



HM Revenue
& Customs

Sanctions to tackle tobacco duty evasion and other excise duty evasion

Consultation document

Publication date: 17 February 2017

Closing date for comments: 12 May 2017

Subject of this consultation:	Additional sanctions to tackle illicit tobacco and tobacco duty evasion, which could also apply to evasion of other excise duties.
Scope of this consultation:	This consultation outlines proposed changes to the range of sanctions available to HMRC for the purpose of tackling illicit tobacco and potentially, evasion of other excise duties, their use by HMRC, Trading Standards Services and other selected agencies and seeks views on the implementation of those changes.
Who should read this:	The general public, representatives of businesses, other government departments, enforcement agencies and public health groups, landowners, landlords and their representatives.
Duration:	17 February 2017 to 12 May 2017
How to respond or enquire about this consultation:	Please send email responses, requests for hard copies of this document or enquiries about the content or scope of this exercise to tobacco.policy@hmrc.gsi.gov.uk Please send written responses to HMRC, Indirect Tax Tobacco Strategy and Policy team, 3W Ralli Quays, Salford, M60 9LA.
Additional ways to be involved:	HMRC welcome discussions with interested parties. If you're interested in discussing this at a meeting, please send an email using the contact details above.
After the consultation:	The proposals will be reviewed in light of the responses. A summary of responses together with any draft legislation will be published as soon as possible after the end of the consultation period.
Getting to this stage:	At Budget 2016 the government announced that they would consult on sanctions to tackle the illicit trade in tobacco and duty evasion.
Previous engagement:	Following publication of the refreshed tobacco strategy (Tackling Illicit Tobacco: From Leaf to Light') published on 24 March 2015, HMRC undertook an informal consultation as part of the wider review of sanctions for tobacco duty evasion. It invited views on sanctions and other action to tackle illicit tobacco. This consultation closed on 28 August 2015. A consultation response was sent to stakeholders on 15 January 2016 who provided comments to the informal consultation.

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Foreword

Smoking is the single biggest cause of inequalities in death rates between the richest and the poorest in the UK. It is the single largest cause of preventable illness and premature death in the UK, accounting for over 100,000 deaths each year. Half of all long term smokers will die as a result of smoking related illnesses.

Tobacco duty makes an important contribution to the public finances. Revenues from tobacco duty were approximately £9.4 billion in 2015-16. High duties reduce the affordability of tobacco products and support the government's public health objective to reduce smoking prevalence.

Evasion of tobacco duty both robs the Exchequer of revenues and blunts the effectiveness of tobacco duty in helping to reduce smoking. The UK cigarette illicit market has reduced by more than a third since its peak and over the same period the illicit market for hand-rolling tobacco has reduced by nearly half.

However, the Government is not complacent. We recognise that the risk from the organised criminal groups behind the illicit trade in tobacco remains high and constantly evolves. The availability of raw tobacco in the UK presents a significant and growing risk, fuelling illegal cigarette and hand-rolling tobacco manufacture. To address this issue legislation was introduced in January 2017 for a raw tobacco approval scheme. Also, at Budget 2016, as well as announcing further investment in operational officers to tackle tobacco fraud, we committed to consulting on options for tougher sanctions to strengthen the UK's response to tobacco smuggling.

This consultation seeks views on our proposals for tougher sanctions which focus in particular on repeat offenders. We also invite views on whether these proposed sanctions could potentially help tackle evasion of other excise duties.

I would very much welcome your views on the issues raised in this consultation.

