

Imperial Brands plc response to the Office for Health Improvement and Disparities Call for Evidence on Youth Vaping

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Company background

Imperial Brands Plc (**IMB**), a FTSE 100 company headquartered in Bristol and London in the UK, is a global consumer goods organisation and the fourth largest international tobacco company.

Our core tobacco business is built around a comprehensive portfolio of local and international cigarette brands and other tobacco products and smoking accessories available in 120 markets worldwide. Imperial Tobacco Limited (**ITL**) (together with Imperial Brands PLC) is the Bristol-based trading operation of IMB which distributes Imperial Tobacco's products to the UK market.

Aligned with our purpose to forge a path to a healthier future for moments of relaxation and pleasure, we are also committed to building a sustainable next generation product (**NGP**) business, offering smokers a targeted range of potentially less harmful alternatives to traditional tobacco products. Included in our portfolio is blu, a market leader in the UK vape category.

For young people, we are clear about our commitment to youth access prevention (**YAP**) measures: We believe that minors (those under 18 years of age) should not use or have access to any vape products. We believe that vape products are to be used by existing adult smokers and adult vapers only. In practice, this means we do not market our vapour products to youth or non-smokers / non-vapers, and we do not market or design e-liquids in flavours that appeal primarily to youth. 2023 data shows that while youth 'trial' of vape product is increasing, regular use of vape products remains low.¹ A recent Action on Smoking and Health (**ASH**) report found that youth uptake of vape products is largely confined to those who currently or previously smoked, with over 92% 11-17 year old never smokers never using an e-cigarette or being unaware of them.² While youth awareness and trial may increase³, we must ensure vape products remain fit for purpose for adult smokers, and prevent increase in trial or use among those under 18.

We welcome the opportunity to contribute to the Office for Health Improvement and Disparities' call for evidence on youth vaping. IMB is a member of the UK Vaping Industry Association (**UKVIA**) and has contributed to the relevant submission to this consultation. Consequently, we will not repeat all the arguments made therein.

¹ <https://ash.org.uk/uploads/Headline-results-ASH-Smokefree-GB-adults-and-youth-survey-results-2023.pdf?v=1684400380>

² <https://ash.org.uk/uploads/Use-of-e-cigarettes-among-young-people-in-Great-Britain-2022.pdf?v=1661866458>

³ <https://ash.org.uk/uploads/Headline-results-ASH-Smokefree-GB-adults-and-youth-survey-results-2023.pdf?v=1684400380>

Executive Summary

- UK Government, industry, and enforcement authorities must work together to create a regulatory framework which balances the important role vape products play in supporting adult smokers to quit and preventing appeal and access of vape products to under 18s. IMB is fully committed to youth access prevention and does not target or market any vape products to those under 18.
- While regular use of vape products by youth remains low⁴, evidence suggests that more can be done under existing regulations to tackle youth access challenges faced across the country – effective enforcement, and sufficient resource to execute this enforcement, is essential to ensure compliance.
- IMB would support the implementation of further targeted regulation to address challenges faced across the category, including on disposable products. These regulatory proposals are discussed in detail in this submission.
- IMB would support further regulatory action on key areas of the vape category including: introduction of a retailer licensing or registration scheme, increased enforcement of existing regulations and support for Trading Standards (TS), a review of flavour naming conventions to limit youth appeal, strengthening of advertising and promotion regulation and raising product quality and safety standards.

Building regulatory compliance

Do you have any evidence to provide on building regulatory compliance?

- Yes

What evidence is there about how and where children are accessing vapes?

IMB believes that strict enforcement of age restrictions on the sale of tobacco and nicotine products, wherever sold, along with penalties for retailers who sell to minors, are crucial to preventing underage use. In the UK, the vast majority of legitimate vape products are sold through independent convenience retail, supermarket stores or online. However, it is possible that those under 18 may access vape products from various sources, including:

Social sources: Evidence shows that a significant point of access to vape products for under 18s is through friends, family, and others known personally. A recent report published by the Lifestyles Team, NHS Digital, surveyed pupils aged 11-15 who identified as regular users of e-cigarettes and found that 61% said they were given e-cigarettes from others, including friends.⁵ This is likely the most popular source of vape products for many under 18s as no age verification is undertaken and in many cases only minimal payment or no payment at all is required.

⁴ <https://ash.org.uk/uploads/Headline-results-ASH-Smokefree-GB-adults-and-youth-survey-results-2023.pdf?v=1684400380>

⁵ <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2021/part-4-electronic-cigarette-use-vaping>

Retail outlets: Evidence suggests the second most popular source of vape products is retail outlets. 57% surveyed said they purchased vape products from a shop, with newsagents being identified by 41%.⁶ ASH data supports a large proportion of those under 18 identifying retail outlets as a key source of vape products.⁷ While retailers are required to verify a customer's age (many retailers operate the 'Challenge 25' policy) some retailers or retail staff may not enforce these regulations effectively.

