



HM Revenue
& Customs

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

**Summary of Responses – licensing (or
equivalent) of the supply chain**

November 2017

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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 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 was in a position to proceed to implementation of the licensing of machinery soon after the consultation concluded, supply chain licensing required further consideration and discussions with the Department of Health (DH) and the Devolved Administrations and other stakeholders.
- 1.6 The government published a summary of responses on the mandatory licensing of tobacco manufacturing machinery in December 2016¹. This document summarises the responses on the potential licensing of the tobacco supply chain.

Details of the consultation

- 1.7 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.
- 1.8 We sought views on two aspects of Article 6:

- the mandatory licensing of tobacco manufacturing equipment

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574563/Tobacco_Illicit_Trade_Protocol___licensing_of_equipment_and_the_supply_chain_-_summary_of_responses.pdf

- whether the UK should license participants in the supply chain of tobacco products.

General responses

- 1.9 We received 84 written responses from public health bodies, local government (including Trading Standards), other enforcement agencies, individual businesses, charities and a member of the public.
- 1.10 We also held meetings with interested parties, the feedback from which has been considered as part of the consultation.
- 1.11 This document summarises 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). The sections of the previous responses document covering questions 1-3 and 21, which concerned general issues in respect of both areas consulted on, are also included here for reference. Responses to the other questions in the consultation document were presented in the earlier summary of responses document.

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 anti-smoking 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.

b) 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

c) 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 of shops / branches declared by respondents ranged from 2 to over 4,000.

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

2.6 Figures provided ranged from 40% to 100%.

e) 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

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 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.

3. Responses to questions 9-10: Licensing of the import and export of tobacco products

- 3.1 Importers of tobacco products are already required to notify HMRC of the brands and recommended prices for the products they are importing. Importers and exporters wishing to store tobacco products in duty suspense must use a registered store (if they are a UK manufacturer) or an excise warehouse to do so. These premises must be approved by and registered with HMRC. There are, therefore, already significant controls in place on importers and exporters of tobacco products. The consultation sought information on whether additional licensing requirements would be effective in tackling illicit tobacco products.

Q9. Are you an importer or exporter of tobacco products?

- 3.2 Five respondents identified themselves as importers or exporters.

Q10. Do you think a 'licence' system is the most effective way of controlling the import and export of tobacco products? If not, do you have any alternative proposals?

- 3.3 Tobacco industry respondents, including the 5 who responded positively to question 9, were generally in favour of importers notifying HMRC that they were importing tobacco products, but also made the point that licensing of legitimate importers was likely to have very little impact on the illicit trade. The main risk to duty from imports is with goods being imported and exported in duty-suspense, and this is already tightly controlled.
- 3.4 A number of Local Authorities and public health groups felt that a licensing system should be introduced for importers of tobacco products, with some respondents commenting that this should be a positive licensing system and that the entire supply chain should be subject to licensing to ensure complete control.
- 3.5 No respondents commented specifically on the licensing of exporters of tobacco products beyond remarks on control of the entire supply chain described above.

Government Response

There are already significant controls on importers of tobacco products, and these are likely to be enhanced through the introduction of a track and trace system for tobacco products as required by the FCTC Illicit Trade Protocol and the EU Tobacco Products Directive. The government sees no evidence that further controls on importers or exporters of tobacco products at this stage would make any significant contribution to tackling the illicit trade.

4. Responses to questions 14-17: Licensing of the tobacco supply chain in the UK

4.1 The Protocol requires parties to consider licensing of the tobacco supply chain “to the extent considered appropriate”. The consultation sought to gather evidence of the impact that licensing of all or part of the supply chain might have in tackling the illicit trade balanced with any additional burdens that such measures may impose on business. The consultation was also carried out in the context of existing and planned retailer registration schemes in Scotland, Wales and Northern Ireland for the purpose of ensuring compliance with other tobacco control legislation such as regulation of displays of products and sales to under-age customers.

Q14. We welcome your views on 4.1 – 4.10, and specifically:

- a) What is your view on a licensing system? Do you think a ‘licence’ system is appropriate? If not, do you have any alternative proposals?**
- b) Do you think a licence system (or equivalent approval) should apply to all businesses in the chain? i.e. retailer, wholesaler, warehouse owners, brokers etc.**
- c) If you feel a licensing system (or alternative proposal) is not appropriate, do you have any alternative suggestions to tackling illicit trade in tobacco products?**
- d) If you think a licence system is appropriate, what type of licence system do you think would work best?**
- e) If you think a licence system (or equivalent proposal) is appropriate, do you have any views on how this should fit with the existing and planned Registers in Scotland, Wales and Northern Ireland?**
- f) What do you see as the potential benefits of a licensing system in tackling the illicit trade in tobacco and evasion of Tobacco Products Duty?**
- g) Do you see any other potential benefits of introducing a licence system to the supply chain other than tackling illicit tobacco?**

4.2 Many respondents from the health promotion and local authority sectors were in favour of a licensing system for the entire supply chain including manufacturers, importers, wholesalers and retailers. In particular, these respondents advocated a positive licensing system rather than simple registration schemes, such as those in the devolved administrations. Some suggested that applicants for a licence to

sell tobacco should pass a fit and proper persons test and demonstrate how they intend to comply with licensing objectives such as prevention of crime and protection of children from harm. It was suggested by some advocating strict controls that licence holders could be charged fees, with money collected used to fund local enforcement activity.