Jane Ellison
Financial Secretary to the Treasury

1. Introduction

- 1.1 Since the launch of the first strategy to tackle illicit tobacco smuggling in 2000, HMRC has had a significant impact in reducing the illicit trade. We have reduced the illicit market for cigarettes from 22% in 2000-01 to 13% in 2015-16 and for hand rolling tobacco (HRT) from 61% to 32% over the same period. Revenue losses have reduced from £3.4bn per annum to £2.4bn per annum over the lifetime of the strategy.
- 1.2 This is a significant achievement, but tobacco fraud remains a problem and HMRC estimate that in 2015-16, 5 billion illicit cigarettes and 3,200 tonnes of illicit hand-rolling tobacco were consumed in the UK. The fraud is dominated globally by organised criminals and the illicit trade damages legitimate business, undermines public health and facilitates the supply of tobacco to young people.
- 1.3 Our strategic approach has been to continually adapt in light of changes in risk and our assessment of impacts. This approach has included regulatory change as well as new sanctions and detection technology. Tackling the threat presented by the criminality behind the fraud requires continuing collaboration across government in the UK and internationally. HMRC works closely with other law enforcement agencies, such as Trading Standards, the Police and licensing authorities, sharing and developing intelligence to support joint activity in the UK.
- 1.4 HMRC has a wide range of sanctions available, which have developed piecemeal over time. Focusing on the efforts across government to attack criminal activity at all levels, we need to ensure we have effective sanctions to deter participation in the fraud.
- 1.5 We said in the refreshed strategy ('Tackling Illicit Tobacco: From Leaf to Light') published on 24 March 2015 that we would undertake an informal targeted consultation as part of our wider review of sanctions for tobacco duty evasion.
- 1.6 HMRC engaged with other government departments and enforcement agencies, public health groups and representatives of business in dialogue on the range of sanctions available across government, their use and impact. The informal targeted consultation closed on 28 August 2015.
- 1.7 The outputs of this exercise have been considered in light of the responses to the HMRC consultation on penalties ('HMRC Penalties: a Discussion Document'), published on 2 February 2015, which closed on 11 May 2015.
- 1.8 HMRC has also undertaken work to explore whether the proposals to tackle illicit tobacco and tobacco duty evasion could also help deter and punish evasion of other excise duties.

2. Background

- 2.1 To help tackle tobacco fraud we have been considering our approach to sanctions and how we can strengthen it by using existing sanctions more effectively. Furthermore, we are developing proposals for additional sanctions with the potential for more radical approaches to the design and use of sanctions.
- 2.2 The majority of respondents to HMRC's informal consultation on sanctions to tackle illicit tobacco recognised the extensive range of civil and criminal sanctions currently available to HMRC and Border Force or through delivery partners. The general consensus was that more can be done to maximise the impact of existing sanctions and there were various suggestions for change. The key themes were as follows:
 - Increased penalties and sanctions
 - More effective action against repeat offenders
 - Naming
 - Scope for agencies to delegate powers; and
 - Improved publicity/campaigns to generally raise public awareness and engage business to clarify how they can address the fraud.
- 2.3 Respondents also suggested imposing statutory duties of care, for example on landlords to ensure their property is not used for the sale of illicit tobacco.
- 2.4 Since then, HMRC has been working with Border Force to ensure better understanding and more effective use of existing sanctions, engaged with Trading Standards on the use of powers across our organisations and introduced mechanisms to better monitor use of sanctions.
- 2.5 In addition, we have opened dialogue with representatives of the retail, wholesale and transport sectors on how we can better engage legitimate businesses in tackling tobacco fraud.
- 2.6 At Budget 2016 the government announced that they would consult on sanctions to tackle illicit tobacco. This consultation is designed to invite views on the government's proposals to change existing sanctions and introduce potential new sanctions, which we believe could have a significant impact in addressing specific issues, including repeat offending.
- 2.7 Although the HMRC tobacco policy team are undertaking this consultation, HMRC are also looking at potential extension of these proposals to other excise duty evasion and would be interested in views on how you would see this working for each option.
- 2.8 The potential new sanctions that we are consulting on are as follows:
 - Increasing financial penalties for repeat offenders
 - A new civil penalty for those involved in fiscal mark wrongdoing in the UK

- Reducing the threshold for the publication of details of people or companies that deliberately evade duty
- Imposing a statutory duty of care on landowners and landlords of properties or land which are used in tobacco (or other excise duty) fraud

2.9 Further details about the above proposed potential new sanctions and questions are in Chapters 3 - 6 of this consultation.