Online retailers: Another way children may access vapes is through online purchases. While it is illegal for under-18s to purchase vape products online, some young people may be able to bypass age verification processes or use fake identification. The NHS Digital study found that 25% of 11–15-year-olds accessing e-cigarettes bought them online.⁸ As a member of the UKVIA, IMB regularly undertakes youth access prevention measures including test purchasing on our blu brand website. These regular rounds of test purchasing ensure that our website is operating a robust and consistent age verification system and is successfully preventing youth access.

It is also possible that those under 18 are accessing illicit and counterfeit product to avoid age verification processes. NHS Digital reported that 25% of those surveyed bought vape products from people who were unknown to them, and 18% bought them from street markets.⁹ We know that the illegal import and sale of illicit vape products is increasing with products being sold directly to consumers or in non-permanent settings such as street markets and car boot sales.

All retail and online stores selling age restricted products, including vape, must operate robust and consistent age verification systems to prevent underage sales. This includes ensuring legitimate photo ID is presented at point of sale, up to date training for all staff members, and visible signage in store informing all customers that a Challenge25 system is in place.

Retailers can access 'No ID, No Sale' and Challenge25 resources, assured guidance and materials online free of charge.¹⁰¹¹

What evidence is there of effective measures to limit children's access to vapes?

IMB believes that those under 18 years of age should not use or have access to any vape products. We believe that vape products are to be used by existing adult smokers and adult vapers only.

Enforce effective Age Verification

We believe that one of the most effective measures to limit children's access to vapes is to enforce strict age verification practices across all retail channels, including online platforms. All retail and online stores selling age-restricted products, including vape, should be operating robust and consistent age verification systems to limit and prevent children's access to vapes. This includes ensuring legitimate photo ID is presented and checked at point of sale and that visible signage in store

⁶ <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2021/part-4-electronic-cigarette-use-vaping>

⁷ <https://ash.org.uk/uploads/Headline-results-ASH-Smokefree-GB-adults-and-youth-survey-results-2023.pdf?v=1684400380>

⁸ <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2021/part-4-electronic-cigarette-use-vaping>

⁹ <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2021/part-4-electronic-cigarette-use-vaping>

¹⁰ <https://noidnosale.com/retail-pack>

¹¹ <https://www.acs.org.uk/challenge25>

informing all customers that a Challenge25 system is in place, supported by up-to-date training for all staff members.

For online sales, websites should be age-gated as well as operating an age verification check at an appropriate point of each transaction. The effectiveness of this measure is evidenced by the age verification systems used on our blu brand website. Blu.com operates a robust age verification system for all transactions at the point of sale. As a member of UKVIA, the blu website is subject to regular test purchasing and consistently returns positive results on preventing youth access attempts.

UKVIA has published several guidance documents to support retailers to implement an age verification system which works for them. The Directory of Online Age Verification Providers¹² provides a list of age verification providers for online purchases, and the Preventing Underage Sales Guide¹³ provides comprehensive guidance and materials to support both in-store and online retailers understand the regulations on age of sale and best practices on how to prevent youth access.

Comprehensive refusal registers should also be kept updated to ensure all retailers, staff and Trading Standards officers can refer back to instances when effective age verification checks were undertaken and resulted in refusal of sale of vape products. Retailers can access resources, guidance, and materials free of charge on the 'No ID, No Sale', Challenge25 or UKVIA websites.

However, we know from conversations with Trading Standards (TS) officers that as the relevant enforcement authority for age verification, TS are challenged by lack of resource and funding, limiting their ability to enforce regulation, and allowing irresponsible retailers to continue selling vape products to those under 18. It is clear that TS requires increased funding and resource to ensure effective enforcement can take place. We welcomed the Health Minister's recent announcement of £3million new investment to create a specialised 'flying squad' to enforce the rules on vaping and tackle illicit vapes and underage sales and would support further funding for TS. We believe this funding could be financed by the introduction of increased, on the spot, penalties for non-compliance and illicit trade, which would provide a more effective deterrent to retailers and may support further TS operations.

We believe that these 'on-the-spot' fines could provide an effective solution to the challenges faced by TS who are currently struggling to enforce regulation on preventing the sale of vape products to those under 18. This measure would allow TS officers to quickly issue penalties for non-compliance, increasing fines paid and removing a significant burden from the courts system. Further, IMB would support a solution to 'ring-fence' penalty funds for future enforcement to ensure the TS offices are able to benefit from the measure via increased resource.

Strengthen product regulation

In addition to robust age verification, we believe that legislation and technical product standards can play a crucial role in reducing both the appeal and access of vape products to those under 18. When the EU introduced the second Tobacco Products Directive (TPD) 2016, the following requirement in relation to nicotine content was implemented:

"Nicotine-containing products or their packaging to be child-resistant and tamper evident".

¹² <https://www.ukvia.co.uk/wp-content/uploads/2022/03/Online-Age-Verification-Providers-Guide-Final.pdf>

¹³ <https://www.ukvia.co.uk/wp-content/uploads/2023/03/Underage-Sales-Guide-2023-Final.pdf>

This provision was transposed into UK regulation in the Tobacco and Related Products Regulations (TRPR) 2016.

