Tobacco Illicit Trade Protocol – Licensing of Equipment and the Supply Chain
Cancer Research UK Consultation Response

Q1: 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/warehouser 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

About Cancer Research UK

1. Every year, around 300,000 people are diagnosed with cancer in the UK and more than 150,000 people die from cancer. Cancer Research UK is the world’s leading cancer charity dedicated to saving lives through research. Together with our partners and supporters, our vision is to bring forward the day when all cancers are cured. As the largest fundraising charity in the UK, we support research into all aspects of cancer through the work of over 4,000 scientists, doctors and nurses. In 2014/15, we spent £341 million on research, plus £41 million went to the Francis Crick Institute. The charity’s pioneering work has been at the heart of the progress that has already seen survival rates in the UK double in the last forty years. We receive no funding from the Government for our research.

Q2 - If your business is in the trade of tobacco products or manufacturing equipment: a) Where are you based? UK (please state whether Scotland, Northern Ireland, Wales or England) / Other EU / Non EU b) How many staff do you employ across the UK? Fewer than 10 / 10 – 100 / 101 – 500 / More than 500 c) How many shops/branches do you have across the UK? d) What proportion of your overall sales relate to tobacco products? e) What is the approximate value of your tobacco product sales?

2. Not applicable.

Q3. Do you have any direct or indirect links to, or receive funding from, the tobacco industry?

3. Cancer Research UK has no direct or indirect links with the tobacco industry and does not receive any tobacco industry funding.

Q4. 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?

4. Cancer Research UK believes a licence system is the most effective way of controlling the manufacture of tobacco manufacturing equipment. A licensing system satisfies the goals and regulations outlined by several key policy papers including:
   a. *Tackling Illicit tobacco: From leaf to light*: The UK Government stated their commitment to addressing the issue of illicit trade in this policy paper. Among the key themes outlined in the document, they propose to decrease the illicit market by targeting fraud at all points in the supply chain, from production to retail\(^a\).
   b. *Article 6 of the WHO Illicit Trade Protocol (ITP)*: This is consistent with Article 6 of the WHO Illicit Trade Protocol, which requires Parties to make the manufacture, import and export of tobacco products and manufacturing equipment subject to a license\(^b\).
   c. *Article 8 of the WHO ITP and Article 15 of the Tobacco Products Directive (TPD)*: These articles require countries to implement a national and regional tracking and tracing regime (which will be vital to investigations of illicit trade)\(^c\).
Article 16 of the TPD: A licence system meets the security feature requirements outlined in Article 16 of the TPD.

5. A licence system is needed in the UK to create a method of tracking equipment to ensure machinery does not enter the illicit market. The license should cover manufacturers, exporters and importers of any part of equipment that is specifically intended to manufacture tobacco-manufacturing equipment.

6. A licence system should also apply to second-hand or reconditioned machinery or machine parts. Second-hand machines have been seized by HMRC in the past, demonstrating that these machines can and do enter the illicit market. They contribute to illicit tobacco trade and should therefore not be excluded from a licensing system.

7. The term “producer” defined in the EU General Product Safety Directive may be helpful. It is defined in the Directive as:
   a. The manufacturer of the product, when he is established in the Community, and any other person presenting himself as the manufacturer by affixing to the product his name, trade mark or other distinctive mark, or the person who reconditions the product;
   b. The manufacturer’s representative, when the manufacturer is not established in the Community or, if there is no representative established in the Community, the importer of the product;
   c. Other professionals in the supply chain (including suppliers of equipment parts they have not manufactured themselves and suppliers of second-hand or refurbished equipment).

8. Cancer Research UK does not object to HMRC’s proposal to exempt hand-operated machines used to roll individual cigarettes from hand-rolled tobacco from the licensing system.

Q5. 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? Please give a brief description if you feel it would be helpful.

9. Not applicable.

Q6. If you have answered yes to question 5 b) or 5 c), do you think this licence system should apply to you?

10. Not applicable.

Q7. Are you an importer or exporter of tobacco manufacturing equipment?

