco retailers.

⁷ <https://www.hse.ie/eng/about/who/tobaccocontrol/enforcement/>