4.3 A number of these respondents provided the same description of what they thought the benefits of a licensing scheme could be:

“(a) The permanent removal of a large proportion of the final sellers of illicit tobacco, (b) significant reductions in the leakage of tobacco from the licensed distribution system, (c) increased turnover for legitimate local retailers, (d) a decline in the illicit tobacco trade.”

4.4 While licensing would undoubtedly deter some retailers from dealing in illicit products and remove others from the supply chain, no evidence was offered to support the scale of the impact claimed on the illicit market as a whole. Sales of illicit tobacco through legitimate retailers represent a relatively small proportion of total illicit sales, so licensing of legitimate retailers can only address a proportion of final sellers of illicit tobacco. Emphasising this point, one retail trade body commented, “Illicit tobacco generally is sourced from pubs, clubs, car parks, barber shops and through organised gangs.”

4.5 Respondents from the tobacco trade, including manufacturers and retailers, were not opposed to a licensing system in principle and some believed that a light touch registration scheme that could be helpful in taking action against legitimate retailers found selling illicit products. They felt that any national scheme would need to work alongside existing licensing arrangements to prevent burdens caused by duplication. However, they were opposed to a positive licensing scheme citing the significant burdens which would be placed on legitimate businesses, the vast majority of which are compliant in this area. One respondent suggested that increased retailer costs as a result of such a scheme would have to be passed on to consumers through higher prices, which in turn may actually enhance the illicit trade.

Q15. If you are replying on behalf of a business:

- a) Where do you think costs and burdens are likely to arise for your business?**
- b) Do you anticipate any benefits for your business?**
- 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?**
- d) If you have an alternative proposal (Q14), would this impact the administrative burden?**

4.6 Very few responses were received to this question. Retailers that did respond noted that a licensing scheme would impose additional costs but that it was impossible to quantify these without details of the scheme.

Government Response

Sales of illicit tobacco through legitimate retailers represent only a proportion of total illicit sales and most retailers are fully compliant with the law in this area. Therefore, it is difficult to make a strong case for retailer licensing for anti-illicit purposes only.

Retailers that choose to sell illicit tobacco do so knowingly and so breaching the terms of a licence is unlikely to have a significant impact on behaviours. HMRC already has and applies a number of sanctions against retailers found selling illicit tobacco, including financial penalties and removal of alcohol licences.

The costs of a national HMRC administered licensing scheme aimed at tackling the illicit trade, particularly the positive licensing scheme advocated by many respondents from the health promotion and local authority sectors, appear to be disproportionate to the additional benefits which would accrue. It would also be burdensome for those businesses already registered under the Scottish, Welsh or Northern Irish health schemes to require them to apply for a second national registration for the sale of tobacco products.

Some interesting suggestions were made about combining enforcement activities for different aspects of tobacco control and funding options for this work, and the government will continue to consider these.

The forthcoming track and trace requirements are also likely to add additional supply chain controls and some form of registration for at least part of the tobacco supply chain.

The government does not consider that the case has been made for an additional tobacco supply-chain licensing system aimed specifically at reducing the illicit trade.

Q17. Do you grow tobacco commercially in the UK?

4.7 No respondents indicated that they grow tobacco commercially in the UK.

Government Response

The government notes that no respondents grow tobacco commercially in the UK. Any such businesses would need to seek approval under the Raw Tobacco Approval Scheme.

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 of any changes introduced on 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 Licensing the supply chain for the sale of tobacco products would have limited impact on the illicit trade, although incorporating illicit trade offences into health driven control schemes could strengthen our impact within a regulated sector at minimal cost.

6.4 The government recognises that the 3 Devolved Administrations already have or are implementing effective registration schemes for tobacco retailers to assist with enforcement of other tobacco control legislation. HMRC will, therefore, continue to work alongside the Devolved Administrations to explore the scope of including illicit tobacco offences in these schemes. This has the merits of keeping any additional burdens on business to a minimum while taking a more holistic approach to enforcement of tobacco control legislation.

6.5 There is at present no tobacco retailer registration scheme in England, nor do DH currently have plans for such a scheme. However, the government keeps its approach to tobacco control under continuous review, and any future consideration of such a scheme in England will be based on an assessment of the evidence in the context of wider tobacco control legislation. HMRC will continue to work closely with DH in any future consideration of such schemes.

- 6.6 As has been mentioned earlier in this document, the UK will be implementing track and trace for tobacco products to comply with the Illicit Trade Protocol. The European Union is also planning a track and trace system through the revised Tobacco Products Directive. While the detail of these schemes is yet to be determined, they will inevitably require a form of registration for at least the first customers of tobacco manufacturers, and possibly further down the supply chain.
- 6.7 HMRC continuously reviews the nature of tobacco fraud and adapts its approach to tackling the illicit trade accordingly. This process will continue in the future, including further consideration of the merits of licensing and registration schemes where and when appropriate.

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 Manufactures' 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.