



Controlling Tobacco Industry Interference in Tobacco Control Policy in Jamaica





Background

The new comprehensive Tobacco Control Bill tabled in December 2020 contains several measures aimed at preventing tobacco industry interference in health policy. Such interference has long been recognised as the key cause of weak laws and regulation governing the sale and use of tobacco.

In this brief we summarise the findings of research into the government's record of regulating industry interference in health policy. Previous attempts to control industry influence in health policy have failed. We also look in depth at how the Bill stands to change things and where it can be strengthened.

Specifically, we examine the government's record in implementing 26 recommendations outlined in the Guidelines for Implementation to Article 5.3 of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), to which Jamaica is a signatory. These recommendations aim to protect health policy-making from tobacco industry influence which are vital to ensuring strong health measures that reduce tobacco consumption and related diseases.

Our findings underline the importance of the provisions in the current Tobacco Control Bill aimed at combating industry interference in health policy-making and highlight the need to strengthen them.

We propose key improvements to the Bill which will strengthen Jamaica's efforts to stop tobacco industry interference in health policy and ultimately promote health. These proposals are outlined in detail in Box 1 (p.6) and Boxes 2-5 at the end of the brief.



Key Findings

Measures aimed at controlling industry interference in health policy in the Tobacco Control Bill are vital to guaranteeing strong, evidence-based health policies. Historically, government efforts to implement Article 5.3 and its Guidelines for Implementation have been poor. On a scale of 0-26, formal compliance with the Guidelines is currently 4.8 or 18%.

The Tobacco Control Bill represents a big improvement on Article 5.3 implementation, but needs to be strengthened. The Tobacco Control Bill will increase the government's compliance to 18 or 69%. Its provisions on individual and institutional conflicts of interest are particularly strong. Modest, but vitally important, changes to the Bill can increase compliance significantly to 20 or 77% (Boxes 1-5).

Key Guideline Recommendations have not yet been acted on. Presently, the Government has failed to act on several key Guideline Recommendations which are critical to effective health policy in Jamaica.

These include those aimed at: direct lobbying; restricting the “revolving door” between politics and the tobacco industry;

banning tobacco industry “corporate social responsibility” outright; and requiring tobacco companies to disclose evidence of their efforts to influence Jamaican politics.

This last omission makes it easier for the industry to use lower-visibility techniques, including the use of third parties, to influence policy.

The Tobacco Control Bill contains several loopholes, which will allow the industry to continue to interfere in health-policy. In its current form, the Bill seeks to restrict and make transparent many of the techniques used by the tobacco industry to influence policy.

However, as currently drafted, it will not effectively limit tobacco industry lobbying across all government departments and public agencies.

Further, not all communications between the industry and public officials will be recorded and made publicly available, which is critical to effective industry monitoring.



Key Recommendations

A New Protocol for Industry-Government Interactions. The government can go a long way to reducing industry influence in health policy by using the Bill to empower the Minister for Health to create guidelines that regulate industry-government interactions and make them transparent (see Box 1 below). The protocol should apply to all public officials, including government ministers, MPs and their staff and civil servants.

In addition, the Bill's provisions on interactions between the industry and public officials should be amended to ensure that all forms of tobacco industry lobbying are restricted.

Tobacco Industry Transparency. As currently drafted, the Tobacco Control Bill does not make all interactions between public officials and the industry fully transparent. The Bill should be amended to ensure that recordings and minutes of interactions between public officials, the industry, and those working to further its

interests are made available to the public.

Loopholes in Regulations & Codes governing Conflicts of Interest must be Closed. The Bill's provisions on individual conflicts of interest should be passed, but with amendments. These provisions presently require public officials to declare and divest themselves of financial and other interests in the tobacco industry and prohibit Ministers and Civil Servants from being employed by the industry. Currently, however, MPs are exempt from these provisions. The Bill should be amended to include them.

Prohibit Political Funding by the Tobacco Industry and Tobacco Industry "Corporate Social Responsibility" Our findings underline the importance of new rules which ban outright tobacco industry CSR and funding of political parties, politicians, campaigns, and candidates. The provisions in the Bill which cover these practices should be implemented without amendment.

