



HM Revenue
& Customs

Tobacco Illicit Trade Protocol – licensing of equipment and the supply chain

**Summary of Responses – licensing (or
equivalent) of tobacco machinery**
December 2016

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1. Introduction

Background

- 1.1 The World Health Organisation Framework Convention on Tobacco Control (WHO FCTC) is an international treaty which aims to reduce tobacco related deaths and disease. Parties to the Convention have developed a Protocol to eliminate Illicit Trade in Tobacco Products (the 'Protocol').
- 1.2 The UK played a leading role in the negotiation of the Protocol and signed it, along with the EU, in 2013, signalling our intention to be bound by its provisions. HMRC leads on implementation and is actively working towards its ratification.
- 1.3 The Protocol covers three main areas: supply chain control; law enforcement; and mutual assistance. Many of the Protocol's measures have already been adopted in the UK as part of our successful strategy to tackle tobacco smuggling, such as registration of tobacco manufacturers and supply chain control requirements on them.
- 1.4 Article 6 of the Protocol covers registration or licensing of participants who trade in tobacco, tobacco products and tobacco product manufacturing machinery. The government announced at Autumn Statement 2015 that it was planning to consult on elements of Article 6.
- 1.5 This document summarises the responses on the mandatory licensing of tobacco manufacturing machinery. Responses on the potential licensing of the tobacco supply chain require further consideration and discussion with the Department of Health (DH) and Devolved Administrations (DAs), as explained in the consultation document.

Details of the consultation

- 1.6 HMRC published a consultation document concerning Article 6 on 25 February 2016 entitled "Tobacco Illicit Trade Protocol – licensing of equipment and the supply chain". The consultation closed on 20 May 2016.
- 1.7 We sought views on two aspects of Article 6:
 - the mandatory licensing of tobacco manufacturing equipment
 - whether the UK should license participants in the supply chain of tobacco products.

General responses

- 1.8 We received 84 written responses from public health bodies or groups, local government (including Trading Standards), other enforcement agencies, individual businesses, charities and a member of the public.

- 1.9 We also held meetings with interested parties, the feedback from which has been considered as part of the consultation.
- 1.10 Licensing of tobacco manufacturing machinery is obligatory under the Protocol and will affect very few businesses and individuals. Licensing of some or all of the supply chain is not obligatory under the Protocol, is more complex and could affect a large number of businesses. Therefore, while HMRC is in a position to proceed to implementation of the licensing of machinery, supply chain licensing requires further consideration.
- 1.11 A separate document will be issued in due course which will summarise the responses and next steps regarding a potential licensing system for participants in the supply chain of tobacco products (questions 9 -10 and 14-17 of the consultation document). As the consultation document made clear, the government will ensure that any response to the illicit trade is proportionate and does not add an undue administrative burden on business. The case for possible licensing of the supply chain will be considered with DH and DAs on this basis, taking into account the responses received to the consultation.

Overview of comments – licensing of machinery

- 1.12 Some respondents raised burdens on business while questioning the impact of licensing on the illicit trade. Based on consultation responses and our research, we believe that the number of businesses affected will be very small – there are very few tobacco manufacturers in the UK and as far as we can tell, there are no manufacturers of machinery. As well as meeting an obligatory requirement of the Protocol, licensing of machinery will be an additional tool in controlling the avoidance of excise duty through the manufacture of illicit tobacco products.

2. Responses to questions 1-3: Understanding your interest in this tobacco consultation

Question 1: Are you: a tobacco retailer / a tobacco wholesaler / a tobacco manufacturer / a manufacturer of tobacco equipment / a manufacturer of component parts of manufacturing equipment / an importer/exporter of tobacco products / an importer/exporter of tobacco manufacturing equipment / a transporter/broker/warehouse of tobacco or manufacturing equipment / a representative body – please specify / a public health body or group / local government (including Trading Standards) or other enforcement agency / a member of the public / other – please specify

2.1 We received 80 responses to this question, coming from the tobacco industry, representative bodies and groups, agencies and other government departments (OGDs) and public health groups. Some respondents identified themselves as belonging to more than one interest group, therefore the following breakdown will not add up to 80.