3. Increasing financial penalties for repeat offenders

- 3.1 Respondents to the informal consultation supported the view that an increase in financial penalties is required to further discourage the general public and businesses from getting involved in the smuggling and distribution of illicit tobacco products, particularly for repeat tobacco cases.
- 3.2 Finance Act 2008 (Schedule 41) is the basis for current financial penalties for excise wrongdoings, which are used in the majority of tobacco cases. However, the structure of these penalties does not appear to be effective in deterring repeat tobacco wrongdoings. We believe this is because the value of penalty available is limited to the potential lost revenue (PLR) for each individual wrongdoing. As a result, repeated wrongdoing does not carry any greater risks.
- 3.3 In addition, Schedule 41 requires HMRC to take account of whether a disclosure was prompted or unprompted, i.e. whether the individual notified HMRC of a wrongdoing before there was any reason to believe that HMRC was about to discover it. It also takes account of the nature of information given and degree of cooperation. Schedule 41 also requires each wrongdoing penalty to be reduced to reflect the quality of any disclosure.
- 3.4 In effect this means higher penalties for those who do not come forward and lower penalties (or a greater reduction) for those who do.
- 3.5 We believe that neither the PLR limit nor potential reductions as outlined above allow for adequate penalties to deter repeat tobacco wrongdoings. This is a particular issue at the border where Border Force see a persistent population who smuggle small amounts of tobacco on a regular basis. To address this we propose new tobacco legislation that would materially increase the financial penalties imposed for the repeated evasion of duty. A potential model would be to introduce:
- penalties for repeat tobacco wrongdoings to increase by 100% of the PLR for each subsequent tobacco wrongdoing committed within a specified period, using FA 2008 Schedule 41 as the basis for a multiplier penalty; and
 - allowing mitigation only in limited circumstances where individuals fully co-operate in providing information.
- 3.6 The following table provides an example of how the new penalty multiplier would apply to somebody who illegally imported around 3,200 cigarettes or 4kg of hand rolling tobacco on multiple occasions. Any illicit tobacco found to be liable to a tobacco wrongdoing penalty under new tobacco legislation would also be seized and an assessment raised for unpaid duty.

Offence	1st	2nd	3rd	4th
Duty evaded (PLR)	£750	£750	£750	£750
Current (E/W) penalty *	£175	£750	£750	£750
Suggested E/W penalty	£250	£1,500	£2,250	£3,000

** Maximum amount shown where the behaviour is not deliberate and concealed or deliberate but not concealed.*

- 3.7 The new tobacco wrongdoing penalty would be drafted in such a way that any subsequent tobacco wrongdoing carried out within a specified period would be assumed to be deliberate, providing HMRC have explained that fact when issuing the initial penalty.

Question 1: Do you think that increasing financial penalties for subsequent tobacco wrongdoings will deter repeat offending? If not, why not and what more do you think we could do?

Question 2: Should such a multiplier apply to wrongdoings in other excise regimes?

Question 3: What do you think about the proposal to increase the penalty by a proposed multiplier of 100% of PLR for each subsequent repeated tobacco wrongdoing? Is this enough or should it be more?

Question 4: Do you think that maintaining reductions for cooperation and the quality of information disclosed for repeat tobacco wrongdoings is helpful in providing an incentive for individuals to cooperate with HMRC? Do you think there is a case for allowing no mitigation?

Question 5: What timescale should be considered from the first to second tobacco wrongdoing to trigger the ramping up of penalties? For example, does a 12 month period appear reasonable or a longer timescale to deter the repeat wrongdoers?

4. A new civil penalty for dealing in illicit product

- 4.1 The informal consultation sought views on the use of ‘on the spot fines’ for tobacco duty evasion. Whilst some respondents felt that such fines could be effective in deterring small scale abuse, many thought that they would have little impact on the primary drivers of illicit tobacco sales and identified enforcement problems.
- 4.2 As an alternative we are considering the introduction of a new civil penalty for fiscal mark wrongdoings. We would like to amend existing tobacco legislation to allow the use of the new penalty by both HMRC and Trading Standards.**
- 4.3 The Tobacco Product Duty Act 1979 established offences for the storage and sale of tobacco products that do not carry the correct UK Fiscal Mark. A Fiscal Mark is a mark that must be carried on ‘specified tobacco products’ indicating that UK duty has been paid.
- 4.4 Under relevant sections of the legislation the courts can impose a fine on a successful prosecution. Pursuing criminal prosecutions can be a costly and time consuming process, especially in the case of repeat wrongdoing e.g. retailers keeping small volumes of illicit product on their premises.
- 4.5 We propose that the new penalty could be used where it is deemed that a case is not suitable for criminal prosecution but where a fiscal mark wrongdoing has clearly been committed.