"The Bill's provisions on interactions between the industry and public officials should be amended to ensure that all forms of tobacco industry lobbying are restricted."

Background and Aims

Smoking prevalence in Jamaica remains unnecessarily high with more than 275,000 adults (15+ years old) using tobacco daily. Smoking prevalence among boys and girls aged 13-15 years is particularly high compared to other countries in the region.[i] Tobacco smoking is a significant risk factor for non-communicable diseases (e.g. cardiovascular diseases, stroke, and cancer). Every year, more than 2,000 Jamaican's are estimated to die from tobacco-related diseases.

The FCTC stands to significantly reduce tobacco-related disease and death by accelerating the adoption worldwide of a comprehensive package of evidence-based policy measures aimed at reducing tobacco consumption.

Tobacco industry influence has long been recognised as the key cause of weak implementation of the Treaty. Article 5.3 of the FCTC aims to protect public health policies in relation to tobacco control “from commercial and other vested interests of the tobacco industry”. As a signatory to the FCTC, the Government has a legal obligation to protect public health policies regarding tobacco control from vested interests of the tobacco industry.

In 2008, the Conference of the Parties adopted Guidelines for Implementation of Article 5.3. The Guidelines contain 34 specific recommendations covering industry-government interactions, conflicts of interests in government and parliament, and tobacco industry transparency. The Guidelines constitute a subsequent agreement under Article 31 of the Vienna Convention on the Law of Treaties 1969 and, therefore, should be considered by governments in interpreting their obligations under Article 5.3. Full implementation of the Guidelines arguably represents the minimum necessary action for governments to be compliant with the Article.[ii]

Our research assessed the extent to which the Government complies with 26 specific Guideline recommendations[iii] and considered the implications of weak implementation for continuing industry influence in tobacco control. The findings highlight how various weaknesses in implementation leave the industry's political strategies unaffected. These weaknesses also give tobacco companies opportunities to adapt their strategies to exploit gaps in how the Guidelines have been implemented.

Methodology

We reviewed several sources of information to examine the government's compliance with the Guideline recommendations. These included: Government reports to the World Health Organization; existing tobacco control legislation; the Parliament (Integrity of Members) Act; the Corruption (Prevention) Act; the Representation of the People Act; The Conduct of Ministers code; the Access to Information Act; the Tobacco Control Bill.

We evaluated the strength of Article 5.3 implementation with reference to two indicators: the number of specific recommendations the government has acted on; and the strength of specific measures undertaken compared to the specific recommendations. We defined implementation in terms of formal policy instruments, which include codes of practices applicable to public and elected officials, administrative measures, and primary and secondary legislation.

Findings

● Industry-Government Interactions

Currently, there are no rules in place governing how industry-government interactions should take place. The only method presently available for making interactions transparent is the Access to Information Act, which is weak and not fit for purpose.

The Tobacco Control Bill represents a big improvement in restricting industry government interactions and making them transparent. However, it comes up short in three respects. First, it does not cover third parties, such as general business associations, which the industry often use to lobby on their behalf. Second, it does not obviously apply to all parts of government. This is important given that in the modern era tobacco companies are just as likely to target finance and trade officials and customs agencies as they are health officials. Third, the Bill isn't explicit about all interactions being recorded and minuted. This may deny the public sight of off-the-record interactions between the industry and public officials.

One way of addressing these weaknesses is for the Bill to include the provision of a protocol (see Box 1) governing how interactions between public officials and industry representatives take effect (see also Boxes 2 and 3).



Box 1 Recommendation: A protocol governing industry-government interactions should be introduced with immediate effect.

Several countries have introduced protocols governing interactions between government officials and representatives of the tobacco industry and those working to further its interests.^[i] These aim to limit interactions to what is necessary for public officials or agencies to implement tobacco control measures.

