



HM Revenue
& Customs

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

Consultation document

Publication date: 25 February 2016

Closing date for comments: 20 May 2016

Subject of this consultation: This consultation is about Article 6 of the World Health Organisation Framework Convention on Tobacco Control (WHO FCTC) Protocol. The aim of the Protocol is to eliminate illicit trade in tobacco products.

Scope of this consultation: The UK Government announced its intention to consult on Article 6 of the Protocol at Autumn Statement 2015. The consultation is seeking views on two aspects of Article 6:

- the mandatory control of tobacco manufacturing equipment; and
- whether the UK should license wholesalers, retailers, brokers etc. of tobacco products

Who should read this: Anyone involved in the trade of tobacco products or tobacco manufacturing equipment or with an interest in tackling the trade in illicit tobacco. We are particularly interested to hear from small businesses, retailers and wholesalers. We welcome contributions from individuals and any other interested parties.

Duration: The consultation will run for 12 weeks from 25 February 2016 to 20 May 2016.

Lead official: Mark Palmer, Tobacco Policy Team, HMRC

How to respond or enquire about this consultation: Tobacco Illicit Trade Protocol – Article 6
HMRC Tobacco Policy Team
3W Ralli Quays
3 Stanley Street
Manchester
M60 9HL
Telephone: 03000 587928
Tobacco.policy@hmrc.gsi.gov.uk

Additional ways to be involved: HMRC welcomes meetings with representative groups to discuss these proposals.

After the consultation: A summary of responses will be published later in 2016.

Getting to this stage: The UK played a leading role in the negotiation of the Protocol and is in favour of all the measures it contains. The UK signed the Protocol, along with the EU, in 2013, signalling our intention to be bound by its provisions. We are now actively working towards its ratification.

At Autumn Statement 2015 the Chancellor announced that the UK Government would consult on Article 6 of the Protocol. A further consultation will take place on the other articles of the Protocol that need to be implemented in due course.

Previous engagement: This is the first formal engagement with stakeholders on this issue.

Contents

1	Introduction	4
2	Understanding your interest in this tobacco consultation	6
3	Licensing (or equivalent approval) of tobacco machinery	8
4	Exploring the case for a licensing system for vendors and other participants in the trade of tobacco	12
5	General Provisions of Article 6	16
6	Table of Impacts	17
7	Summary of consultation questions	19
8	The consultation process	23
Annex A	Relevant Legislation	25
Annex B	WHO FCTC Article 6	26

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1. Introduction

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. As part of this, 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 this 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 measures are already in place as part of the UK's strategy to tackle tobacco smuggling, such as registration of tobacco manufacturers and supply chain controls.

1.4 Article 6 of the Protocol is concerned with registration or licensing of participants who trade in tobacco and tobacco products. The Government announced at Autumn Statement that it was planning to consult on elements of Article 6. Specifically:

- implementation of controls of tobacco manufacturing equipment (including import and export). Under the Protocol, the control of tobacco manufacturing equipment is mandatory – this consultation therefore asks how this can best be achieved; and
- whether wholesalers, retailers, brokers etc of tobacco products should be licensed (or require equivalent approval). The Protocol states that parties 'should endeavour to license, to the extent considered appropriate'. This consultation will explore what impacts a licensing system (or other form of control) might have for users, particularly for businesses, and how effective the measure might be in combatting the illicit tobacco trade in the UK.

1.5 The Government is keen to ensure that any response to the illicit tobacco trade is proportionate and does not add an undue administrative burden on business. It will therefore be seeking views from a wide range of stakeholders to establish clear evidence-based rationale for its decisions. **No decisions have yet been made in relation to whether parties in a supply chain should be licensed or whether some but not all parties should be licensed.**

1.6 Since the Protocol was signed by the UK as a whole, HMRC has agreed that it will run the UK-wide consultation on how to implement Article 6 of the Protocol. HMRC's focus in undertaking this consultation is on identifying options to tackle tobacco duty evasion. However, HMRC will consider the results of this exercise with the Department of Health, and the devolved administrations of Scotland, Northern Ireland and Wales, in the context of the Government's wider tobacco control agenda and development and implementation of the Department of Health's (England) Tobacco Control Strategy to be published later this year.