11. No.

Q8. 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?
12. Cancer Research UK believes a licence system is the most effective way of controlling the import and export of tobacco manufacturing equipment. See answers to Q4 above and Q11-14 below for further details.

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

13. No.

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?

14. Cancer Research UK believes a licence system is the most effective way of controlling the import and export of tobacco products. See answers to Q4 above and Q11-14 below for further details.

Q11. What conditions should be applicable for obtaining a licence or equivalent?

15. See answer to Q14 below.

Q12. What reasonable sanctions/penalties do you think should be applied to businesses for non-compliance?

16. See Q16 below.

Q13. 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 (Qs 4, 8 & 10), would this impact the administrative burden?

17. Not applicable.

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?

18. Cancer Research UK supports the introduction of a positive licensing scheme to apply to all levels of the supply chain for tobacco manufacture; this includes manufacturers, wholesalers, retailers, importers and exporters. Tobacco is a uniquely harmful product that kills up to two-thirds of long-term users, so the government must enforce strong policy to ensure an accelerated decline in the damage it causes in the UK. We believe a strong positive licensing scheme is a necessary element of a comprehensive tobacco control plan.

19. Specifically, we believe the licensing scheme must include regulations at least proportionate to those imposed on alcohol in the UK.

20. Furthermore, we think the scheme should apply to both premises and individuals involved in the supply chain of tobacco products. This provision is necessary to ensure individuals do not escape the consequences of participating in illegal tobacco trade by simply moving to
new premises and continue to carry out illegal activity. It will also hold individuals accountable and specifically identify their role in supply chain failures.

21. Cancer Research UK endorses the consultation response prepared by Action on Smoking and Health (ASH), which identifies key issues that a positive licence scheme will address:
   a. To drive out those involved in the criminal supply of illicit tobacco at all levels of the supply chain;
   b. To inhibit unlawful or illegal activity by businesses that are ostensibly legitimate, but who are complicit in the illicit tobacco supply chain;
   c. To provide real incentives to legitimate traders not to enter into any form of involvement in the illicit supply of tobacco for reasons of income or, as is becoming more common, from pressure from organised crime; and
   d. To protect tax revenues. Tobacco excise tax raised £9.5 billion in 2014/15, and the total tax revenue lost because of illicit tobacco was £2.1 billion.  

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.

22. Cancer Research UK believes the licensing scheme should apply to manufacturers, wholesalers, retailers, importers and exporters involved in the manufacture and sale of tobacco products, and include the following elements:
   a. Manufacturers and importers: a permit to import or manufacture tobacco products with the cost based on sales data, a requirement to only supply and distribute product through licenced distributors and wholesalers, and a requirement to provide information on sales and brand volumes by region/area/shop each year.
   b. Distributors and wholesalers: a permit to transport tobacco products, with mandatory security requirements and tracking controls; a permit to sell products; a requirement to provide customer and sales data, and a requirement to only supply retailers who have a permit.
   c. Retailers: a permit to sell tobacco products, which could be suspended or revoked for breaches of tobacco control legislation (sale to minors, display ban, etc.) as well as selling or receiving illicit tobacco.

23. Manufacturers: Cancer Research UK does not support HMRC’s decision to exempt manufacturers from the licensing scheme. We do not think the provisions set out in the Tobacco Products Regulations 2001 are sufficient; these provisions do not provide adequate enforcement or penalties to manufacturers participating in illicit trade, either through direct participation or failure to effectively control their supply chain. Stronger regulation is needed to penalise those participating in illicit trade and deter legitimate manufacturers from partaking in illegal activity in the future.

24. We recognise that Section 7A of the Tobacco Products Duty Act 1979 places duties on tobacco manufacturers. Specifically,
   a. To avoid supplying tobacco products to persons who are likely to smuggle them into the UK.
   b. To avoid supplying tobacco products where the nature or circumstances of the supply make it likely that they will be re-supplied to persons who are likely to smuggle them into the UK.
   c. To avoid otherwise facilitating smuggling of tobacco products into the UK.
25. However, we do not agree that these are effective enough; they have not raised an adequate amount of money or reached their potential in preventing illicit activity.