Question 6: Do you consider it would be appropriate to extend this provision to those selling other illicit products on which excise duties should have been paid?

- 4.6 Issuing the new penalty for a fiscal mark wrongdoing would still leave HMRC the option to raise both a civil assessment and excise wrongdoing penalty under FA2008 for handling goods subject to unpaid excise duty.
- 4.7 Where the new penalty is issued, we propose that the person subject to the new penalty will be provided with the following information:
- Details of the wrongdoing penalty
 - Details of the person issued with the penalty for fiscal mark wrongdoing
 - Where and when the wrongdoing took place
 - How the penalty has been issued (in person or by post)
 - The level of fine imposed (when the fine must be paid by)
 - How the fine can be paid.
- 4.8 The above list is not exhaustive and we would welcome your views on what details you think could be considered for inclusion in the new penalty notice.

Question 7: Do you think that the new penalty would be an effective and proportionate sanction? If not, can you suggest an alternative approach?

4.9 The following questions concern the design and enforcement of the potential new penalty.

Question 8: Do you think that the new penalty should be on a sliding scale as determined by the potential lost revenue?

Question 9: Do you think that any new penalty should be subject to a maximum amount?

Question 10: Who in the supply chain that is found to be dealing in illicit tobacco do you think that the new penalty should be issued to? How far could it extend?

Time to pay

4.10 To further increase the immediacy of our impacts we also would like the new penalty to be time bound whereby the amount to pay specified on the notice only applies for the first 30 days. Failure to pay within that time would result in a second, higher amount becoming automatically due. We propose to allow 14 days to pay the higher amount.

Question 11: Do you believe that 30 days is sufficient time to pay the new penalty or do you think a different time limit is appropriate, if so what and why?

Question 12: What are your views on the higher penalty amount for failing to pay within 30 days?

- **Do you think HMRC/Trading Standards should issue a reminder letter to the responsible person before the 30 days are up?**
- **Do you think 14 additional days is the right amount of time to pay the higher penalty? If not why?**
- **At what level do you believe the second penalty should increase, for example, by 50% of the original amount, 100% or some other amount?**
- **How do you think HMRC should deal with offenders who fail to pay a second penalty within the 14 days? Possible options HMRC are considering are:**
 - **Court Order issued demanding payment known as Order of Recovery**
 - **Application to the court for an attachment of earnings order (allows money to be deducted from wages to pay the fine or;**
 - **Application to the court to have deductions made from benefits to pay for the fine.**

- 4.11 Rather than increasing the penalty for failure to pay within 30 days an alternative is to reduce the penalty where an individual pays the penalty charge within 14 days.

Question 13: What design model do you believe would have the most impact on encouraging behaviour?

- 4.12 We would be interested to hear your views on the above and whether you have any other alternative suggestions.

- 4.13 HMRC have rules regarding hardship and providing time to pay arrangements for outstanding debts. However, we do not propose to allow the new penalty to be paid in instalments but may consider time to pay arrangements where these arrangements are already in place.

Question 14: Should payment by instalments be in your opinion considered? If yes, why?

General

Question 15: Are there any potential wider consequences of introducing the new penalty that we have not identified?