The protocol should apply to all public officials, including government ministers, MPs and their staff and civil servants. It should limit all interactions (meetings, telephone conversations, correspondence) between tobacco industry representatives (which includes those working to further the interests of the industry) and all public officials to technical matters relating to the implementation of tobacco control policy. Further, it should:

- limit meetings (including digital meetings and conference calls) to industry actors named in advanced in writing;
- require a pre-determined agenda for all meetings (including digital meetings and conference calls);
- stipulate that interactions are recorded and minuted (and that minutes include the method of interaction, the names of the parties and individuals involved, the matters discussed and decisions taken, and any follow up activity planned or anticipated);
- ensure that meetings take place on government premises and that a lawyer is present;
- mandate that the public is given full and free access to all relevant information regarding interactions, including dates, those in attendance, and minutes;
- prohibit all side meetings, hospitality or meetings at social events.

Partnerships and Policy Subsidies

Recommendations 3.1, 3.2 and 3.3 of the Guidelines urge governments to avoid partnerships, non-binding agreements, and voluntary arrangements with the tobacco industry as well as advocating that they refrain from becoming involved with or endorsing tobacco industry youth and public education initiatives and voluntary codes.

Recommendation 3.4 urges governments to refrain from accepting assistance from the tobacco industry in developing tobacco control policies.

Clause 9(1) of Tobacco Control Bill will effectively implement these recommendations in full. Given the threat that partnerships and offers of assistance in policy development pose to strong public health policies going forward, it is vital that this clause is passed into law in its entirety.



"British American Tobacco and its subsidiary companies, including Carreras, focus on key strategic segments of the market that offer the best prospects for long term growth."

Carreras Annual Report 2020

Newly appointed managing director of cigarette company Carreras (British American Tobacco), Raoul Glynn (above), recently promised to build on the gains made by his predecessor in pushing back against proposed new tobacco regulations. Glynn announced that Carreras would work with the Government in crafting the new regulatory regime, highlighting the same confused industry commitment to employment and opportunities for young people.

Managing Individual Conflicts of Interests

<i>The Revolving Door</i>	
Article 5.3 Recommendation	The Tobacco Control Bill
Recommendation 4.4 advocates that clear policies should be developed which regulate the revolving door between government and the tobacco industry.	Jamaica currently has no regulations in place that manage this policy risk effectively. Importantly, this is not covered in the Bill with the detail required.

<i>Financial Interests in the Tobacco Industry</i>	
Article 5.3 Recommendation	The Tobacco Control Bill
Recommendation 4.6 advocates that public officials should be required to declare and divest themselves of direct interests in the tobacco industry	Existing rules - such as the Staff Orders for the Public Service (civil servants only), the Parliament (Integrity of Members) Act, and the Corruption Prevention Act - are riddled with exceptions and unsatisfactory for several reasons. Clause 9(3)(b) of the Bill will sweep some of these problems aside, but does not obviously cover MPs (see Box 4).

<i>Employment in the Tobacco Industry</i>	
Article 5.3 Recommendation	The Tobacco Control Bill
Recommendation 4.8 of the Guidelines urges governments to prohibit members of government bodies, committees or advisory groups from being employed by the tobacco industry or any entity working to further its interests.	Existing instruments such as the Prevention Corruption Act and the Conduct of Ministers are either unlikely to apply to this provision or have no teeth. MPs and Government Ministers are not currently subject to any effective law or regulation relevant to this recommendation. The Bill will close this loophole for Ministers, but not obviously for MPs (see Box 4).

○ Managing Institutional Conflicts of Interests

Financial Interests in the Tobacco Industry

Article 5.3 Recommendation	The Tobacco Control Bill
Recommendation 4.7 calls on governments to divest public bodies of investments in the tobacco industry. This would include pension schemes for public servants.	Clause 9(3)(b) prohibits a "person employed with a public body" from "invest[ing] in the tobacco industry or any related ventures." Public bodies are relatively tightly defined in the Bill. Consequently, the provision will not extend to all investments held on behalf of public bodies (see Box 5).

Funding of Politicians and Political Parties

Article 5.3 Recommendation	The Tobacco Control Bill
Recommendation 4.11 covers political financing and translates to a prohibition on and transparency in relation to contributions to: political parties; politicians; candidates; campaigns.	Legislation governing political funding (e.g. The Representation of the People Act and its amendments and regulations) does not currently prohibit industry political funding or adequately make it transparent. The Tobacco Control Bill's proposals on sponsorship will close these gaps and should be implemented in full.