26. **Retailers**: Cancer Research UK endorses the position of Article 15 EU TPD regulations that requires Parties to implement a tracking and tracing system to record information from “all purchasers from manufacturing to the first retail outlet”. It is important to note this is in contrast to Article 6 of the ITP which states information only be recorded from “the first customer who is not affiliated to the manufacturer” and the “identity of any known subsequent purchaser”.

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?

27. Cancer Research UK believes a licensing scheme, with the provisions we have outlined in this consultation response, is appropriate.

28. We are unaware of any alternative approach that would constitute an “equivalent approval granted, or control system” within the terms of Article 6 of the ITP, and provide an effective means of meeting the UK’s obligations under Article 23.3 of the revised EU Tobacco Products Directive, which requires that “Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures that are necessary to ensure that these penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive. Any financial administrative penalty that may be imposed as a result of an intentional infringement may be such as to offset the economic advantage sought through the infringement”.

d) If you think a licence system is appropriate, what type of licence system do you think would work best?

29. We believe a positive licensing scheme would be the most appropriate step forward. We have identified the following issues with a negative licensing scheme:
   a. In contrast to a positive scheme, which is pro-active and prevention-oriented, negative schemes are reactive so can only respond to issues once they have occurred.
   b. It is not possible to pre-assess the legitimacy of a tobacco retailer before they can sell tobacco in a negative licensing scheme. A positive licensing scheme would eliminate those retailers who are unfit to sell legitimate tobacco before they are active in the market.
   c. If tobacco retail is permitted to dispense tobacco without requiring a licence, a weak message is sent to wholesalers and retailers regarding the importance of compliance of tobacco control laws, especially in comparison to the strict licensing scheme applicable to alcohol retail.

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?

30. We note the licensing schemes already existing in Scotland, being introduced in Northern Ireland and under consideration in Wales. HMRC should factor in these experiences when developing their own proposals. We would, for example, endorse the comments of ASH Scotland that the existing Register there could be strengthened through the introduction of fees, holding retailers to compliance with existing laws or face being removed from the
register, and more effective enforcement activity. These experiences should be factored in when determining a system for England.

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?

31. Cancer Research UK sees many potential benefits of a licensing system to tackling the illicit trade in tobacco and evasion of Tobacco Products Duty, and is an integral addition to a comprehensive tobacco control strategy.

32. Primarily, we believe a licence system will facilitate driving perpetrators of illicit tobacco manufacture and trade out of the supply chain. We believe it is essential to implement the licence scheme to all aspects of the supply chain – to ignore any part of this would undermine the effectiveness of the scheme.

33. A licence system would decrease the prevalence of unlawful activity from businesses that are otherwise legitimate aside from their involvement in the unlawful sale of tobacco.

34. A strict licensing scheme with strict enforcement and penalties would disincentivise individuals and businesses from entering the illicit tobacco market, for reasons of income or from pressure from organised crime.

35. It would protect tax revenue and lead to a reduction in leakage of tobacco from the legitimate to black market in the UK.

g) Do you see any other potential benefits of introducing a licence system to the supply chain other than tackling illicit tobacco?

36. As outlined above, we believe a licence scheme would contribute greatly to reducing the incidence of illicit tobacco in the UK. We also recognise these regulations will have a positive spill over effect into other areas of tobacco control and public health.

37. Firstly, we believe the regulations will decrease the amount of illicit trade available to the population, most notably to young people and those of low socioeconomic status. This in turn will decrease their tobacco consumption and uptake. These populations are particularly vulnerable to tobacco harms, so any regulation that benefits them is especially progressive for tobacco control.

38. A licence scheme as outlined above will also do more to eliminate illicit tobacco retailers in the UK. This will benefit legitimate businesses by increasing their revenue. Although we recognise profit margins for tobacco retail are low, the elimination of illicit vendors will ensure consumers will only purchase tobacco from legitimate shops.