5. Reducing the threshold for the publication of details of people or companies that deliberately evade duty

- 5.1 A key part of HMRC's tobacco strategy is the threat of cross tax investigations as a consequence of tobacco offences. Those who deliberately trade in illicit tobacco are made aware that if caught they could be subject to detailed investigations into all their tax affairs. Our aim is to publicise the impacts of such investigations as a deterrent to other illicit traders.
- 5.2 Current legislation in the Finance Act 2009, section 94 allows HMRC to publish the details of Deliberate Tax Defaulters. This is where the potential lost revenue is more than £25,000 and is for acts that are deemed to have been deliberate in nature. This does not appear to be an effective deterrent for tobacco wrongdoing, which tend to be of lesser amounts than other taxes, as although the initial tobacco wrongdoing and penalty may have been deliberate the penalty is likely to be below the publication threshold. Subsequent VAT, PAYE, Corporation Tax audits conducted by HMRC may take the potential lost revenue amount over the threshold. However those cross tax investigations may be considered non-deliberate or careless and therefore the publication criteria is not met. This results in a decreased deterrent effect for tobacco wrongdoings.
- 5.3 **HMRC propose the following two changes which could provide a more effective deterrent for tobacco wrongdoings:**
- **to allow publication of deliberate defaulters' details, if the tobacco element of the total penalties charged is deemed to be deliberate; and**
 - **reduce the overall potential lost revenue from £25,000 to £15,000.**
- 5.4 This approach was supported by respondents to the informal consultation who believed that lowering the current threshold to publicise the details of those evading duty in civil penalty cases would be a powerful deterrent.

We propose naming and publishing details where a deliberate excise wrongdoing has resulted in an individual or company being subsequently assessed for potential lost revenue in excess of £15,000, irrespective of whether that additional lost revenue was the result of a deliberate default.

Question 16: Do you think the potential lost revenue threshold figure of £15,000 is sufficient to have a deterrent effect on those who persist in evading excise duty?

Question 17: What are your views on publicising the details of companies or people who have evaded duty?

Question 18: Do you consider the naming of individuals or companies to be an effective deterrent and likely to change behaviour?

- 5.5 Reducing the threshold would encompass more wrongdoings and make the threat of publishing details of individuals and businesses more likely. This sanction would be in relation to the introduction of other proposals and form part of the intervention toolkit to combat the illicit trade in tobacco.
- 5.6 There are a number of reasons why we believe that naming those involved in illicit tobacco is justified:
- **Crime** – Illicit tobacco supply and distribution has strong links to organised crime and criminal groups.
 - **Health** – children and young people are often targeted by those that sell illicit cigarettes.
 - **Community tensions** – we regularly receive correspondence about legitimate businesses losing custom and residents aggrieved at the continuing illicit activity.
- 5.7 We propose to maintain the current safeguards set out in section 94(6) of the Finance Act 2009. These include informing the person and allowing them the opportunity to explain why their details should not be published even where they agree to a penalty.

Question 19: HMRC would publish the details on GOV.UK. Do you have any views on this? Specifically:

- **Who else should HMRC inform - local press, local authority, local police, public health, tobacco manufacturers? Others?**
- **Do you think the message would have a greater deterrent if published by another source? If so, who and why?**
- **When publishing the details, should HMRC publish names in the community? If so, how and where?**

6. Statutory Duty of Care on landlords and landowners of properties or land

- 6.1 A number of respondents to the informal consultation suggested imposing a statutory duty of care on landlords where a tobacco offence has been committed. Respondents believed that this would be an effective tool for raising their awareness and ensure their property is not used in the sale of illicit tobacco.
- 6.2 The sale of illicit tobacco through retail outlets remains a significant problem. Those involved persistently continue to do so as there is a perception that this presents a low risk. In some cases we believe that the landlord or landowners are aware of the fraud and turning a blind eye to their tenant's behaviour to ensure rental income is maintained. In some cases we believe that the landlord is complicit.
- 6.3 Landlords often have a standard lease agreement that they use in most cases. We believe that it is common for such lease agreements to have a clause which expressly prohibits illegal activities on the premises.
- 6.4 **To help discourage illicit tobacco trading or other illicit excise trading, we are proposing to write to relevant landlord and landowners associations directly requesting that they voluntarily add a clause to their standard lease agreements.**

Question 20: Would you be in favour of this approach?