1.7 We are mindful that Scotland, Northern Ireland and Wales have already taken significant steps in this area. As a devolved public health matter,

the Scottish Tobacco Retailers Register (<http://www.tobaccoregisterscotland.org/>) was introduced in Scotland in 2011. Northern Ireland will shortly have a tobacco retailers register in operation and Wales has recently published draft legislation to enable a similar register.

1.8 HMRC is working collaboratively with the devolved administrations as part of this consultation to ensure that any decision on how best to implement Article 6 takes account of, and complements, what is happening in Scotland, Northern Ireland and Wales. We will seek to ensure that businesses there are not disproportionately affected.

1.9 Please note that this consultation applies to finished products, as described in EU and UK legislation - see [Notice 476](#), Tobacco Products Duty, for more information. The UK Government has already announced plans for a registration system for anyone using or dealing in raw tobacco – there is more information at <https://www.gov.uk/government/consultations/control-of-raw-tobacco>

1.10 The Government will publish a summary of responses later in 2016. Decisions on implementation will need to form part of the wider tobacco control agenda which includes a range of initiatives that the UK Government is progressing, such as implementation of the Tobacco Products Directive.

2. Understanding your interest in this tobacco consultation

2.1 Businesses, organisations and individuals may have different perspectives and HMRC is interested in understanding the context of the answers you give to all the questions in this consultation.

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/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

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?**

2.2 As a party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), the UK has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To meet this obligation, we ask all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. We will still carefully consider all consultation responses from the tobacco industry and from those with links to the tobacco industry and include them in the published summary of consultation responses.

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

3. FCTC Protocol Article 6(1)

Licensing (or equivalent approval) of tobacco machinery

3.1 Paragraph 1 of Article 6 requires parties to the Protocol to prohibit the manufacture of tobacco products and manufacturing equipment, as well as the import and export of those products, except where a licence or equivalent approval has been granted:

To achieve the objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each Party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter "licence") granted, or control system implemented, by a competent authority in accordance with national law:

- (a) manufacture of tobacco products and manufacturing equipment; and*
- (b) import or export of tobacco products and manufacturing equipment.*

Manufacturers of tobacco products

3.2 Manufacturers of tobacco products in the UK are already required to have a licence, so HMRC will not be consulting on this point.

Manufacturers of tobacco manufacturing equipment

3.3 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 seeks stakeholders' views on how this should be achieved.

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?

3.4 HMRC understands that 'manufacturing equipment' can cover a broad spectrum from large plant machinery to portable equipment and would like to gain a clearer understanding of this sector. We would like to know if you will be affected by this change in legislation.

3.5 For clarity, HMRC **does not** propose to require a licence for the manufacture of hand-operated machines to roll single cigarettes from rolling tobacco.

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

3.6 Do not answer the questions at **Q5** above if the component(s) you manufacture are incidental. For example, plugs, fuses and other component parts that can be used in other types of equipment and that are not specific to the tobacco sector.

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

Import and export of tobacco manufacturing equipment

3.7 Article 6 paragraph 1(b) states:

To achieve the objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each Party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter "licence") granted, or control system implemented, by a competent authority in accordance with national law:

.....
 (b) import or export ofmanufacturing equipment

3.8 There are currently no approval or licensing requirements in the UK for the import or export of manufacturing equipment for tobacco products. This will need to be introduced under the Protocol and HMRC is keen to hear your views on how this should be implemented.

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

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?

Import and export of tobacco products

3.9 Article 6 paragraph 1(b) states:

To achieve the objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter "licence") granted, or control system implemented, by a competent authority in accordance with national law:

.....

(b) import or export of tobacco products.....

3.10 The UK already has approval controls in place around the import or EU acquisitions of 'Duty Suspended' tobacco products. It is not suggested that the UK should change any of the existing controls so HMRC will not be consulting on existing processes.

3.11 However, there are no current controls in place for the import from outside the EU or acquisition from the EU of 'Duty Paid' tobacco products. Currently, businesses or individuals importing duty paid tobacco are only required to declare the goods at the border and pay the customs duty, excise duty and VAT that is due.

3.12 The UK also already has controls in place around individuals bringing tobacco products into the UK, including allowances for the import of 'duty free' products for personal use. This consultation does not propose to change these rules.

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

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?

Conditions, penalties and impacts

3.13 Whether you are a manufacturer or importer/exporter of tobacco products or tobacco manufacturing equipment, HMRC seeks your views on the conditions that might be applied and any sanctions or penalties for non-compliance as well as any potential impacts.