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?

39. Not applicable.
Q16. What reasonable sanctions/penalties do you think should be applied to businesses for non-compliance if a licensing system were to be implemented?

40. Cancer Research UK believes sanctions and penalties for non-compliance of a licensing scheme should be comparable to the uniquely harmful nature of tobacco to public health and the significant cost the illicit trade inflicts on society by undermining tobacco control programmes and costing the Exchequer revenue. We strongly support the position of the Government, announced in the Budget 2016, stating, “HMRC will consult on strengthening sanctions to tackle tobacco fraud”.

41. Article 23.3 of the EU Tobacco Products Directive requires that “Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures that are necessary to ensure that these penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive. Any financial administrative penalty that may be imposed as a result of an intentional infringement may be such as to offset the economic advantage sought through the infringement”.

42. We support ASH’s view that reasonable sanctions and penalties for those convicted of illicit tobacco activity should account for:
   a. The uniquely harmful nature of the product and its very serious impact on public health
   b. The loss of Government revenue consequent on illicit trade
   c. The high level of potential profits for individuals engaged in illicit trade.

43. Sanctions should include:
   a. Punitive penalties for criminals operating without a licence at all levels of the supply chain. The available penalties should reflect the full range of harms that the trade creates, including harm to public health, loss of duty and tax, and harm to the viability of legitimate businesses.
   b. Fines proportionate to the size of the commercial entity that breaches its licence conditions
   c. Fines sufficient to negate any commercial advantage gained through breaches of licence conditions
   d. Temporary or permanent deprivation of licence.

44. Fines and licence seizures should be controlled by the relevant enforcement authority:
   a. The HMRC should be responsible for businesses and individuals operating at the national level or across local authority boundaries.
   b. Local authority enforcement should be responsible for breaches confined within their authority.

45. We agree with ASH that manufacture or sale of tobacco products or tobacco manufacturing equipment should be categorised as a criminal offence, punishable by unlimited fines or up to six months in prison (i.e. within the range of sanctions that can be imposed by a magistrates’ court). Magistrates should be issued with guidance designed to ensure that they treat such offences with the seriousness they deserve.
Q17. Do you grow tobacco commercially in the UK?

46. No.

Q18. Do you think a fee for licences under this protocol should be levied? Please provide further comment, if applicable.

47. Cancer Research UK believes a licence fee should be set at a level that covers both administrative and enforcement costs of the licence scheme. The fee could be required either independently or in tangent with an alcohol licence.

48. We would support recouping the licencing fees for this scheme from tobacco manufactures as part of a Tobacco Levy to provide a sustainable funding model for tobacco control activity in the UK.

Q19. Do you have any general comments or views on paragraphs 3-5 of the Protocol?

Q20. Are there potential wider consequences of any of the proposals that we have not identified in this consultation?

Q21. Do you have any information that could inform the Impact Assessment?

---

1 Registered charity in England and Wales (1089464), Scotland (SC041666) and the Isle of Man (1103). Registered as a company limited by guarantee in England & Wales No.4325234. Registered address: Angel Building, 407 St John Street, London EC1V 4AD
2 "Tackling illicit tobacco: from leaf to light": HMRC and Border Force strategy to tackle tobacco smuggling: Page 10. HMRC & Border Force, March 2015
3 WHO. WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products
4 WHO. WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products
5 For example, Final fake tobacco factory gang member jailed: HMRC Press Release, 2 Nov 2012
7 HMRC Tobacco Bulletin, Feb 2016 and HMRC Tobacco Tax Gap Estimates 2014/2015 Tax loss figure quoted is mid-range estimate
8 It should be noted that Westminster Council recently won an important case in the Supreme Court concerning fees for licences covering the sex trade. The judgment said: “There is no reason why [a licensing fee] should not be set at a level enabling the authority to recover from licenced operators the full cost of running and enforcing the licensing scheme, including the costs of enforcement and proceedings against those operating sex establishments without licences.”