We believe that if the Government went further on introducing robust regulatory requirements for vape products, including devices, youth access to vape products would be further restricted. IMB proposes that increased product quality and safety standards must be included in forthcoming UK regulation and a more robust compliance process ahead of product launch. IMB recognises the importance of product standards and supports strengthened regulation around product quality and safety requirements for vape products. Only if our Next Generation Products are of the highest quality with regards to design, manufacture, distribution, ingredients, and electronic and software functioning can they provide adult smokers with a real alternative to combustible tobacco.

The lack of clear and consistent regulation around product quality, manufacturing, and safety standards of reduced harm alternatives – particularly vape products – acts as another barrier to harm reduction. We believe that strengthening product safety regulations will be of critical importance in addressing the lack of consumer confidence and indeed widespread misinformation around the use of vape products and encouraging the transition from combustible tobacco.

The appeal of vape products

Do you have any evidence to provide on the appeal of vapes to children?

- Yes

What evidence is there about the appeal of vapes to children?

IMB acknowledges that some irresponsible manufacturers choose to sell vape products which may overly appeal to those under 18. We believe that key features which may appeal to children include product design and packaging design. We do not believe that this is a category wide issue, and if these irresponsible products were subject to targeted enforcement action by Trading Standards, youth appeal to vape products may significantly decrease. All IMB product and packaging design adheres to our stringent internal International Marketing Standards which state:

“We will design the packaging of our products in a manner so that the content clearly does not appeal to youth”

Product design

IMB is committed to high levels of technical product standards for our vape devices. We believe that legislation and technical product standards can play a crucial role in reducing both the appeal of, and access to, vape products for those under 18. When the EU introduced the second Tobacco Products Directive (TPD) 2016, the following requirement was implemented in relation to nicotine content:

“Nicotine-containing products or their packaging to be child-resistant and tamper evident”.

This provision was transposed into UK regulation in the Tobacco and Related Products Regulations (TRPR) 2016.

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The lack of clear and consistent regulation around product quality, manufacturing, and safety standards of reduced harm alternatives – particularly vape products – acts as another barrier to harm reduction. We believe that strengthening product safety regulations will be of critical importance in addressing the lack of consumer confidence and indeed widespread misinformation around the use of vape products and encouraging the transition from combustible tobacco.

Packaging design

IMB believes that robust enforcement action of existing regulation must be taken to remove products from the market that feature design elements which overly appeal to those under 18, and believes that were this undertaken, youth appeal of vape products may decrease significantly.

Looking at the wide range of products on the market, we know that there are several products currently for sale which feature elements on their packaging which may overly appeal to children, including:

- Cartoon characters
- Food and drink
- Confectionary

While many of these packaging features may constitute Intellectual Property or Trademark infringements, they may also contravene the Tobacco and Related Products Regulations 2016, which provides that vape product packaging must not feature any suggestion that the product:

- (i) “is less harmful than other electronic cigarettes or refill containers,
- (ii) has vitalising, energising, healing, rejuvenating, natural or organic properties, or
- (iii) has other health or lifestyle benefits”

or contain any feature that:

- (iv) “refers to taste, smell or other additives (except flavourings) or the absence of any such thing;
- (v) resembles a food or a cosmetic product; or
- (vi) suggests that a particular electronic cigarette or refill container has improved biodegradability or other environmental advantages”

IMB believes that effective enforcement of existing regulations, and further targeted regulation to prevent packaging elements which may overly appeal to those under 18, will be sufficient in successfully addressing and tackling youth access across the UK. We do not support the extension of tobacco regulations to vape products and there is no compelling evidence that tobacco product

packaging regulations, including pictorial health warnings and standardised (or plain) packaging, is a necessary or proportionate measure to tackle youth access challenges.

Text health warnings can serve the important role of informing adult consumers about the contents and risk profile of a product. To be effective, they must be appropriate for the product in question, and they must follow accepted scientific evidence. We accept that nicotine is an addictive substance, and we understand that the UK government is keen for this to be made clear on packs with existing mandatory, standardised text warnings.

Applying health warnings from combustible tobacco to vape products is inaccurate and inappropriate. The risks to health from vape products are orders of magnitude lower than for combustible products. Conflation of these risks reduces the efficacy of tobacco harm reduction and may discourage adult smokers from trying potentially lower risk products. A risk-proportionate approach should reflect this in the content, size, and placement of any warning information on the product or product packaging. These design characteristics, as well as the wording itself, communicate the degree of risk.

In line with our regulatory responsibilities, IMB includes a clearly visible written health warning on our blu vape product packs and advertising of all our vape products, including on any outer packing intended to be presented to the consumer:

“This product contains nicotine.”

IMB does not support graphic (picture) health warnings for vape products. Such warnings are inappropriate given the level of risk and may limit the appeal of vape products to adult smokers. If the same or similar graphical warnings as used for tobacco are applied, the vape category will become insufficiently differentiated from combustible tobacco, undermining the principle of tobacco harm reduction.