Government Subsidies for the Tobacco Industry

Article 5.3 Recommendation	The Tobacco Control Bill
Recommendations 7.1 and 7.3 urge governments to refrain from giving subsidies to the tobacco industry through tax exemptions and other financial benefits. This represents a poor use of public money.	Clause 9(3) of the Bill looks set to prohibit such subsidies and should be implemented in full.

○ Tobacco Industry Transparency

Recommendations 5.2 and 5.3 urge governments to require the tobacco industry and any organisation working to further its interests to periodically submit information on lobbying and other forms of political activity and for a register of tobacco industry lobbyists (broadly defined) to be created.

Giving effect to these recommendations in the Tobacco Control Bill would represent an excellent way of strengthening the ability of public officials, civil society, and the Jamaican public to monitor the industry's efforts to influence Jamaican politics. We strongly advocate that clauses 25 and 26 in the Bill - which cover the industry's disclosure requirements - are extended to the tobacco companies' political activities.

○ Reducing the Political Effects of Corporate Social Responsibility

Recommendations 6.2-6.4 of the Guidelines for Implementation seek to limit the tobacco industry's use of corporate social responsibility (CSR) to influence politics - a key purpose of modern tobacco companies. Among other things, the recommendations seek to prevent the industry from using CSR to gain access to public officials, build alliances with other groups in society, and generally boost its legitimacy among the public and public officials.

Currently, restrictions on tobacco industry CSR are woefully inadequate. However, the Tobacco Control Bill's restrictions on tobacco industry sponsorship will effectively prohibit tobacco companies from using CSR to influence Jamaican politics. It is vitally important that these provisions are introduced without amendment.



BAT Carreras Morris runs an annual scholarship programme, which ties the company in the public imagination to young people's welfare and community development.

Recommendations to Protect Health Policy from the Tobacco Industry and those working to further its Interests

In the Bill

- ▶ Prohibit all tobacco industry “corporate social responsibility” activities.
- ▶ Ban political tobacco industry financing of Jamaican politics.
- ▶ Require all public officials to declare and divest themselves of direct interests in the tobacco industry.

To be strengthened in the Bill

- ▶ Strengthen the Bill to ensure *all* government-industry interactions are regulated and made transparent and introduce a formal protocol governing these interactions (Boxes 1, 2 and 3).
- ▶ Require all *elected* officials and *all* public bodies to declare and divest themselves of direct interests in the tobacco industry (Boxes 4 and 5).

Not in the Bill

- ▶ Require the tobacco industry and any organisation working to further its interests to periodically submit information on lobbying and other forms of political activity.

Box 2 Recommendation: The Importance of Cross-Government Protection: the Tobacco Control Bill and limitations on Interactions between Tobacco Industry Representatives and Public Officials

Clause 8(1) of the Bill seeks to restrict the effectiveness of tobacco industry lobbying by limiting interactions between representatives of the industry and public officials. It states that “a person who acts on behalf of or for the benefit of a public body which has responsibility for tobacco control” shall not interact with a “person in the tobacco industry in furtherance of a business activity, except where it is strictly necessary so to do.”

In the modern era, the industry lobbies officials across government departments (including customs and excise and finance departments), primarily to influence the taxation of tobacco products. It also uses third parties - such as general business associations - to lobby on its behalf.

The Bill does not cover these key forms of lobbying. This is partly because of how the “tobacco industry” is defined in clause 2 of the Bill - i.e. “tobacco manufacturers, wholesale distributors, importers, and exporters of tobacco products.” This definition does not cover third parties. Further, only officials acting “on behalf of” or working for “the benefit of” a “public body which has responsibility for tobacco control” are subject to the restrictions. This may potentially exclude persons working outside of health-related departments, with whom the tobacco industry are keen to engage.

