



HM Revenue
& Customs

Control of Raw Tobacco

Consultation document

Publication date: Monday 20 October 2014

Closing date for comments: Friday 30

January 2015

Subject of this consultation:	This consultation concerns the formal consultation on new arrangements for the control of raw tobacco.
Scope of this consultation:	<p>The Government has decided to introduce controls on the holding and movement of raw tobacco in order to reduce the risk of evasion of excise duty.</p> <p>The consultation is seeking views on two options: a proposed scheme of registration for users of raw tobacco to tackle this form of tax evasion and an alternative option to bolster existing powers of seizure. We will also seek the views on any alternative methods of control which would meet the same objective.</p>
Who should read this:	Anyone who imports, buys, sells, transports, uses or stores raw tobacco in the UK. We would particularly like to hear from anyone who uses raw tobacco for non-smoking purposes to enable us to accurately assess the impact of these proposals on them.
Duration:	The consultation will start on 20 October 2014 and run until 30 January 2015.
Lead official:	Mark Palmer, HMRC Tobacco Policy Team
How to respond or enquire about this consultation:	<p>Raw Tobacco Consultation HMRC Tobacco Policy Team Ralli Quays 3 Stanley Street Manchester, M60 9HL 03000 587928 tobacco.policy@hmrc.gsi.gov.uk</p>
Additional ways to be involved:	<p>Requests for this document in Welsh or accessible versions should be made using the contact details above.</p> <p>Requests for meetings will be considered and should be made by email or in writing using the contact details above as soon as possible.</p>
After the consultation:	A summary of responses together with draft legislation will be published as soon as possible after the end of the consultation period.
Getting to this stage:	At Budget 2014 the Chancellor announced that the government would consult during summer 2014 on a range of measures to strengthen its response to tobacco smuggling.
Previous engagement:	This is the first engagement with stakeholders on this issue.

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1. Foreword

Tobacco duty makes an important contribution to the public finances. Revenues from tobacco duty were approximately £9.7 billion in 2013-14. The revenue from tobacco tax forms part of our plan to reduce the UK's debt. High taxes reduce the affordability of tobacco products and supports the Governments' objective to reduce smoking prevalence.

This Government invested an extra £25m to support HMRC and Border Force's joint strategy to tackle tobacco smuggling. The UK cigarette illicit market has reduced by more than half since its peak and has been held below 10% for the last three years. Over the same period, the illicit market for hand-rolling tobacco has reduced by more than one-third.

However, we are not complacent and recognise that the risk from the organised criminal gangs behind the illicit trade in tobacco remains high and constantly evolves. The availability of raw tobacco in the UK presents a significant growing risk fuelling illegal cigarette and hand-rolling tobacco manufacture. This is why at Budget 2014 we announced that we would consult on a range of measures to strengthen the UK's response to tobacco smuggling, including increasing controls on raw tobacco.

This consultation seeks views on proposals to make it easier for enforcement agencies and legitimate businesses to distinguish raw tobacco for legitimate use from illicit use and for the application of sanctions where illicit use is discovered. The consultation also seeks to identify the impacts the proposed changes would have on legitimate users of raw tobacco.

I would very much welcome your views on the issues raised in this consultation as we seek to balance protection of the revenue needed to fund important public services and reduction in smoking prevalence with a minimum of burden on legitimate businesses.

Priti Patel
Exchequer Secretary to the Treasury

2. Introduction

1. Raw tobacco which is not yet in a smokeable form is not subject to excise duty and the associated movement controls in the UK. This is presenting an increasing risk of evasion of Tobacco Products Duty through raw tobacco being freely and legally imported and either processed into illicit smoking products in unregistered premises or sold in small quantities to consumers for home processing. This issue is of increasing concern across the EU, with Poland and the Republic of Ireland having both recently introduced legal controls on raw tobacco.

2. It is a requirement of the World Health Organisation Framework Convention on Tobacco Control (FCTC) Illicit Trade Protocol (ITP), to which the UK is a signatory, to “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:

...

(d) wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment.”