Type of respondent	Number of responses
Tobacco retailer	1
Tobacco wholesaler	1
Tobacco manufacturer	2
Importer/exporter of tobacco products	7
Transporter/broker/warehouse of tobacco or manufacturing equipment	5
Representative bodies or groups	28
Public health bodies or groups	14
Local government (including Trading Standards) or other enforcement agencies	21
Member of the public	1
Other	7

2.2 No one identified themselves as:

- manufacturers of tobacco equipment
- manufacturers of component parts of manufacturing equipment or
- importers / exporters of tobacco manufacturing equipment.

Question 2: If your business is in the trade of tobacco products or manufacturing equipment:

a) Where are you based? UK / Other EU / Non EU

2.3 Of the businesses who answered this question, 9 were located in the UK, 5 of which were located in England. We also received responses from bodies

representing businesses. Of these, 5 answered this question and were based in the UK, with 2 of these stating that they were located in Scotland.

a) How many staff do you employ across the UK? Fewer than 10 / 10-100 / 101-500 / More than 500

2.4 Of the respondents to which this question applied and who answered it:

Number of staff	Number of responses
Fewer than 10 staff	2
Between 10-100 staff	2
Between 201-500 staff	1
More than 500 staff	3

b) How many shops / branches do you have across the UK?

2.5 Although some of the representative bodies provided useful overall UK figures for the number of shops owned by their members the actual number from businesses themselves ranged from 2 to over 4,000.

c) What proportion of your overall sales relate to tobacco products?

2.6 Figures provided ranged from 40% to 100%.

d) What is the approximate value of your tobacco product sales

2.7 Figures provided ranged from £180,000 pa to £4.9 billion pa.

Question 3: Do you have any direct or indirect links to, or receive funding from, the tobacco industry?

2.8 Thirty four respondents answered that they had no direct or indirect links to, or receive funding from, the tobacco industry. These included:

- local government (including Trading Standards) or other enforcement agencies
- public health bodies or groups
- representative bodies for Trading Standards, public health bodies and anti-smoking groups
- charities / anti-smoking groups.

2.9 Seventeen respondents answered that they did have links to, or received funding from, the tobacco industry. These included:

- tobacco retailers
- tobacco wholesalers
- tobacco manufacturers
- importers / exporters of tobacco products
- transporters/brokers/warehouseers of tobacco products or manufacturing equipment

- representative bodies or groups, such as those for tobacco retailers
- pro-smoking groups.

2.10 Thirty three respondents either did not answer this question or said that it was not applicable.

Government Response

The government is grateful for the responses to these 3 questions, which provide useful context for consideration of responses.

3. Responses to questions 4-13: Protocol Article 6(1) – Licensing (or equivalent approval) of tobacco machinery

- 3.1 Until now there has been no obligation to seek a licence or approval for the manufacturing of equipment used to manufacture tobacco products. The Protocol now makes this a requirement. HMRC sought stakeholders' views on how this should be achieved.

Question 4: Do you think a 'licence' system is the most effective way of controlling the manufacture of tobacco manufacturing equipment? If not, do you have any alternative proposals?

- 3.2 Local government, Trading Standards, public health bodies and groups, some representative bodies and anti-smoking charities favoured the introduction of a licence system. Many of these wanted any licensing system to also cover producers of machines and manufacturers, exporters and importers of machine parts that are used in tobacco manufacturing machinery or equipment. One respondent suggested that we should use definitions in other legislation to define such terms as 'tobacco manufacturing equipment', 'tobacco product' and 'producers'.
- 3.3 A much smaller number, including the tobacco industry and its representatives, suggested that a register should be introduced as an alternative if there was compelling evidence to do so. However, they considered that only machinery that can directly manufacture cigarettes or hand rolled tobacco should be registered and not machinery used in packaging, labelling and printing.
- 3.4 One respondent from the tobacco industry considered that there were appropriate controls already in place under the UK Tobacco Products Duty Act 1979 and Part II of the Tobacco Products Regulations 2001 and questioned the need for a new licence. Another respondent from the tobacco industry said that a licensing system would have little positive impact on illicit trade.

Government Response

It's a requirement of the Protocol that parties implement a licensing scheme for tobacco manufacturing machinery.