- 6.5 Additionally or alternatively, we could legislate to **impose a duty of care on landlords and landowners of properties or land, which are used in tobacco (or other excise duty) fraud and introduce a new civil penalty for non-compliance with requirements to take reasonable steps to ensure that their property is not used to evade duty.**
- 6.6 The duty of care would only arise once the landlord or landowner has been notified that the tenant has evaded tobacco duty (or other excise duty).
- 6.7 To minimise the burden on the landlord or landowner we would provide for a defence for landlords or landowners who have taken reasonable steps to prevent future wrongdoings in or on their property.
- 6.8 This may involve a landlord or a landowner taking steps such as:
- Having provisions in all new leases making it clear that any illicit tobacco trading or any other illicit excise activity will terminate an existing lease.
 - Undertaking periodic checks on the premises and request information relating to the tenants business.
 - Evicting anyone who subsequently violates these provisions.

- Taking steps to ensure they are aware of illicit activity and contacting HMRC or Trading Standards immediately if they have concerns.
- Providing HMRC with a copy of the tenancy agreement with provisions relating to illicit tobacco or other excise products.

6.9 The above list is not exhaustive and we would welcome your views on what steps we could reasonably expect a landlord or landowner to take to prevent tenants from future dealings in illicit tobacco or other excise fraud.

Question 21: Do you think the examples above are on the right lines to ensure that the duty of care is reasonable and proportionate?

6.10 If the tenant then continues to deal in illicit tobacco or engage in other illicit excise activity and the landlord or landowner cannot demonstrate that they have taken steps to address the issue then HMRC will consider further action against the landlord or landowner.

Question 22: What would be a reasonable expectation of the steps landlords/landowners should take and the timescale for doing this and for taking action if there are further transgressions?

Question 23: What sanctions should HMRC apply to landlords or landowners who have not taken steps to prevent illicit tobacco or other illicit excise activity on the property or land? For example, should HMRC impose a financial penalty?

Question 24: Are there any potential wider consequences of introducing a duty of care and a civil penalty that we have not identified?

7. Maximising the use of sanctions

7.1 In addition to the proposals outlined in Sections 3-6, HMRC are working internally and with partner agencies externally to ensure we have the mechanisms available to apply new and existing sanctions in the most effective way. Some of these key actions are highlighted below:

- Exploring the potential for sharing powers across our partner agencies to strengthen the attack on those involved and deter participation e.g. to remove trading licences and applying for closure orders in order to impact on the profitability of the crime.
- Promoting more effective, targeted use of appropriate sanctions to fit the offence from organised criminal organisations to those at the lower end of the illicit tobacco supply chain.
- Developing a more robust media strategy to promote greater awareness of the wide range of penalties and sanctions, the circumstances in which they can apply and the consequences of dealing in illicit tobacco. This will include undertaking targeted campaigns using behavioural levers, e.g. on retailers and pubs, and proactive engagement to promote media interest.
- Working with the Crown Prosecution Service to extend the use of Serious Crime Prevention Orders to limit financial, property or business dealings or holdings, working arrangements, how and with whom they can communicate, premises to which they have access or use and on movement within the UK or between the UK and other countries.

8. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2016-17	2017-18	2018-19	2019-20	2020-2021
	Any Exchequer impact will be estimated following consultation, and will be subject to scrutiny by the Office for Budget Responsibility.				
Economic impact	Proposals are designed to support action against the illicit tobacco market and associated criminality and to reduce associated harm to individuals, communities and legitimate business.				
Impact on individuals and households	Proposals are designed to support action against the illicit tobacco market and associated criminality and to reduce associated harm to individuals, communities and legitimate business.				
Equalities impacts	Potential equalities impact. We do not have data on consumptions across various protected characteristic but men are slightly more likely to smoke than women.				
Customer cost impact	The changes are not expected to have any impact but will be confirmed through the consultation.				
Impact on businesses and Civil Society Organisations	<p>The illicit market undermines legitimate businesses and proposals represent an element of government intervention to protect their interests.</p> <p>This measure is expected to have no impact on civil society organisations.</p>				
Operational impact (£m) – [HMRC or other]	Any potential operational or additional costs to HMRC will need to be established in light of the outcome of the consultation and development of any policy change.				
Other impacts	Any other impacts will be reviewed in light of consultation responses and as the shape of any option is developed.				

Question 25: Do you have any information that could inform the Impact Assessment?

9. Summary of Consultation Questions

Question 1: Do you think that increasing financial penalties for subsequent tobacco wrongdoings will deter repeat offending? If not, why not and what more do you think we could do?