We expect to carry out a further consultation later in 2014 on the implementation of other aspects of the ITP in the UK.

3. Increasing volumes of raw tobacco are being imported to the UK, much of which cannot be accounted for by legitimate use. Since 2011/12 import data indicates a 100% increase in the volume of raw tobacco being imported from 'third countries' to non-registered tobacco producers, with a total of 64 tonnes being imported in 2013/14. This data does not include tobacco imported from within the EU, this means that the actual total volume entering the UK will be substantially higher. The illicit manufacture of cigarettes and hand-rolling tobacco (HRT) in the UK from raw tobacco deprives the Exchequer of the duty which should be paid and makes cheaper illicit tobacco products more accessible to people, especially the young and vulnerable and so undermines the Government's public health objectives.

4. Under current legislation HMRC and Border Force (BF) have limited powers to control the movement of raw tobacco. The relevant European Union Directive does not allow raw tobacco being moved within the EU to be charged with excise duty. Current UK legislation permits HMRC and BF to seize raw tobacco where there is evidence of an intention to fraudulently evade duty at the time of seizure. As there are other legitimate, albeit niche, uses of raw tobacco, in most cases demonstrating this intention can be very difficult and is often not possible at the point of detection. Once raw tobacco has entered the UK, it is subject to no further controls and can therefore be easily diverted to illegal production of tobacco products.

5. Accordingly, HMRC is proposing to introduce additional controls on raw tobacco. Our preferred solution is the introduction of a scheme of registration for all businesses and individuals importing or using raw tobacco for any purpose. This consultation sets out how such a system will operate and who will be affected. The

scheme of registration aims to minimise burdens on legitimate businesses and users of raw tobacco while providing effective controls and deterrence to prevent the illegal manufacture of tobacco products.

6. Underpinning a scheme of registration would be a new power to enable HMRC and BF to seize raw tobacco which is not properly held in accordance with the new registration provisions.

7. A scheme of registration is our preferred option based on the assumption that there would be very few legitimate end-users of raw tobacco in the UK and therefore provides the most efficient means of assuring effective control of imports of raw tobacco. If the consultation indicates a significantly greater level of legitimate use than currently assumed, the efficiency benefits from the scheme of registration would be reduced and the compliance costs for businesses and individuals using or holding raw tobacco would be increased. Should this happen, we would consider implementing the alternative option to broaden the existing seizure powers. Whichever approach is adopted, a key objective will be to keep additional burdens on legitimate business to a minimum while preventing the evasion of excise duty.

3. Definition of Raw Tobacco

8. The Tobacco Products (Descriptions of Products) Order 2003 (SI 2003/1471) sets out definitions of cigarettes, cigars, hand-rolling tobacco and other smoking tobacco. It is the definitions of hand-rolling tobacco and other smoking tobacco which are of primary significance here, and these are as follows:

Hand-rolling tobacco

(1) References to hand-rolling tobacco in the Act include any product that would, but for the reference to hand-rolling tobacco in article 7(1) below, be other smoking tobacco and—

(a) in which more than 25% by weight of the tobacco particles have a cut width of less than 1.5 millimetres, or

(b) that is sold or intended to be sold for making into cigarettes by hand, or

(c) that is of a kind used for making into cigarettes by hand.

(2) In this regulation—

(a) the references to “making into cigarettes by hand” in paragraph (1)(b) and (c) above include making into cigarettes by hand with the aid of a mechanical device, and

(b) the use for making into cigarettes referred to in paragraph (1)(c) above must amount to more than occasional use but need not amount to common use.

Other smoking tobacco

(1) Subject to paragraph (2) below, references to other smoking tobacco in the Act include any product that is not cigarettes, cigars, or hand-rolling tobacco and comprises—

- (a) tobacco that has been cut or otherwise split, twisted or pressed into blocks, and is capable of being smoked without further industrial processing, or
- (b) tobacco refuse put up for retail sale that can be smoked.

(2) References to other smoking tobacco in the Act include products consisting in whole or in part of substances other than tobacco that otherwise conform to a description in paragraph (1) above, unless they are herbal smoking products.