The government agrees that such a scheme should cover only machinery used to directly manufacture tobacco products and that to include machines which make labels or packing would unnecessarily widen the scope of the scheme with increased burdens on business for little or no benefit. The government will continue to consult on the definition(s) to be used through publication of draft legislation needed to fully implement the obligatory aspects of Article 6.

Question 5: If you are a manufacturer of equipment that can be used either directly or indirectly to manufacture tobacco or tobacco products, what type of equipment do you manufacture: a) equipment that is directly used to manufacture tobacco or tobacco products? b) component part(s) for equipment that is specifically used to manufacture tobacco or tobacco products? c) equipment that is indirectly used by the tobacco industry, for example, the labelling and manufacturing of tobacco packaging?

- 3.5 As stated in 2.2, we received no responses from businesses that identified themselves as manufacturing equipment that could be used, either directly or indirectly, to manufacture tobacco or tobacco products.

Government Response

The government recognises that this consultation and other research shows an apparent absence of UK production of tobacco manufacturing machinery. This means that the licensing scheme will only affect registered tobacco manufacturers and those dealing in imported tobacco manufacturing machinery. This is likely to be a very small population.

Question 6: If you have answered yes to question 5 b) or 5 c), do you think this licence system should apply to you?

- 3.6 Only 1 respondent answered. They believed that there should be an exemption where tobacco machinery was located in a legitimate and already licensed manufacturing facility, given that the aim is to control illicit trade.

Government Response

The government recognises the need to avoid over regulation and duplication of controls. The design of the licensing scheme for tobacco manufacturing machinery will be fully integrated with the registration of tobacco factories.

Question 7: Are you an importer or exporter of tobacco manufacturing equipment?

- 3.7 Only 1 respondent answered positively to this question.

Government Response

This again supports the government's conclusion that a very small number of businesses will be affected by the scheme.

Question 8: Do you think a ‘licence’ system is the most effective way of controlling the import and export of tobacco manufacturing equipment? If not, do you have any alternative proposals?

- 3.8 The majority of respondents echoed previous comments. For example, health promotion groups were in favour of a licence system while tobacco industry respondents believed that a register should be introduced as an alternative.
- 3.9 One respondent suggested that there should be an obligation on producers to obtain a licence for the supply of tobacco machinery and a responsibility to dispose of it in a secure manner. This would prevent potential use in the manufacture of illicit product.
- 3.10 One respondent commented that a positive licensing system provides a stronger basis for tackling illegal practice. However, another respondent in the tobacco trade did not think a licensing system would help address the illicit market. They commented that they would, however, support a requirement to destroy disused manufacturing equipment.
- 3.11 Questions 9 and 10 will be included in the summary of responses regarding supply chain licensing which will be published in the future.

Government Response

The government proposes to introduce a simple licensing scheme for all tobacco manufacturing machinery in the UK including machinery being used and machinery being imported, exported or destroyed.

Question 11: What conditions should be applicable for obtaining a licence or equivalent?

- 3.12 Many of the respondents wanted an effective licensing system which would require applicants to prove that they were fit and proper persons, mirroring the conditions for obtaining Personal or Premises Licences under the Licensing Act 2003. Any applicant that had committed an offence would be denied the licence. Licences could also be suspended or revoked if the holder was found to be breaking the terms of the licence.
- 3.13 Other conditions suggested included:
- manufacturers applying for a licence should demonstrate they are complying with the provisions of the WHO FCTC in relation to the illicit trade in tobacco products
 - corporate bodies applying for licences should be required to supply details of a responsible person. That person, in addition to the corporate body, would be liable to any enforcement action or loss of a licence
 - licences must be renewed annually and be subject to review at any time

- licences and proper business records must be retained for a reasonable time for inspection by any authorised officer. Authorised officers shall have rights of entry and search.

Government Response

Tobacco manufacturing machines represent a risk of duty evasion. The government agrees that a fit and proper person test should be applied for all applicants for a licence. Licence holders will be subject to inspection and checks that they are complying with the terms of their licence. Registered manufacturers of tobacco products are already required to comply with legislation designed to tackle the illicit market and this will continue.

Question 12: What reasonable sanctions/penalties do you think should be applied to businesses for non-compliance?

