

EXPLANATORY MEMORANDUM ON THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

Treaty Title: Protocol to Eliminate Illicit Trade in Tobacco Products

Command Paper No: 9614

SUBJECT MATTER

This explanatory memorandum concerns the government's plan to ratify the Protocol to Eliminate Illicit Trade in Tobacco Products (the Protocol) pursuant to the World Health Organization Framework Convention on Tobacco Control (FCTC).

The FCTC is an international treaty designed to reduce tobacco-related deaths and disease around the world. Adopted in May 2003, the objective of the FCTC is to provide a framework for international regulation of tobacco production and distribution in order to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. The UK is one of 181 Parties to the FCTC and a firm supporter of the Convention and the Protocol. The Protocol is intended to eliminate all forms of illicit trade in tobacco products. Key requirements of the Protocol include a licensing system, tracking and tracing and record keeping systems, and international cooperation between enforcement authorities. International adoption of the Protocol will be a significant step forward in the battle against the global trade in illicit tobacco products.

The Protocol was adopted at the fifth Conference of the Parties (COP5) in Seoul, South Korea in November 2012, and opened for signature on 10 January 2013. Finalisation of international agreements is a multi-stage process involving both 'signature' and 'ratification'. Both the UK and the EU signed the Protocol in December 2013 and the EU ratified the Protocol in June 2016.

The Protocol is a mixed competency agreement with provisions that are shared competence between Member States and the EU; exclusive EU competence; and exclusive Member State competence. The EU has already legislated to implement its obligations under the Protocol in its areas of exclusive EU competence and areas of shared competence with Member States.

The UK asserted its opt-in and did not participate in the EU decision to ratify the Justice and Home Affairs (JHA) elements of the Protocol. As a result, because the EU has ratified the Protocol, the UK will be bound by the non-JHA elements once the Protocol comes into force. The UK will only be bound by the JHA elements when the UK has ratified the Protocol. Having passed all the required legislation, the government now intends to ratify the Protocol.

MINISTERIAL RESPONSIBILITY

The Chancellor of the Exchequer has responsibility for United Kingdom policy on European Union monetary and economic issues.

The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for the conclusion and implementation of treaty obligations and responsibility for their application in Overseas Territories.

The Secretary of State for Health and Social Care has overall responsibility for the application of the FCTC in the UK.

POLICY CONSIDERATIONS

General

The illicit trade in tobacco products deprives the UK of vital revenue that could be used to fund essential public services, including tackling the damaging effects of tobacco itself. However, its impact extends far beyond that.

Dominated globally by organised criminal gangs, the illicit trade damages legitimate businesses, undermines public health, and facilitates the supply of tobacco to young people. The criminality involved, including the use of the proceeds to fund other crimes, has a devastating effect on individuals and communities across the UK and abroad.

The Protocol is an important international agreement that promotes a global solution to the illicit trade in tobacco products. The UK is fully committed to the Protocol and played a leading role in the agreement of the text. To become international law, 40 countries must ratify or accede to the Protocol. As of March 2018, the number of ratifications stands at 34.

Once the Protocol has entered into force, Parties to the Protocol will convene for the first session of the Meeting of the Parties. This group has decision-making powers to promote the Protocol and ensure its effective implementation. It will also decide the scale and mechanism of any voluntary assessed contributions from the Parties for its operation and implementation. As per Article 34, section 2(g) Parties to the Convention but not the Protocol may only attend in an observer capacity. The Protocol is likely to come into force this year. In order for the UK to be a full member of the Meeting of the Parties at the first session, an instrument of ratification must be deposited on or before 2 July 2018.

Implementation

Most of the requirements of the Protocol have been in place in the UK for some time as part of our successful tobacco anti-fraud strategy. These include requirements for registration of tobacco factories and licencing for tobacco manufacturing machines. Under Article 9 of the Protocol, the Parties agree to establish within five years of the Protocol entering into force, a global tracking and tracing regime for tobacco products. The UK is currently developing a track and trace system as required by the EU Tobacco Products Directive 2014. This goes slightly further than the requirements of the Protocol.

The primary benefits to the UK of ratification of the Protocol are to further reinforce its continuing commitment to tackling illicit tobacco and encourage other nations to ratify and implement the provisions. The UK is a target market for illicit product and widespread adoption of supply chain controls, for example, will play a significant role in reducing the supply of legitimate products onto the UK illicit market.

The "One-in, Three-out" (OITO) rule has been considered as part of the process of concluding the Treaty, but is not applicable.

Financial

Latest figures indicate the illicit trade in tobacco products cost the UK an estimated £2.5 billion in lost revenue in 2016-17. It is not possible to quantify the benefits of international implementation of the measures in the Protocol, however the adoption of global standards and international cooperation will contribute towards the UK's efforts to tackle the illicit trade and benefit the UK Exchequer.

The UK committed to implementation of the Protocol when it signed it in 2013. As all of the legislative requirements are now in place, the UK is ready to ratify the Protocol. Ratification will present no additional costs to government.

The track and trace requirements of the Protocol will be introduced across the EU under the Tobacco Products Directive. The tobacco industry will bear the costs of implementing the system and its operation. In signing the Protocol and adopting the Directive, the UK recognised that track and trace requirements would impose additional burdens on businesses that deal in tobacco products. HMRC will be working with affected businesses to limit those burdens and ensure the system delivered is as effective, efficient and as proportionate as possible.

Reservations and Declarations

No reservations or declarations were made at the time of UK signature of the Protocol and none are proposed at ratification.

Consultations

Officials have had ongoing discussions with stakeholders about implementation of the Protocol, including formal consultation on individual requirements. For example, HMRC consulted on licensing of tobacco manufacturing machinery and possible licensing of the supply chain in February 2016. Discussions with affected stakeholders about the implementation of a track and trace regime under the EU Tobacco Products Directive are ongoing.

The Protocol is designed to tackle the illicit trade in tobacco. The duty system is not a devolved administration issue and no devolved administration interests arise. However, health is a devolved matter and the devolved administrations each have tobacco control strategies, which set out their commitment to working with the UK government to tackle illicit trade in tobacco.

The Protocol will not apply to any Crown dependencies or overseas territories.

A handwritten signature in black ink that reads "Robert Jenrick". The signature is written in a cursive style with a long horizontal stroke at the end.

**ROBERT JENRICK MP
EXCHEQUER SECRETARY
HM TREASURY**