(3) For the purposes of paragraph (1), “tobacco refuse” means the remnants of tobacco leaves and the by-products of the processing of tobacco or the manufacture of tobacco products.

9. We propose to use the following definition of raw tobacco for the purpose of the scheme of registration or additional powers of seizure:

“Raw tobacco is any part of the tobacco plant (leaf, stem etc.) that has been harvested from the ground but does not yet meet the definition of ‘other smoking tobacco’ or ‘hand-rolling tobacco’.”

Question 1: Does the proposed definition encompass all forms of raw tobacco which could be used to manufacture tobacco products?

Question 2: Should plants which have not been harvested but are still growing in containers such as pots or bags also be included to prevent an alternative route to evade duty?

4. A Scheme of Registration

10. A scheme of registration would seek to make a clear distinction between raw tobacco for a legitimate use and illicit use. A scheme of registration would require all end-users of raw tobacco to register with HMRC. Any raw tobacco imported or held that is not destined for a registered end-user will be liable to seizure. This will enable HMRC and BF to identify and seize raw tobacco which is not held by or destined for a registered end-user, and to carry out checks on registered end-users where a risk is identified.

Who will be required to register?

11. The following would be required to be registered under the proposed scheme.

- Anyone who uses raw tobacco for the manufacture of smoking products or for non-smoking purposes including use as animal bedding, pesticides or for production of electronic cigarettes

The registration process

12. For most end-users handling small quantities of raw tobacco for purposes other than the manufacture of tobacco products (as defined by the legislation at paragraph 8 above), there will be a very simple form of registration. More detailed information will be required from larger end-users or applicants assessed to be of greater risk.

13. For small end-users, registration will involve applying to HMRC providing details of the name and address of the individual or business who is the end-user of the raw tobacco, any premises where raw tobacco may be received, stored or used, the end-use of the raw tobacco and an estimate of what quantities will be received.

14. Applications from businesses or individuals who will be using larger quantities of raw tobacco and are not registered to manufacture tobacco products will need to provide more detailed information similar to that for applications to register as a tobacco factory. HMRC will need to be satisfied that the raw tobacco is only destined for legal uses and that there are no risks of duty evasion. Both the suitability of the applicant and the premises to be used for storage will be considered. The existing process is set out in section 4 of Notice 476 which can be viewed at http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageExcise_ShowContent&id=HMCE_CL_000268&propertyType=document

15. We will explore the possibility of using an online digital tool to apply for registration.

16. Existing registered tobacco manufacturers will be able to apply to have their existing registrations amended to include raw tobacco, minimising the additional burden on legitimate businesses while preventing evasion of excise duty by illicit operators.

Question 3: We would very much like to hear from businesses and individuals who use raw tobacco for purposes other than manufacturing tobacco products on which duty is payable, including manufacturers of e-cigarette fluids. It would be extremely helpful to know:

- the nature of your usage;
- where and in what quantities you currently source raw tobacco, including the approximate quantities used;
- how you feel these proposals would impact you;
- is there an alternative substance that you could use in place of tobacco?

Question 4: What are your views on a simplified scheme for low volume users for non-smoking purposes:

- **Do you think there should be a simplified scheme for low-volume users and if so, why?**
- **At what level do you believe that the threshold should be set for a low-volume user of raw tobacco for non-smoking purposes?**
- **How could HMRC ensure that such a scheme was not exploited to avoid Tobacco Products Duty?**
- **Please supply any evidence you have of usage to support your view.**

17. An initial registration period will be provided ahead of the new system going live. This will allow existing legitimate end-users in raw tobacco to register and put the required record keeping systems in place ahead of the new scheme of registration coming into force.

Question 5: If you would be required to register under this scheme, for which other taxes and duties are you already registered?

Refusal or revocation of a registration

18. HMRC will have the power to refuse an application for registration where any conditions of registration are not met. Only persons who can demonstrate that they are fit and proper, have a legitimate end-use for the raw tobacco, can demonstrate a legitimate business need and meet the requirements of the Raw Tobacco legislation will be registered.