- 3.14 Several respondents felt that non-compliance with a tobacco licensing system would take a number of different forms. This could include responsible businesses that make an error, those wanting to comply but lacking the expertise to do so and those who deliberately seek to evade the law and are criminal in their intent.
- 3.15 The majority of respondents considered that where non-compliance was not as a result of a genuine mistake or error, reasonable sanctions could include:
- formal warnings
 - penalties
 - fixed penalty notices to deal with minor infringements where a penalty is justified
 - fines
 - suspension of the licence.
- 3.16 In these circumstances, some respondents believed that permanent revocation of the licence was appropriate.
- 3.17 Respondents suggested that persistent breaches of conditions should lead to the closure of the business and/or criminal prosecution and that fines should be proportionate to the size of the commercial entity breaching licence conditions.
- 3.18 One respondent that favoured a register instead of a licence felt that there should be scale of penalties similar to those imposed in Scotland.

Government Response

Non-compliance with the licensing requirements will be subject to a range of sanctions according to the offence. Tobacco manufacturing machines discovered without a valid licence will be subject to seizure, enhancing existing controls available to prevent the manufacture of illicit tobacco products.

Question 13: If you are replying on behalf of a business:**a) Where do you think costs and burdens are likely to arise for your business?**

- 3.19 Tobacco industry respondents were concerned that they would have to dedicate a named resource to handle all of the information needed to ensure that the licence was applied for and kept up-to-date. They felt that this would add complexity and be an unnecessary and unreasonable burden.

Government Response

The government proposes a light touch licensing system for tobacco manufacturing machinery which will aim to minimise administrative burdens. Applicants who already have a registered factory will have new requirements closely linked to existing registrations to avoid any duplication.

b) Do you anticipate any benefits for your business?

- 3.20 The majority of respondents did not answer this question. From the small number that did respond, some tobacco industry respondents felt that there would be no benefits to their businesses. Some health promotion bodies felt that the benefits would be the reduction of the trade in illicit tobacco products.

Government Response

The government agrees that a reduction in the illicit trade will be of benefit to legitimate business. This measure is an additional tool to tackle this problem.

c) Could you outline the nature of these costs/benefits and the timescales over which they are likely to arise? Is it possible to outline the key methodology and assumptions used in producing any estimate of these costs?

- 3.21 A small number responded that, at this stage, no forecasts could be made.

d) If you have an alternative proposal (Qs 4 and 8), would this impact the administrative burden?

- 3.22 A few respondents thought that a registration scheme limited to provision of information, with no approval process, would be less burdensome for businesses and HMRC.

Government Response

The government will seek to keep the administrative burdens on the few legitimate businesses affected to a minimum.

4. Responses to questions 18-20: Protocol Article 6 – General Provisions – Paragraphs 3-5

4.1 Paragraphs 3 – 5 of Article 6 outline the obligations of the regulatory body. Key points include:

- establishing an authority to issue, renew and cancel licences
- ensuring that licence applications contain requisite information
- the authority collects, where applicable, any licence fees.

Question 18: Do you think a fee for licences under the Protocol should be levied? Please provide further comment, if applicable.

4.2 Public health bodies, local government, Trading Standards and some representative bodies all believed that a fee should be charged. Many emphasised that the fee should be set at a level appropriate to cover both administrative and enforcement costs.

4.3 Those involved in the tobacco industry, did not believe a fee would be appropriate.

Government Response

In common with existing regulatory frameworks administered by HMRC to tackle duty evasion, the government will not charge a fee for a licence for a tobacco manufacturing machine. This will keep the costs to legitimate businesses to a minimum.

Question 19: Do you have any general comments or views on paragraphs 3-5 of the Protocol?

4.4 A few respondents provided comments reiterating answers provided earlier in the consultation document.

Question 20: Are there potential wider consequences of any of the proposals that we have not identified in this consultation?

4.5 No responses raised wider consequences of the proposal for a licensing scheme for tobacco manufacturing machinery.

Government Response

The government notes that no additional consequences were identified.

5. Responses to question 21: Table of Impacts

Question 21: Do you have any information that could inform the Impact Assessment?

- 5.1 Only a few respondents provided comments. These were about the balance between the administrative burdens and benefits in tackling the illicit trade.

Government Response

The government will seek to keep the administrative burdens on the very few legitimate businesses affected to a minimum.