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

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

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?**

4. FCTC Protocol Article 6(2)

Exploring the case for a licensing system for vendors and other participants in the trade of tobacco

4.1 Paragraph 2 of Article 6 requires parties to the Protocol to ‘endeavour to license, to the extent considered appropriate’ those involved in the selling, storing, transporting or growing of tobacco products and, in some cases, tobacco manufacturing equipment:

Each Party shall endeavour to license, to the extent considered appropriate, and when the following activities are not prohibited by national law, any natural or legal person engaged in:

- (a) retailing of tobacco products;*
- (b) growing of tobacco, except for traditional small-scale growers, farmers and producers;*
- (c) transporting commercial quantities of tobacco products or manufacturing equipment; and*
- (d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.*

4.2 The devolved administrations in Scotland, Northern Ireland and Wales have either brought in, or are considering/intending to bring in, legislation for a mandatory register of tobacco retailers on public health grounds:

- the objective of the Scottish Tobacco Retail Register introduced in 2011, is to enable clear identification of retailers to support efficient enforcement of the law. The Register helps enforcement officers to both provide advice to retailers in order to avoid illegal sales and to also take enforcement action where necessary.
- the Northern Ireland Tobacco Retail Register will provide essential information to councils to allow them to enforce tobacco legislation, to gather relevant data on the sector to aid policy development and provide an information service to members of the public with regards to tobacco retailers in their area.
- the primary purpose of the Welsh Register of Retailers of Tobacco and Nicotine Products will be to reinforce the importance of protecting under 18s from tobacco and nicotine products, as well as reducing the risk of under 18s accessing these products.

4.3 At this stage of the consultation, HMRC is interested only in gauging opinion on whether a licensing system for the tobacco products supply chain should be introduced to meet our obligations under Article 6 of the Protocol. There is no pre-

conceived view on whether to introduce a licence system (or equivalent) at all, whether any licensing scheme should apply to all or part of the supply chain, how any licence system (or equivalent) might work, whether there should be any charges levied to those affected and who might be responsible for enforcing it.

4.4 If, following this consultation, there is a case for introducing a retailer licensing system to tackle the trade in illicit tobacco, then a further technical consultation will follow to determine the details of how such a system would work.

Retailers

4.5 Retailers do not currently need a licence to sell tobacco products in any part of the UK. However, as noted in the introduction to this consultation, Scotland has implemented a registration system that requires retailers to register to sell tobacco in Scotland. A similar system is currently being introduced in Northern Ireland following a formal consultation on draft Regulations, and is being considered in Wales, where draft legislation has been published. Any case for licensing retailers will need to complement or enhance these arrangements. HMRC will aim to ensure that burdens and costs on businesses are proportionate.

4.6 Clearly, any prospect of licensing retailers would affect a large number of businesses in any part of the UK, and in many cases small businesses. It is important, therefore, to understand fully the impact of such a decision and to ensure any approach is proportionate in tackling illicit tobacco trade.

Transporters of commercial quantities of tobacco products or manufacturing equipment

4.7 Currently ‘movement guarantees*’ aim to secure the duty on the transport of duty-suspended tobacco products throughout the EU. However, there is no equivalent system for duty paid goods and the transport of manufacturing equipment.

* Generally, excise goods that are moving within the EU in excise duty-suspension must be covered by a financial security in the form of a movement guarantee. The financial security is provided by an approved guarantor who undertakes to pay money to HMRC if an irregularity occurs during the movement.

Wholesalers, brokers, warehouse-keepers or distributors of tobacco and tobacco products or manufacturing equipment

4.8 The Protocol asks parties to consider the case for licensing further parties in the supply chain of tobacco products and manufacturing equipment – those who are involved in wholesaling, brokering, warehousing or distributing tobacco and tobacco products or manufacturing equipment.

4.9 Again, any prospect of licensing these participants would affect a significant number of businesses, and in some cases small businesses. It is important, therefore, to understand fully the impact of such a decision and to ensure any approach is proportionate in tackling illicit tobacco trade.

4.10 For clarity, when commenting on a licence specifically for warehoused products, we are interested in views on duty paid products. There are already excise controls and approvals in place for duty suspended goods.