19. Reasons for refusing a registration under the fit and proper rules may include circumstances where:

- the owner(s) of the company (the directors in the case of a limited company) have unspent convictions
- there are proven links between the legal entity or key employees with other known non-compliant or fraudulent businesses
- HMRC is not satisfied that the business is genuine
- the company or individual seeking registration have outstanding HMRC debts
- the legal entity applying for authorisation has been involved in significant revenue non-compliance
- the proposed accounting system does not satisfies us

The above list is not exhaustive.

Question 6: Paragraph 19 includes factors that will be considered as part of a fit and proper test:

- **What is your view on the suggested factors that would be included in a fit and proper test?**
- **Are there any additional items you think should be considered as part of this fit and proper test?**

20. HMRC will have the power to revoke a registration where there has been a failure to comply with, or contravention of any condition or requirement attached to the registration.

21. Where a registration is refused or revoked, the applicant or registered person will have the right to ask for a review or appeal to an independent tribunal.

Record-Keeping requirements

22. Every registered person will be required to keep basic business records of raw tobacco received, used or supplied to others. Basic business records can include, but is not limited to, purchase orders, invoices, delivery notes, stock records, production records and payment records. These records will be liable to inspection.

23. For existing registered tobacco factories, there are likely to be very few new requirements on top of the current controls and record keeping requirements, and in the detailed design of the scheme HMRC will strive to keep burdens on legitimate businesses to a minimum while closing avenues for duty evasion being exploited by others.

Question 7: What record keeping requirements do you consider would be necessary to assure HMRC that raw tobacco is being used for a legitimate purpose, i.e. is not being used to illegally manufacture tobacco products?

Sanctions for non-compliance

24. Anyone registered under this scheme will only be permitted to use the raw tobacco themselves (meeting all other legal requirements if it used to manufacture smoking products).

25. Raw tobacco will be liable to seizure at the point of import into the UK from a third country or entry in the UK from another EU member state if the movement is not shown to be destined for a registered end-user.

26. Any raw tobacco identified within the UK which is not in the possession of a registered end-user or in transit to a registered end-user's registered premises will be liable to seizure.

27. We will consider what other sanctions, including financial penalties, which may be appropriate for non compliance with the registration conditions and for failing to register.

Question 8: Paragraph 25 states that HMRC will establish at the point of importation that raw tobacco is destined for a registered holder. It may therefore be necessary for the carrier or owner of raw tobacco being imported to provide proof of destination at the border. Are there any issues you can identify with this requirement?

Question 9: Are there any potential wider consequences of this system that we have not identified here?

Question 10: Are there any equality issues raised by these proposals, such as a disproportionate impact on any particular group of the population such as ethnic groups or disabled people, for example?

Question 11: Do you have any views on the potential impact of this scheme on businesses affected, including potential costs and burdens and any suggestions for how these can be kept to a minimum?

5. Broadening the existing powers of seizure

28. The alternative option to a scheme of registration would be to broaden the existing seizure powers to cover raw tobacco and require the importer/consignee to prove that the raw tobacco imported is for a legitimate purpose. This is similar to the scheme introduced by the Republic of Ireland.

29. Currently BF/HMRC can only seize raw tobacco under section 170B of the Customs and Excise Management Act (CEMA) 1979 where there is evidence that the raw tobacco is being used for the evasion of excise duty. Section 170B of CEMA states:

If any person is knowingly concerned in the taking of any steps with a view to the fraudulent evasion, whether by himself or another, of any duty of excise on any goods, he shall be liable—

(a) on summary conviction, to a penalty of the prescribed sum or of three times the amount of the duty, whichever is the greater, or to imprisonment for a term not exceeding six months or to both; and

(b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both.

(c) Where any person is guilty of an offence under this section, the goods in respect of which the offence was committed shall be liable to forfeiture.

30. Under this alternative option the importer or consignee of each shipment of raw tobacco would be required to prove to the satisfaction of BF/HMRC that the raw tobacco was to be put to a legitimate use.