There is no evidence that implementing tobacco product-style packaging restrictions to vape products would be effective. We oppose plain packaging for vape products. If vape products are brought under the same packaging regulations as smoking, it fails to differentiate vape products in law as a much less harmful alternative. Plain packaging infringes upon manufacturers intellectual property rights to market vape products to adult smokers. Our products are only marketed to adult smokers and recreational nicotine users. Our packaging does not appeal to youth, nor do our vape products share brands with our combustibles portfolio.

Making all vape products available in the same, easy-to-copy plain packaging would lead to a significant increase in counterfeit products, undermining the considerable joint work being undertaken by the tobacco industry and customs authorities worldwide to combat illicit trade, and undermining Trading Standards and adult consumers ability to be confident that products are compliant, and meeting high quality standards.

[What evidence is there about the appeal of vape flavours to children?](#)

IMB believes that the availability of flavours is an important factor to adult smokers looking to transition away from combustible tobacco products, and therefore should not be disproportionately restricted. Research shows that most adult consumers who have moved from combustible to non-

combustible forms of nicotine have used flavoured products in their transition journey. Literature is consistent in concluding that flavours, alongside other factors such as design and price, are identified as an important factor in a smoker or vaper's decision to use vape products.¹⁴ However, we recognise that some flavour names and descriptors used by some irresponsible manufacturers may overly appeal to those under 18. This non-compliant practice undermines the harm reduction potential of vape products.

IMB would support a targeted approach to address 'inappropriate' products, rather than poorly targeted and counterproductive bans on flavours.

We ask that the work of responsible manufacturers with fit-for-purpose internal controls be recognised by considering a differentiated regulatory regime for those with appropriate standards for youth access prevention in place.

We urge government to undertake a regulatory review of flavour names and descriptors to ensure that naming conventions do not overly appeal to those under 18. As the relevant enforcement authority, we would support further MHRA measures to tackle non-compliance. We encourage the establishment of a new MHRA pre-notification process focussing on flavour naming conventions, and believe that the MHRA should include a due diligence check at pre-notification level to identify child-appealing product and packaging characteristics and flavour names and ensure compliance with strengthened regulation.

A study published in the *International Journal of Environmental Research and Public Health* found that the availability of different flavours was reported to be the most attractive product characteristic of e-cigarettes by all user groups (including adult and youth vape users).¹⁵

A survey by Action on Smoking and Health (**ASH**) in 2022 found that flavoured e-cigarettes were the second most common reason for ex-smokers to try vaping, after the desire to quit smoking. The survey found that 63% of adult ex-smokers reported using menthol or fruit flavours.¹⁶ This data shows the importance of retaining the availability of a range of flavours in adult smokers' decisions to transition away from smoking. These studies show that the availability of a range of flavours is an important factor for those adult smokers looking to quit using vape. Flavours should be protected to ensure ex-smokers do not revert to tobacco use.

Research also shows that flavours may also be more effective in supporting ex-smokers to quit tobacco use permanently. Ex-smokers who used flavoured vape products were more likely to have successfully quit smoking than those who used tobacco-flavoured vapes. A study published in the journal *Nicotine and Tobacco Research* in March 2023 found that the use of flavoured e-cigarettes was associated with a greater likelihood of successful smoking quit attempts¹⁷. The study found that "the rate of quit success significantly differed by e-cigarette use and flavour: 27.2% of 'current users of flavoured e-cigarettes' succeeded in quitting smoking, while 20.6% and 16.1% of 'current users of non-flavoured or exclusive tobacco-flavoured' and 'non-e-cigarette users' succeeded in quitting."¹⁸

¹⁴ <https://www.mdpi.com/1660-4601/15/6/1190>

¹⁵ <https://www.mdpi.com/1660-4601/16/23/4661#B24-ijerph-16-04661>

¹⁶ <https://ash.org.uk/uploads/Use-of-e-cigarettes-vapes-among-adults-in-Great-Britain-2022.pdf?v=1661865959>

¹⁷ <https://academic.oup.com/ntr/article/25/3/541/6761959>

¹⁸ <https://academic.oup.com/ntr/article/25/3/541/6761959>

What evidence is there of effective measures to limit the appeal of vapes to children?

To limit the appeal of vape products to under 18s, features which may overly appeal to under 18s must be restricted, and products must be made inaccessible to under 18s. IMB proposes several measures which would likely limit youth access and appeal of vape products to under 18s.

Effectively operate age verification

Retailers are required by law to operate age verification systems to prevent the sale of vape products to anyone under 18. However, some retailers may not enforce these regulations effectively. Online retailers must also have stringent age verification processes in place to prevent under-18s from accessing vape products.

Introduce a retailer licensing or registration scheme

A retailer licensing or registration scheme would likely improve discipline across the retail environment, help prevent youth access, and improve product compliance at the retail level. Where youth access is being fuelled by irresponsible retailer actions, a licensing or registration regime coupled with appropriate penalties (e.g. fines) may justify the financial and administrative costs imposed by such a scheme. A licensing or registration scheme will also deter retailers from selling illicit or non-compliant vapes. If retailers are found to be selling illicit vapes, they should be removed from the register and prevented from selling vape products in the future.