Question 2: Should such a multiplier apply to wrongdoings in other excise regimes?

Question 3: What do you think about the proposal to increase the penalty by a proposed multiplier of 100% of PLR for each subsequent repeated tobacco wrongdoing? Is this enough or should it be more?

Question 4: Do you think that maintaining reductions for cooperation and the quality of information disclosed for repeat tobacco wrongdoings is helpful in providing an incentive for individuals to cooperate with HMRC? Do you think there is a case for allowing no mitigation?

Question 5: What timescale should be considered from the first to second tobacco wrongdoing to trigger the ramping up of penalties? For example, does a 12 month period appear reasonable or a longer timescale to deter the repeat wrongdoers?

Question 6: Do you consider it would be appropriate to extend this provision to those selling other illicit products on which excise duties should have been paid?

Question 7: Do you think that the new penalty would be an effective and proportionate sanction? If not, can you suggest an alternative approach?

Question 8: Do you think that the new penalty should be on a sliding scale as determined by the potential lost revenue?

Question 9: Do you think that any new penalty should be subject to a maximum amount?

Question 10: Who in the supply chain that is found to be dealing in illicit tobacco do you think that the new penalty should be issued to? How far could it extend?

Question 11: Do you believe that 30 days is sufficient time to pay the new penalty or do you think a different time limit is appropriate, if so what and why?

Question 12: What are your views on the higher penalty amount for failing to pay within 30 days?

- **Do you think HMRC/Trading Standards should issue a reminder letter to the responsible person before the 30 days are up?**

- Do you think 14 additional days is the right amount of time to pay the higher penalty? If not why?
- At what level do you believe the second penalty should increase, by, for example, by 50% of the original amount, 100% or some other amount?
- How do you think HMRC should deal with offenders who fail to pay a second penalty within the 14 days? Possible options HMRC are considering are:
 - Court Order issued demanding payment known as Order of Recovery
 - Application to the court for an attachment of earnings order (allows money to be deducted from wages to pay the fine or;
 - Application to the court to have deductions made from benefits to pay for the fine.

Question 13: What design model do you believe would have the most impact on encouraging behaviour?

Question 14: Should payment by instalments be in your opinion considered? If yes, why?

Question 15: Are there any potential wider consequences of introducing the new penalty that we have not identified?

Question 16: Do you think the potential lost revenue threshold figure of £15,000 is sufficient to have a deterrent effect on those who persist in evading excise duty?

Question 17: What are your views on publicising the details of companies or people who have evaded duty?

Question 18: Do you consider the naming of individuals or companies to be an effective deterrent and likely to change behaviour?

Question 19: HMRC would publish the details on GOV.UK do you have any views on this? Specifically:

- Who else should HMRC inform- local press, local authority, local police, public health, tobacco manufacturers? Others?
- Do you think the message would have a greater deterrent if published by another source? If so, who and why?
- When publishing the details, should HMRC publish names in the community? If so, how and where?

Question 20: Would you be in favour of this approach?

Question 21: Do you think the examples above are on the right lines to ensure that the duty of care is reasonable and proportionate?

Question 22: What would be a reasonable expectation of the steps landlords/landowners should take and the timescale for doing this and for taking action if there are further transgressions?

Question 23: What sanctions should HMRC apply to landlords or landowners who have not taken steps to prevent illicit tobacco or other illicit excise activity on the property or land? For example, should HMRC impose a financial penalty?

Question 24: Are there any potential wider consequences of introducing a duty of care and a civil penalty that we have not identified?

Question 25: Do you have any information that could inform the Impact Assessment?

10. 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 stage 2 of the process. 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 number of questions are asked in section 3, 4, 5 and 6 and summarised in section 9

Responses should be sent by 12 May 2017, by email to:

Tobacco.policy@hmrc.gsi.gov.uk or by post to:

HMRC Indirect Tax Tobacco Strategy and Policy Team, 3W, 3 Stanley Street, Ralli Quays, Salford, M60 9LA.

Telephone enquiries should be made to 03000 579517 (from a text phone prefix this number with 18001).

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 normal 12-week period will allow sufficient time for respondents to reply.

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.