31. This option introduces additional burdens on legitimate businesses involved in the importation of raw tobacco and would require HMRC and BF to investigate all consignments intercepted. For any importation or consignment of raw tobacco, the importer or consignee would need to be able to satisfactorily prove that the raw tobacco is destined for a legitimate end use. Where the importer or consignee could not prove to the satisfaction of BF/HMRC that raw tobacco is destined for a legitimate use the raw tobacco would be liable to seizure and the importer and consignee liable to other sanctions including the imposition of a financial penalty. Satisfactory evidence could include:

- the name and address of the owner of the raw tobacco
- the name and address of the supplier of the raw tobacco
- the name and address of the importer and/or carrier
- the name and address of the end-user including evidence to show that the raw tobacco was to be used legitimately

32. The above list is not exhaustive. This evidence would have to be provided to BF/HMRC within a specified time to enable BF/HMRC to undertake further checks to assure the credibility of the information provided. This may include visiting any or all of the businesses and individuals involved and requiring more detailed information. Failure to provide sufficient proof of a legitimate end use would render the goods liable to forfeiture.

Question 12: What documentation do you consider it reasonable and necessary for an importer or consignee to provide to prove that a consignment of raw tobacco is destined for a legitimate end use?

Question 13: What are your views on broadening the seizure powers, including any issues, potential costs and burdens. Please supply any evidence you have to support your view.

Question 14: Are there any potential wider consequences of increasing existing powers that we have not identified here?

Question 15: Do you have any alternative proposals for the control of raw tobacco and the prevention of avoidance of Tobacco Products Duty?

6. Next steps

33. A summary of the responses to this consultation will be published, followed by draft legislation for any changes which the Government decides to introduce. We may also carry out further consultation on the detailed design of the system to be implemented with selected respondents to this exercise.

7. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	Any Exchequer impact will be estimated following consultation and will be subject to scrutiny by the Office for Budget Responsibility.				
Economic impact	This measure is not expected to have any significant economic impacts. Better control of raw tobacco will prevent evasion of Tobacco Products Duty.				
Impact on individuals and households	Minimal direct impacts expected, and this will be investigated as part of this consultation. Households and individuals will benefit indirectly from a reduction in duty avoidance.				
Equalities impacts	None anticipated, and will be confirmed through this consultation.				
Impact on businesses and Civil Society Organisations	<p>This measure is expected to have a negligible impact on businesses and civil society organisations.</p> <p>The new registration system will build on existing registrations held wherever possible; minimising the impact on legitimate users of raw tobacco.</p> <p>Some businesses not currently registered for tobacco purposes may need to be registered and keep additional documentation.</p> <p>A full assessment of the impact on business will be carried out following consultation.</p>				
Impact on HMRC or other public sector delivery organisations	HMRC will administer the registration system and ensure compliance. Only a small number of registrations are expected, and the new system will simplify HMRC's role of controlling raw tobacco and ensuring that Tobacco Products Duty is paid when due.				

Other impacts

Small and micro business assessment; a full assessment of the impact on small and micro business will be carried out following consultation.
Other impacts have been considered and none have been identified.

8. Summary of Consultation Questions

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Question 2: Should plants which have not been harvested but are still growing in containers such as pots or bags also be included to prevent an alternative route to evade duty?

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Question 14: Are there any potential wider consequences of increasing existing powers that we have not identified here?

Question 15: Do you have any alternative proposals for the control of raw tobacco and the prevention of avoidance of Tobacco Products Duty?

9. 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 policy design and any suitable possible alternatives.

How to respond

A summary of the questions in this consultation is included at section 8.

Responses should be sent by 30 January 2015, by email to tobacco.policy@hmrc.gsi.gov.uk with the subject line "Raw Tobacco Consultation" or by post to: Raw Tobacco Consultation, Tobacco Policy Team, HMRC, Ralli Quays, 3 Stanley Street, Manchester, M60 9HL.

Telephone enquiries: 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).

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 Inside Government](#). 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:

Oliver Toop, 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 (current) Government 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)