Since 2017, retail stores in Scotland wishing to sell tobacco or nicotine vapour products must register. Registration is centralised, free, and was introduced to give Trading Standards further powers to tackle youth access and the illicit trade. The Scottish Government implemented a registration scheme rather than a licensing scheme due to the increased burden on local authorities and retailers required by licensing. This model could be used as the basis for a similar roll out in England.

Enforcement of existing regulations and support for Trading Standards

IMB calls on government to increase support to local authorities to effectively tackle key threats to the vape category. To protect the integrity of the vape category and build confidence, effective enforcement of existing regulations is essential to ensure compliance.

Trading Standards operates as the relevant enforcement authority for any vape product, packaging and promotion non-compliance, youth access issues, and illicit trade in the UK. However, local Trading Standards offices are under-staffed and under-resourced leaving an enforcement gap.

Review flavour naming conventions to limit youth appeal

While the importance of the availability of a range of flavours to adult smokers is discussed throughout this submission, we would support a review of flavour names and descriptor regulations to ensure that naming conventions do not overly appeal to those under 18.

Strengthen advertising and promotion regulation for online and social media

Advertising and promotion of vape products are tightly regulated in the UK. However, some irresponsible online and social media marketing can still reach young people. We would support government in strengthening these online and social media regulations.

Raise quality and safety standards through robust regulation

IMB proposes that increased product quality and safety standards must be included in any future UK regulations and a more robust compliance process ahead of product launch. IMB recognises the importance of product standards and support strengthened regulation around product quality and

safety requirements for vape products. Only if our Next Generation Products are of the highest quality with regards to design, manufacture, distribution, ingredients, and electronic and software functioning can they provide adult smokers with a real alternative to combustible tobacco.

The lack of clear and consistent regulation around product quality, manufacturing, and safety standards of reduced harm alternatives, particularly vape products acts as another barrier to harm reduction. We believe that strengthening product safety regulations will be significant in addressing the lack of consumer confidence and widespread misinformation around the use of vape products and encouraging the transition from combustible tobacco.

We urge government to undertake a regulatory review of flavour names and descriptors to ensure that naming conventions do not overly appeal to those under 18. As the relevant enforcement authority, we would support further MHRA measures to tackle non-compliance. We encourage the establishment of a new MHRA pre-notification process focussing on flavour naming conventions and believe that the MHRA should include a due diligence check at pre-notification level to identify child-appelling product and packaging characteristics and flavour names and ensure compliance with strengthened regulation.

Marketing and promotion of vape products

Do you have any evidence to provide on the marketing and promotion of vape products?

- Yes

What evidence is there that vapes are being targeted specifically at children?

Under the Tobacco and Related Products Regulations 2016 (**TRPR**), vape product packaging must not feature any suggestion that the product:

- (i) “is less harmful than other electronic cigarettes or refill containers,
- (ii) has vitalising, energising, healing, rejuvenating, natural or organic properties, or
- (iii) has other health or lifestyle benefits”

or contain any feature that:

- (iv) “refers to taste, smell or other additives (except flavourings) or the absence of any such thing;
- (v) resembles a food or a cosmetic product; or
- (vi) suggests that a particular electronic cigarette or refill container has improved biodegradability or other environmental advantages”

These provisions were introduced, in part, to discourage irresponsible manufacturers from using packaging and design features which may specifically target or increase the appeal of vape products to those under 18 and non-smokers. However, it is clear that many products currently available are not necessarily compliant with relevant regulations, including those cited above.

IMB believes that if these regulations were strictly enforced so that every vape product available to purchase was compliant with these provisions, that youth appeal of vape products may be significantly

reduced. As discussed throughout this submission, more needs to be done to ensure effective enforcement of existing regulations, as this will have a positive impact on youth access.

Further to effective enforcement of existing regulations aimed at limiting the appeal and access of vape products to under 18s and non-smokers and vapers, IMB believes that a regulatory review would give government the opportunity to introduce a range of new regulatory measures which would limit the ability of some manufacturers to use features on vape products which may be targeted specifically at those under 18. We believe that these proposals would positively affect youth appeal and access to vape products, while ensuring adult smokers and vapers are well informed and confident in their decision to vape and the products they choose.

Regulatory measures which we believe would be effective include:

Review flavour naming conventions to limit youth appeal

While the importance of the availability of a range of flavours to adult smokers is discussed throughout this submission, we would support a review of flavour names and descriptor regulations to ensure that naming conventions do not overly appeal to those under 18.

Strengthen advertising and promotion regulations for online and social media

Advertising and promotion of vape products are tightly regulated in the UK. However, some irresponsible online and social media marketing can still reach young people. We would support government in strengthening these online social media regulations.

Raise quality and safety standards through robust regulation

IMB proposes that increased product quality and safety standards must be included in forthcoming UK regulation and a more robust compliance process ahead of product launch. IMB recognises the importance of product standards and will continue direct engagement with regulators to support strengthened regulation around product quality and safety requirements for vape products. Only if our Next Generation Products are of the highest quality with regards to design, manufacture, distribution, ingredients, and electronic and software functioning can they provide adult smokers with a real alternative to combustible tobacco.

