



Consultations Coordinator
Department of Health
3E48, Quarry House
Leeds
LS2 7UE

Email: consultations.co-ordinator@dh.gsi.gov.uk

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Consultation on the standardised packaging of tobacco products

On 16 April 2012, the Department of Health sought responses from stakeholders to specific questions in respect of its consultation on standardised (also known as 'plain') packaging for tobacco products.

A copy of the consultation response which JTI has submitted, as part of this process, is enclosed. In it JTI explains why it is categorically opposed to plain packaging and supports consultation Option 1, which would retain the existing regime without adding more to the already stringent regulation in the UK. The enclosed copy of its response explains JTI's view that there is no evidence that plain packaging will work, the consultation process considering this measure is flawed, plain packaging will have extremely serious unintended consequences and alternative, effective and proportionate solutions to legitimate public health goals are available.

JTI ensures that its comments on potential regulatory measures are always carefully considered and evidence-based. Therefore, JTI's consultation response was accompanied by the expert reports of Professor Laurence Steinberg, Professors Ravi Dhar and Stephen Nowlis, Professors Alan Zimmerman and Peggy Chaudhry, Dr Andrew Lilico, Professor Martin Cave, Professor Daniel Gervais, Professor Timothy M. Devinney, and Dr Warren Keegan. Each of these reports will shortly be available at <http://jti.com/how-we-do-business/resources/>.

As mentioned above, one of JTI's key objections to the Department of Health's proposal to introduce a plain packaging measure stems from the serious flaws in the consultation process itself. Further to paragraph 13.1 of the consultation document, JTI would like to draw your attention to the various shortcomings it has identified relating specifically to the consultation process. These are set out in greater detail in JTI's response document, but they include:

- (a) internal Department of Health documents show it has actively sought evidence to support its preferred policy. This reinforces JTI's concern that the Department of Health may have already decided to introduce plain packaging, despite the lack of evidence (see paragraphs 2.12 to 2.19 of JTI's response for further detail);

- (b) the Department of Health assumes that packaging changes smoking behaviour, particularly by minors. This is not based on, or consistent with, a credible and scientifically rigorous understanding of smoking behaviour, as explained in expert reports accompanying JTI's consultation response. By ignoring this and what the Government has previously said about why people smoke in the current consultation, the Department of Health wrongly assumes that plain packaging will change smoking behaviour (see paragraphs 2.16 to 2.19 of JTI's response for further detail);
- (c) the consultation's reliance on a flawed and incomplete evidence base, which falls short of the standards required by the very Better Regulation principles the Government is committed to. The objectives of the Department of Health seek to change smoking behaviour but it has no such evidence to rely on. The 'evidence' it does have – including a review which is called systematic but which is not – is unreliable and unconvincing. The individual consumer surveys underlying the 'systematic' review test what people say they will do rather than what they actually do and are unreliable. Grouping them together does not make them reliable. The materials relied on are so weak that the Department of Health's Impact Assessment can only say that there are "plausible scenarios" under which plain packaging "could be effective". This falls well short of what the Department of Health is required to show – there is no "robust and compelling" case that plain packaging will work (see paragraphs 2.7 to 2.19 of JTI's response for further detail);
- (d) lacking evidence on smoking behaviour, the Department of Health tries to justify plain packaging using the "best guess" and "subjective views" of its preferred panel of individuals to speculate on the impact of plain packaging. This is not a reliable replacement for evidence on what the impact of plain packaging on smoking behaviour would be. The yet-to-be established 'expert panel' side-steps Better Regulation requirements. Panel membership appears to have been designed to reach a pre-determined result. This process, which the Department of Health failed to complete before consulting, in any event lacks accountability and transparency (see paragraph 2.18 of JTI's response for further detail);
- (e) unable to show an impact on smoking behaviour, the Department of Health has set its policy goals in such a way as to try and achieve the desired policy. This abuses Better Regulation and cannot hide the fundamental lack of evidence to justify plain packaging (see paragraphs 2.20 to 2.25 of JTI's response for further detail);
- (f) the Department of Health has decided to press ahead with the consultation despite the rating of its Impact Assessment by the Regulatory Policy Committee as 'Amber', indicating "*areas of concern which should be corrected*" (see paragraph 2.47 of JTI's response for further detail);

- (g) the failure of the consultation and its accompanying Impact Assessment to properly evaluate the effectiveness of existing regulation, neglecting the measures already taken in recent years to achieve the same or similar policy objectives (see paragraphs 2.26 to 2.34 of JTI's response for further detail);
- (h) the failure of the Impact Assessment to consider whether there are more proportionate alternatives to plain packaging, and most notably the failure to consider either Options 1 or 3 presented by the consultation itself. The consultation does not try to calculate the benefits of avoiding further regulatory burdens (see paragraphs 2.35 to 2.44 of JTI's response for further detail);
- (i) the inadequate consideration in the Impact Assessment of unintended consequences, such as the impact plain packaging would have on the illicit trade in tobacco products, price and competition, innovation, brand equity and intellectual property (see paragraphs 2.45 to 2.47 of JTI's response for further detail);
- (j) the lack of clarity as to whether consultation with other Government stakeholders on whom plain packaging would have a detrimental impact has taken place, for example Her Majesty's Revenue and Customs, the Treasury, the Department for Business, Innovation and Skills, the UK Intellectual Property Office and the Office of Fair Trade, to name but a few (see paragraph 2.48 of JTI's response for further detail); and
- (k) the inappropriate timing of the consultation, when similar measures are being considered by the EU (see paragraphs 2.49 to 2.51 of JTI's response for further detail).

JTI supports legislative and regulatory measures on tobacco control which meet internationally and nationally accepted principles of Better Regulation. However, JTI will question, and where necessary challenge, regulation that is flawed, unreasonable, disproportionate or without evidential foundation. The Government has made clear that it is committed to Better Regulation principles, and that regulation should only be introduced as a last resort. The Department of Health's consultation and accompanying Impact Assessment manifestly fail to satisfy Better Regulation principles (these are discussed in greater detail in paragraphs 2.2 to 2.6 of JTI's response), and are simply insufficient to justify plain packaging. In light of these shortcomings it is unsurprising that Mark Prisk MP, Minister for Business and Enterprise, admitted recently that should the Government wish to proceed with a plain packaging measure, "*the next stage would be to develop detailed proposals. These would then need to be put out for public consultation...*". The need for a further consultation, at even greater expense to the UK taxpayer, illustrates the inadequacy of the current one.

In line with Criterion 7.3 of the Government's Code of Practice on Consultation, JTI expects the serious flaws it has identified in the enclosed document about the consultation process to be added to any other concerns identified by other stakeholders and reported to the Secretary of State for Health by you, in your capacity as Consultations Coordinator. We encourage you to also make public the shortcomings identified and for them to be shared with the departments and agencies identified at paragraph 2.48 of JTI's response.

Yours sincerely



Martin Southgate

Managing Director, JTI UK

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