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?**

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?**

Q16. What reasonable sanctions/penalties do you think should be applied to businesses for non-compliance if a licensing system were to be implemented?

Tobacco growers

4.11 HMRC understands that there is little or no commercial tobacco grown in the UK. However, we would be interested to hear if this is not the case.

Q17. Do you grow tobacco commercially in the UK?

5. FCTC Protocol Article 6

General Provisions - Paragraphs 3 - 5

5.1 Paragraphs 3 – 5 outline the obligations of the regulatory body. HMRC welcomes any early comments on these obligations but these will be subject to further scrutiny if there is a case for introducing a licensing system and will be included in a further technical consultation, as appropriate. The text of paragraphs 3-5 are reproduced in Annex B – key points include:

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

5.2 HMRC seeks stakeholders' early views with regard to the last of these – the prospect of charges to be levied if a licensing system were introduced.

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

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?

6. Table of Impacts

6.1 Because no decisions have been reached on the shape of a licensing system (or equivalent) for manufacturers of tobacco manufacturing equipment, or whether the UK will introduce a licensing system for others, it is not possible to give a comprehensive assessment of the impact of all the possible changes. This consultation gives all interested parties the opportunity to comment on the potential impacts of the various options discussed in this document.

6.2 If an option is taken forward and legislative change is required, a Tax Information and Impact Note will be published alongside the draft legislation and this will take on board comments on the impacts provided in response to this consultation.

6.3 A summary of HMRC's current assessment of impacts can be found below.

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
	Any Exchequer impact will be estimated following consultation, and will be subject to scrutiny by the Office for Budget Responsibility.					
Economic	The measure is not expected to have any significant economic impacts.					
Impact on individuals, households and families	The measure is not expected to have any direct impact on individuals, households and families as it is expected to impact on tobacco traders and manufacturers of tobacco manufacturing machinery.					
Equalities impact	The changes are not expected to have any impact here but this will be confirmed through consultation.					
Customer cost impact	The impact on burdens will be reviewed in light of consultation responses and as the shape of any option is developed.					
Impact on businesses and civil society organisations	<p><u>Licensing (or equivalent approval) of tobacco machinery</u></p> <p>Businesses affected will face one-off costs of registration and familiarisation with the new regime. Ongoing costs will include keeping additional records where businesses are not currently registered for tobacco purposes, we expect these costs will be minimal as the number of manufacturers of tobacco manufacturing machinery in the UK is expected to be small.</p>					

	<p><u>Exploring the case for a licensing system for vendors and other participants in the trade of tobacco</u></p> <p>Traders, including small businesses, selling tobacco will be affected if a registration/licensing system is introduced and the number of businesses affected is likely to be significant. Businesses affected will face one-off costs of registration and familiarisation with the new regime. Ongoing costs will include keeping additional records where businesses are not currently registered for tobacco purposes.</p> <p>The impact on business including small and micro businesses will be reviewed in light of consultation responses and as the shape of any option is developed.</p>
Operational impact (£m) – [HMRC or other]	There will be an operational cost (to HMRC and/or others) in setting up and administering a registration/licensing system, as well as costs of enforcing such a system. A more detailed assessment of the operational impact will be undertaken following consultation.
Other impacts	Any other impacts will be reviewed in light of consultation responses and as the shape of any option is developed.

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

7. Summary of Consultation Questions

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/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

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?

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

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?

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

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

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

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?

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

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?

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

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

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?**

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?**

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?

Q16. What reasonable sanctions/penalties do you think should be applied to businesses for non-compliance if a licensing system were to be implemented?

Q17. Do you grow tobacco commercially in the UK?

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

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?

8. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stages 1 and 2 of the process (Section 3 at stage 2, and Section 4 at Stage 1). The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 7.

Responses should be sent by [tbc] by e-mail to tobacco.policy@hmrc.gsi.gov.uk with the subject line: Tobacco Illicit Trade Protocol – Article 6 Consultation or by post to:

Mark Palmer
HMRC Tobacco Policy Team
3W Ralli Quays
3 Stanley Street
Manchester
M60 9HL

Telephone enquiries: Mark Palmer - 03000 587928 (from a text phone prefix this number with 18001)

Please also let us know if you believe that a meeting to discuss the issues raised would be helpful (though we cannot guarantee to meet every respondent who requests to do so).