The lack of clear and consistent regulation around product quality, manufacturing and safety standards of reduced harm alternatives, particularly vape products acts as another barrier to harm reduction. We believe that strengthening product safety regulations will be significant in addressing the lack of consumer confidence and widespread misinformation around the use of vape products and encouraging the transition from combustible tobacco.

We urge government to undertake a regulatory review of flavour names and descriptors to ensure that naming conventions do not overly appeal to those under 18. As the relevant enforcement authority, we would support further MHRA measures to tackle non-compliance. We encourage the establishment of a new MHRA pre-notification process focussing on flavour naming conventions and believe that the MHRA should include a due diligence check at pre-notification level to identify child-appealing product and packaging characteristics and flavour names and ensure compliance with strengthened regulation.

What evidence is there of effective measures to limit the marketing and or promotion of vapes to children?

IMB takes extensive measures beyond our regulatory responsibilities in the UK to limit the marketing and promotion of vape products to those under 18. To limit youth appeal and access, all IMB products, product packaging, and advertising adheres to our stringent internal International Marketing Standards which state:

“We shall not market our products to youth;

We will only direct our products’ marketing activities towards adults;

We will design the packaging of our products in a manner so that the content clearly does not appeal to youth”

We believe that responsible, educational, and scientifically substantiated information on vape products and their relative harm is an important and effective measure in ensuring existing adult smokers feel confident if and when they choose to quit tobacco using vape products. We do not support non-compliant marketing and promotion of vape products targeted at those under 18.

IMB believes that current advertising regulations under Part 7 Tobacco and Related Products Regulations (TRPR) 2016 and Rule 22 of the CAP code limit the number of adult smokers looking to reduce or replace combustible tobacco use using vape products, as they restrict/prevent manufacturers from combatting misinformation. We believe decoupling vape and combustible tobacco regulations and permitting regulated switching messages would present a significant opportunity to encourage more adult smokers to confidently transition.¹⁹²⁰ This proposal is supported by PHE evidence, and their recommendation that ‘a greater emphasis needs to be placed on how to best communicate evidence of relative harm to smokers so that they can consider all the options available to them to quit smoking’.²¹

Further, we believe that advertising restrictions currently applied to vape products should be reviewed. Many regulators and public health bodies have concluded that vape products are less harmful alternatives to smoking, and therefore have a positive role to play in reducing smoking-related disease. Regulating vape products, and several forms of advertising, in a similar way to combustible tobacco products conflates the two categories and does not recognise the harm reduction potential of the vape category and is not in the interest of the government’s public health objectives. Effective regulation should support vape products being made accessible to more adult smokers, encouraging and supporting them in their transition to less harmful products.

IMB believes that government, in line with recommendations from major public health bodies, as well as the UK House of Commons Science and Technology Committee²², should review and change current marketing and advertising laws governing vape products to enable more widespread education and understanding of these products among adult smokers.

Adult smokers should have access to informative, educational, and scientifically substantiated information about the alternative products available to them. Regulated advertising and responsible

¹⁹ <https://pubmed.ncbi.nlm.nih.gov/31753541/>

²⁰ <https://openresearch.lsbu.ac.uk/item/86955>

²¹ <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021/vaping-in-england-2021-evidence-update-summary>

²² <https://committees.parliament.uk/committee/135/science-and-technology-committee-commons/news/100841/government-missing-opportunity-with-ecigarettes/>

marketing help in this regard. PHE reported in 2022 that only 34% adult smokers correctly believed that vaping was less harmful than smoking.²³ It is likely that without rectifying this misperception, the government will not reach its 2030 Smokefree England ambition. IMB believes regulated advertising and responsible marketing, as detailed above, could address this challenge.

Allowing pre-approved health messaging would ensure adult smokers are confident in their decision to use vape products and would help to ensure those under 18 are fully aware of the health risks associated with vaping for non-smokers, as well as age of sale regulation.

The role of social media

Do you have any evidence to provide on the role of social media?

- Yes

What evidence is there of effective measures to ensure vapes are not targeted to children through social media platforms?

In the UK, the Advertising Standards Authority (**ASA**) is the enforcement agency responsible for the marketing and promotion of vape products. The ASA enforces the Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (**CAP**) Code, including rule 22 relating to e-cigarettes.

IMB welcomed a recent ASA ruling which addressed the non-compliant advertising of Elf bar branded vape products on social media platform TikTok. Under the CAP Code, marketing communications with the direct or indirect effect of promoting nicotine-containing e-cigarettes and their components which are not licensed as medicines are not permitted in online and some other forms of electronic media. The ASA found that as the video was a paid-for advertisement, prominently featuring Elf bar rechargeable disposable pods, posted by an 'influencer' account, that it constituted promotional activity and was therefore in breach rule 22.12 of the CAP Code relating to e-cigarettes. On youth access concerns, the ASA again concluded that as it was possible for TikTok content to be pushed to consumers without having opted-in to receive the message it contained, the video was in breach of rule 22.12.