6. Next steps

- 6.1 The government is grateful to all those who took time to respond to this consultation which provided many helpful, informative and constructive responses.
- 6.2 The government has fully considered these responses, as well as the outcomes of meetings with stakeholders, to design its response.
- 6.3 The licensing of machinery is a requirement of the Protocol to which the UK is committed. The government view is that it will provide a benefit in giving extra powers to combat illicit tobacco through controlling the machinery needed to manufacture tobacco products. The responses to the consultation and our research indicate that the impact on UK business will be limited to a small population. In designing a scheme, we will seek to minimise administrative burdens.

Next phase and timing

- 6.4 We will ensure that administrative burdens are kept to a minimum and that concerns about the potential integrity and robustness of the scheme are addressed.
- 6.5 We will also work to ensure that the scheme is suitable to address the needs of those involved in the importation, exportation, and/or manufacture of tobacco machinery or component parts.
- 6.6 We will take steps to support compliance with the scheme. The detailed scheme design will also ensure that proper and proportionate enforcement powers and sanctions are in place to address cases of deliberate non-compliance.

- 6.7 Alongside this document, the government has published draft legislation on the licensing of tobacco manufacturing machinery as part of the draft Finance Bill 2017 and welcomes comments on the draft.
- 6.8 A summary of responses on whether the UK should license participants in the supply chain of tobacco products will be published at a later date.

Annexe A: List of stakeholders who responded

Action on Smoking and Health (ASH)
Action on Smoking and Health Northern Ireland (ASH (NI))
Action on Smoking and Health Scotland (ASH (Scotland))
Action on Smoking and Health Wales (ASH (Wales))
Association of Convenience Stores
Association of Directors of Public Health
Association of Independent Tobacco Specialists
Berkshire West Tobacco Control Alliance Team
Black Country Tobacco Alliance
Blackpool Council
British American Tobacco UK Ltd
British Beer & Pub Association
Calderdale MBC
Cancer Focus Northern Ireland
Cancer Research UK
Chartered Trading Standards Institute
County Durham County Council
Darlington Borough Council
Denholm Global Logistics
Devon County Council – Public Health Devon
Faculty of Public Health of the Royal Colleges of Physicians of the United Kingdom
Federation of Wholesale Distributors
Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST)
Freight Transport Association
FRESH
Gateshead Smokefree Tobacco Alliance
Gateshead Council
Gift International Ltd
Hartlepool Borough Council
Healthwatch Sunderland
Hunters & Frankau Ltd
Imperial Tobacco Ltd
Imported Tobacco Products Advisory Council
Japan Tobacco International
Local Government Association
London Borough of Barking & Dagenham
London Borough of Haringey
London Healthier High Streets
London Trading Standards
Luton Borough Council
Making Smoking History in the North East Partnership
Middlesbrough Council – Trading Standards
Middlesbrough Smokefree Alliance
National Federation of Retail Newsagents
Newcastle City Council

North Central North East London Illegal Tobacco Group
North East Trading Standards
North Tyneside Smokefree Alliance
North Yorkshire Tobacco Steering Group
North Yorkshire Trading Standards
Northumberland Council – Trading Standards
Northumberland County Council
Pan-London Illegal Tobacco Control Group
Petrol Retailers Association
Philip Morris Ltd
Scandinavian Tobacco Group UK Ltd
Scottish Grocers Federation
Scottish Licensed Trade Association
Scottish Wholesale Association
Smokefree County Durham Alliance
Smokefree Lincolnshire Alliance
South East London Illegal Tobacco Network
South Tyneside Council
Southwark Council
Stockton on Tees Borough Council
Stoke on Trent Council
Suffolk County Council
Sunderland City Council – Director of Public Health
Sunderland City Council – Leader of the Council
Sunderland Clinical Commissioning Group
Sunderland Health & Wellbeing Board
Tackling Illicit Tobacco for Better Health Partnership
The Co-operative Group
Tobacco Manufacturers' Association
Tobacco Retailers Alliance
Tor Imports Ltd
Trading Standards South East Ltd
UK Chamber of Shipping
UK Travel Retail Forum
Wakefield Tobacco Alliance
Warwick Council
Wolverhampton Council
Yorkshire & Humber Public Health Regulatory Leads Network

HMRC also received 1 response from a private individual.