We propose that clause 8(1) is amended to include persons acting on behalf of the tobacco industry and all public officials as follows:

- “a person who acts on behalf of or for the benefit of a **public body, the activities of which have an effect on tobacco control**, shall not, whether in the person’s individual capacity or otherwise interact in any manner whatsoever, with a person in the tobacco industry **or any entity working to further its interests** in furtherance of a business activity, except where it is strictly necessary so to do, in order to ensure the effective regulation of the tobacco industry, a tobacco product or relevant product.”

Box 3 Recommendation: The Importance of Cross-Government Transparency: the Tobacco Control Bill and plans to make Interactions between the Industry Representatives and Public Officials Transparent.

Clause 7(2) of the Bill seeks to make interactions which occur between public officials and the industry transparent to the public. This is necessary to ensure that Jamaican public can call out the industry when it seeks to influence health policy.

The clause also states that “the Minister shall ensure that all records and documents relating to the interactions and communications between the Government and the tobacco industry be made available to the public.”

There is a risk that this provision will be interpreted narrowly, partly because of how the tobacco industry is defined in the bill, partly because it does not explicitly extend to all parts of government, and partly because the passage in 8(2) which notes that interactions should be “documented” does not spell out that they should be recorded and minuted.

We propose changes in the Bill that will empower the Minister to introduce a Protocol governing interactions between representatives of the tobacco industry and public officials and how they are made transparent (see Box 1 above).

Alternatively, we propose that clause 8(2) is amended to specify that all interactions shall be “transparent and recorded and minuted”. Further, we propose that clause 7(2) is amended as follows to ensure that interactions across public bodies are made fully transparent:

“Pursuant to subsection 1(c) the Minister shall ensure that all records and documents relating to interactions and communications between **public bodies** and the tobacco industry **and those working to further its interests** are made **freely accessible** to the public.”

Box 4 Recommendation: The Tobacco Industry, Conflicts of Interest and Parliamentary Representatives

MPs are not included in the Tobacco Control Bill's provisions which aim to manage conflicts of interest in public administration.

Clause 9(3)(b) of the Bill provides that a person "employed with a public body" shall not "invest in the tobacco industry or any related ventures". Further, clause 10(1) of the Bill notes that a person "employed with a public body" shall not "engage in any occupational activity, which may create a conflict of interest".

Neither provision covers MPs because of how "public bodies" are defined in the Bill - i.e. as "a ministry or department of Government, including a statutory body or authority, a government company, and an agency designated as an executive agency under the Executive Agencies Act."

We propose that all conflict of interest provisions in the Bill are amended to include persons "employed with a public body *and* elected representatives" and that a definition of "elected representatives" is included in the interpretative provisions of the Bill (clause 2) which covers all MPs and local government elected representatives.

Box 5 Recommendation: Tobacco Industry Divestment

Equally, the definition of "public bodies" means that the Bill is limited in the extent to which it will facilitate tobacco industry divestment. Clause 9(3)(b) may apply to the Minister of Finance and Planning who has ultimate responsibility for the National Insurance Fund under the National Insurance Act, but it will not extend to local authorities or private companies that manage public assets.

We propose that an additional clause is included which extends the prohibition in 9(3)(b) to investment managers and others involved in the management of public assets such as the National Insurance Board.

References

[i] Hambleton, I. R., S. M. Jeyaseelan, C. Howitt and A. J. Hennis (2017) "Monitoring Caribbean tobacco use: baseline adolescent smoking prevalence and regional disparities." *Salud Pública de México*, 59: 12-21.

[ii] Fooks, G.J., Smith, J., Lee, K. et al. (2017) "Controlling corporate influence in health policy making? An assessment of the implementation of article 5.3 of the World Health Organization framework convention on tobacco control", *Globalization and Health*, 13(12).

[iii] Of the eight Recommendations excluded from our analysis four are broadly defined and overlap with others, one centres on enforcement, and three relate to state tobacco companies.

[iv] Australian Government Department of Health (2019) Guidance for Public Officials on Interacting with the Tobacco Industry. Canberra: Department of Health. Republic of Philippines Department of Health (2010). Department of Health Memorandum No. 2010-0126 on Protection of the Department of Health, including all of its Agencies, Regional Offices, Bureaus or Specialized/Attached Offices/Units, against Tobacco Industry Interference. Manilla: Department of Health.

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