Rule 22 of the CAP Code applies to the advertising and promotion online of e-cigarettes, including on social media platforms. On some social media platforms, including Facebook, it is possible for public pages to age-gate their profile and content. We believe this age-gating practice is an effective measure of age verification to ensure vape brand pages are not easily accessible by those under 18 and those not searching for vape content. However, on other social media platforms, including Twitter and TikTok, it is not possible to age-gate content. This is due to the algorithms used by these platforms, which have the ability to push content to any user regardless of age or interest. On these platforms, it is more challenging to prevent vape product content being viewed by those under 18.

While not directly referenced in the recent ASA ruling, it is clear that due to the public nature of TikTok content, it is possible that users under 18 are able to view and interact with content involving vape products. As a responsible manufacturer, IMB ensures that it only posts content about its vape products on UK social media platforms where this can be achieved in a responsible manner, whether by ensuring the UK social media platform allows age-gating, or by ensuring that content cannot be distributed to users beyond those who have signed up to follow the account and are over 18. It is likely

²³ <https://www.gov.uk/government/publications/nicotine-vaping-in-england-2022-evidence-update/nicotine-vaping-in-england-2022-evidence-update-main-findings#harm-perceptions>

that as a platform, TikTok is popular amongst a younger demographic of users. For this reason, as a responsible manufacturer, IMB does not operate Twitter or TikTok accounts for its vape brands in the UK or participate in any third-party advertising or promotion on these platforms.

Effective educational approaches to prevent child use of vapes

Do you have any evidence to provide on effective educational approaches?

- Yes

What evidence is there of children receiving misinformation about vapes?

In adherence with the stringent IMB internal International Marking Standards, we do not promote or market our vape products to those under 18, non-smokers or non-vapers. Our products' advertising and promotional marketing activities are directed to, and appeal to, adults only. We strongly support efforts to prevent both youth access and initiation to our products.

However, there is evidence in the UK that a significant percentage of adult smokers and under 18s are misinformed about the relative harm of vape products compared to traditional tobacco products.

In July 2022, ASH reported in their annual survey of under 18s that:

*'The misperception that e-cigarettes are more than or equally harmful as tobacco cigarettes rose from 2013 onwards and in 2022 was 40.9%, the same as in 2020.'*²⁴

and that:

*'Only 42.1% of 11–17-year-olds in 2022 believed that e-cigarettes were less harmful than cigarettes.'*²⁵

IMB believes that there are several regulatory measures which, if implemented and effectively enforced, may act to correct misinformation. These measures include:

Decoupling tobacco and vape regulations

Currently in the UK, combustible tobacco and vape product legislation fall under the same regulatory framework. This has resulted in confusion, with many adult smokers conflating the two categories, without realising that vaping is very different, and much less harmful than smoking combustible tobacco. A separation of vape and combustible tobacco regulations must be a central plank of future government strategy– the current figures regarding those who believe vape to be just as or more harmful than cigarettes are concerning and will hinder the government's Smokefree 2030 ambition.

Combat misinformation about the relative harm of vape products

²⁴ <https://ash.org.uk/uploads/Use-of-e-cigarettes-among-young-people-in-Great-Britain-2022.pdf?v=1661866458>

²⁵ <https://ash.org.uk/uploads/Use-of-e-cigarettes-among-young-people-in-Great-Britain-2022.pdf?v=1661866458>

IMB believes that government, in line with recommendations from major public health bodies, as well as the UK House of Commons Science and Technology Committee²⁶, should review and change current marketing and advertising laws governing vape products to enable more widespread education and understanding of these products. Improving accessibility of educational and regulated information on vape products will combat misinformation by allowing relative harms to be communicated clearly to existing adult smokers, increasing transition rates away from combustible tobacco.

The impact of vaping products on the environment

Do you have any evidence of the environmental impact of disposable vapes?

- Yes

What evidence is there of effective measures to reduce the environmental impact of disposable vapes?

IMB has made a clear commitment to reduce our environmental impact by minimising waste and water use, improving energy efficiency, and reducing our carbon footprint. We are working towards meeting several ambitious aims, including:

- Send zero waste to landfill in our operations by 2025;
- Make 100% of our packaging reusable, recyclable or compostable by 2025;
- Reduce waste generated within our operations by 20% by 2030

IMB recognises that the inherent design of disposable vape products presents a sustainability challenge. However, we ensure full compliance with existing environmental regulations and communicate responsible disposal guidance to our consumers. We ensure consumer awareness regarding the proper and safe disposal via guidance on local blu websites.

Disposable vape devices are an important additional alternative offering for those adult smokers looking to transition away from combustible tobacco products, and we seek to offer adult consumers a choice of potentially reduced risk products. Disposable vapour products form part of that offering. It is important that consumer choice is protected, to prevent these ex-smokers transitioning back to combustible tobacco use.

The vaping industry is voluntarily taking significant and proactive steps to reduce the environmental impact of their products including disposables. IMB- owned vape brand blu is committed to ensuring that our vape products are disposed of by consumers in a responsible manner, limiting the potential for any negative impact of vape products on the environment. Our approach to minimising waste has largely focused on improving processes within our manufacturing locations. We seek to minimise the waste and waste to landfill associated with our products, packaging, and production process through a combined approach of reduce, reuse, and recycle.