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Relevant legislation

Customs and Excise Management Act 1979

Tobacco Products Duty Act 1979

Tobacco Products Regulations 2001 (SI 2001/1712)

Tobacco Products (Description of Products) Order 2003 (SI 2003/1471)

Scotland

Tobacco and Primary Medical Services (Scotland) Act 2010

<http://www.legislation.gov.uk/asp/2010/3/contents>

Legislation for proposed registers

Wales

Public Health (Wales) Bill

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Id=12763>

Northern Ireland

Tobacco Retailers Act (Northern Ireland) 2014

<http://www.legislation.gov.uk/nia/2014/4/contents>

Annex B: Article 6 of the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products

PART III: SUPPLY CHAIN CONTROL

ARTICLE 6

Licence, equivalent approval or control system

1. To achieve the objectives of the WHO Framework Convention on Tobacco Control and with a view to eliminating illicit trade in tobacco products and manufacturing equipment, each Party shall prohibit the conduct of any of the following activities by any natural or legal person except pursuant to a licence or equivalent approval (hereafter “licence”) granted, or control system implemented, by a competent authority in accordance with national law:

- (a) manufacture of tobacco products and manufacturing equipment; and*
- (b) import or export of tobacco products and manufacturing equipment.*

2. Each Party shall endeavour to license, to the extent considered appropriate, and when the following activities are not prohibited by national law, any natural or legal person engaged in:

- (a) retailing of tobacco products;*
- (b) growing of tobacco, except for traditional small-scale growers, farmers and producers;*
- (c) transporting commercial quantities of tobacco products or manufacturing equipment; and*
- (d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.*

3. With a view to ensuring an effective licensing system, each Party shall:

- (a) establish or designate a competent authority or authorities to issue, renew, suspend, revoke and/or cancel licences, subject to the provisions of this Protocol, and in accordance with its national law, to conduct the activities specified in paragraph 1;*
- (b) require that each application for a licence contains all the requisite information about the applicant, which should include, where applicable:*

- (i) where the applicant is a natural person, information regarding his or her identity, including full name, trade name, business registration number (if any), applicable tax registration numbers (if any) and any other information to allow identification to take place;*

(ii) when the applicant is a legal person, information regarding its identity, including full legal name, trade name, business registration number, date and place of incorporation, location of corporate headquarters and principal place of business, applicable tax registration numbers, copies of articles of incorporation or equivalent documents, its corporate affiliates, names of its directors and of any designated legal representatives, including any other information to allow identification to take place;

(iii) precise business location of the manufacturing unit(s), warehouse location and production capacity of the business run by the applicant;

(iv) details of the tobacco products and manufacturing equipment covered by the application, such as product description, name, registered trade mark if any, design, brand, model or make and serial number of the manufacturing equipment;

(v) description of where manufacturing equipment will be installed and used;

(vi) documentation or a declaration regarding any criminal records;

(vii) complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details;

and

(viii) a description of the intended use and intended market of sale of the tobacco products, with particular attention to ensuring that tobacco product production or supply is commensurate with reasonably anticipated demand;

(c) monitor and collect, where applicable, any licence fees that may be levied and consider using them in effective administration and enforcement of the licensing system or for public health or any other related activity in accordance with national law;

(d) take appropriate measures to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system;

(e) undertake measures such as periodic review, renewal, inspection or audit of licences where appropriate;

(f) establish, where appropriate, a time frame for expiration of licences and subsequent requisite reapplication or updating of application information;

(g) oblige any licensed natural or legal person to inform the competent authority in advance of any change of location of their business or any significant change in information relevant to the activities as licensed;

(h) oblige any licensed natural or legal person to inform the competent authority, for appropriate action, of any acquisition or disposal of manufacturing equipment; and

(i) ensure that the destruction of any such manufacturing equipment or any part thereof, shall take place under the supervision of the competent authority.

4. Each Party shall ensure that no licence shall be assigned and/or transferred without receipt from the proposed licensee of the appropriate information contained in paragraph 3, and without prior approval from the competent authority.

5. Five years following the entry into force of this Protocol, the Meeting of the Parties shall ensure at its next session that evidence-based research is conducted to ascertain whether any key inputs exist that are essential to the manufacture of tobacco products, are identifiable and can be subject to an effective control mechanism. On the basis of such research, the Meeting of the Parties shall consider appropriate action.