

Rt Hon. Victoria Atkins  
Secretary of State for Health and Social Care  
Department of Health and Social Care  
39 Victoria Street  
London  
SW1H 0EU

Department of Health and Social Care FAO:  
Sir Chris Wormald KCB (Permanent Secretary for the Department of Health)  
39 Victoria Street  
London  
SW1H 0EU  
United Kingdom

29 February 2024

[REDACTED]

Dear Minister/Sir:

**Government Response to Consultation on “Creating a smokefree generation and tackling youth vaping” – Consideration of Tobacco Industry Consultation Responses**

This letter is written on behalf of British American Tobacco UK Limited (**BAT**), which is part of the BAT group of companies and whose ultimate parent company is listed on the London Stock Exchange and is a member of the FTSE 10, and Imperial Tobacco Limited, which is part of the Imperial Brands group of companies and whose ultimate parent company is also listed on the London Stock Exchange and is a member of the FTSE 100.

We are writing in relation to the Government’s statement in its response to the consultation “Creating a smokefree generation and tackling youth vaping” (**Consultation**), published on 29 January 2024 and updated on 12 February 2024 (**Consultation Response**), that it has not considered the consultation responses submitted by respondents with disclosed links to the tobacco industry.

Specifically, the Government states in the Consultation Response that: “*[i]n line with the requirements of article 5.3 of the FCTC, throughout this consultation response we summarise the views of respondents with disclosed links to the tobacco industry. But we have not considered these views when determining our policy response due to the vested interests of the tobacco industry (emphasis added).*”

We are deeply concerned by this stated approach, both in respect of this Consultation and as a potential approach of the Government to future consultations on measures that impact the tobacco industry. As explained below, nothing in Article 5.3 of the FCTC requires the Government to exclude evidence put forward by tobacco companies in an open consultation process. The exclusion of consideration of evidence submitted by stakeholders with links to the tobacco industry is a breach of the principles of procedural fairness, as well as the Government’s own guidance.

The signatories to this letter made substantial and important contributions to the Consultation, including by submitting expert analyses and assessments. The responses accepted the Government’s policy objectives and engaged constructively in explaining the pros and cons of the various options proposed by the Government to achieve them. We are disappointed with several of the conclusions reached and, whilst our analysis of the Consultation Response is ongoing, we feel that had our responses been taken into account, a better regulatory position would have been arrived at.

### **Article 5.3 does not require representations by the tobacco industry to be discounted.**

Article 5.3 states:

*“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”*

Accordingly, Article 5.3 requires Parties to “protect” public health policies relating to tobacco control from improper or undue commercial interference. It does not prohibit Government interaction with the tobacco industry, nor exclude tobacco industry stakeholders from fully participating in an open, public consultation process. The purpose of Article 5.3 is to ensure that any interactions with commercial or other vested interests of the tobacco industry are transparent and accountable. We support this purpose, which is achieved through the requirement in the Consultation for respondents to declare any interest with the tobacco industry.

Moreover, Article 5.3 does not override national law, which includes the principles of procedural fairness and the requirements of a fair and lawful consultation. The refusal to consider the responses and evidence submitted by stakeholders with links to the tobacco industry – despite conducting an open public consultation – is contrary to these principles.

The failure to consider the responses and evidence submitted by stakeholders with links to the tobacco industry when determining the Government’s policy on tobacco products and nicotine products, also contradicts the Government’s own [‘Guidance for government engagement with the tobacco industry’ \(Guidance\)](#) which was updated in June 2023. For example, the Guidance states that *“When undertaking a consultation on tobacco policy, respondents should be asked to declare any direct or indirect links to, or funding received from, the tobacco industry.”* The Guidance also gives the following example scenario and recommended action to take:

*“Example 7*

*As part of a consultation on regulatory changes, responses are received from the tobacco industry.*

*Action to take: as part of the process for submitting their responses, respondents will have already been asked to declare links to or funding received from the tobacco industry.”*

The Guidance does not advise or recommend that views of the companies that comprise the tobacco industry should not be considered in the Government’s determination of its policy response.

### **The FCTC does not apply to a number of alternative products, including e-cigarettes and tobacco-free nicotine products.**

It is important to also note that the FCTC only applies to “*tobacco products*” which are defined in the FCTC as those products made from tobacco and prepared for “*smoking, sucking, chewing or snuffing*”. A number of products that were at issue in the Consultation, including e-cigarettes, cigarette papers, and oral nicotine pouches, are clearly not covered by this definition. Article 5.3 of the FCTC is therefore irrelevant to these products and cannot impose any limitations on the interaction with the industry regarding the parts of the Consultation related to these products.

### **Failure to consider all relevant evidence undermines the objectives of the Consultation.**

We believe that members of the tobacco industry have a constructive and expert role to play in the development of effective regulation. They also have a legitimate interest, given that they are engaged in lawful business enterprise.

Full stakeholder participation: (a) brings the expertise, perspective and ideas of all those affected by the problem into the policy-making process, including the consideration of alternative solutions;

(b) promotes balance, ensuring that the views of one group are not given disproportionate weight; and (c) ensures that regulators gain a practical understanding of how a measure will operate once implemented and are fully apprised of the risks of unintended consequences that could arise from policy determinations under consideration.

**Next Steps**

We invite you to take into consideration the views of those respondents with disclosed links to the tobacco industry in determining the Government’s policy response to the Consultation. It is open to the Government, once it has considered those views, to reject or disagree with some or all of them if it has a legitimate basis for doing so. However, it is our view that expressly refusing to consider responses submitted by respondents with disclosed links to the tobacco industry in their entirety is unlawful. We also believe that this approach will lead to less effective regulation. We therefore ask you to confirm that the responses will be fully and carefully considered, and that the Government will therefore withdraw and reconsider its Consultation Response.

We look forward to hearing from you as soon as possible and no later than close of business on 7 March 2024. Please send your response to [REDACTED] and [REDACTED]

In the circumstances, all our rights are reserved.

Yours faithfully

[REDACTED]

[REDACTED]

**British American Tobacco UK Limited**

[REDACTED]

[REDACTED]

**Imperial Tobacco Limited**