In the UK, producers and retailers of Electrical and Electronic Equipment (**EEE**), including all vape products, are obligated under the European Union's Waste Electrical and Electronic Equipment (**WEEE**) Directive, requiring producers to offer free collection and disposal or recycling of electronic

²⁶ <https://committees.parliament.uk/committee/135/science-and-technology-committee-commons/news/100841/government-missing-opportunity-with-ecigarettes/>

waste. Consumers of blu products can access our vape take back scheme on the blu website²⁷, and return their used devices, bottles and pods to us where they will be safely and responsibly disposed of, free of charge. blu aims to use this scheme to educate our consumers by limiting the inappropriate disposal of vape pods and devices to create a more sustainable category.

Understanding the vape market

Do you have any evidence of vaping's wider economic impact?

- Yes

What evidence is there of the impact on demand for vapes from children and adults if the price changes?

Retaining a noticeable price differential between combustible tobacco products and vape products is important to ensure vape products remain an affordable reduced risk alternative to smoking for existing adult smokers. The lower price of vape products, when compared to tobacco products, offers a significant annual financial saving to any existing adult smoker.

In UK consumer research undertaken by IMB, price is consistently identified by existing adult smokers as a significant driver in their ability to initially transition away from combustible tobacco using vape products, and to make the transition permanent.

It is important to note that there are many factors that may contribute to the appeal of vape products to youth, including flavour variety, ease of use, and social influence. While price may be a factor for some, it is unlikely to be the sole driver of vape use among young people. Evidence supports this; a recent report '*Smoking, Drinking and Drug Use among Young People in England, 2021*' published by the Lifestyles Team, NHS Digital, surveyed pupils aged 11-15 who identified as regular users of e-cigarettes, and found that 61% said they were given e-cigarettes from others, including friends.²⁸ This is likely the most popular source of vape products for many under 18s as no age verification system is applied.

As evidence shows that many under 18s are given vape products, rather than purchasing them from retailers or online, a significant price increase would likely not affect youth vaping rates as effectively as other measures.

We note that there have been calls for the introduction of an excise rate on disposables vape products in the UK in recent months. Should the government wish to consider the introduction of an excise category to reduce youth appeal, we would support a low rate of duty to reflect the harm reduction potential of vape products, and to ensure vape products remain affordable to adult smokers wishing to transition. We propose the excise rate is applied to all liquids for vaping, regardless of nicotine content or strength, on a "per millilitre" basis. Vape products should be classified and defined separately to cigarettes, hand rolling tobacco, and heated tobacco for excise purposes. As vape products are consumed through the process of inhalation but critically do not contain tobacco, they should therefore be excised at a level below that of heated tobacco products.

²⁷ <https://www.blu.com/en/GB/blu-product-disposal>

²⁸ <https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2021/part-4-electronic-cigarette-use-vaping>

What evidence is there that indicates how likely users are to switch from one product to another?

Our research shows that ex-smokers who choose to use vape products in an attempt to quit may trial several different vape products as part of their 'transition journey'. Many adult smokers, for example, choose a high nicotine strength vape product initially. These products more closely imitate the nicotine delivery of a combustible cigarette and may provide a more satisfying experience. Ex-smokers may initially choose familiar flavours including tobacco and menthol, although IMB evidence demonstrates smokers are increasingly transitioning directly to vape products using non-tobacco flavours, including fruit flavours. Disposable vape products offer a convenient method of switching, as they do not require any form of assembly or charging before use. However, many ex-smokers also opt for pod systems which offer a more long-term cost-effective option and require very low maintenance.

As ex-smokers continue their transition journey, they may begin to choose lower nicotine strengths and explore a wider range of flavour options. As discussed in this submission, a significant proportion of ex-smokers identify the availability of a range of flavours as a key reason that they do not revert to combustible tobacco.

What evidence is there on the average amount of liquid in disposable products and does this differ for flavoured, non-flavoured or non-nicotine types?

Section 36 of The Tobacco and Related Products Regulations (**TRPR**) 2016 states that:

"Nicotine-containing liquid which is presented for retail sale must be in —

- (i) a dedicated refill container in a volume not exceeding 10 millilitres; or
- (ii) a disposable electronic cigarette, a single use cartridge, or a tank, in a volume not exceeding 2 millilitres"

IMB believes that all products presented for sale in the UK must be compliant with liquid and tank capacity restrictions. We were disappointed to see that the UK market leader in disposable vape products was recently subject to an MHRA and Trading Standards investigation due to the suspected over-filling of disposable tanks, in breach of the regulation cited above.

We welcomed the enforcement action taken by the MHRA and Trading Standards, to ensure a fair and level playing field for all manufacturers and retailers in the category.

We believe that the MHRA should introduce a strengthened pre-notification testing process which would ensure all products are fully compliant with product and packaging regulation ahead of being placed on the market. We urge MHRA to include a due diligence check at pre-notification level to identify child-appealing product and packaging characteristics and flavour names and ensure compliance with strengthened regulation.