



HM Revenue
& Customs

Sanctions to tackle tobacco duty evasion

Consultation Document

Publication date: 1 December 2020

Closing date for comments: 23 February 2021

Subject of this consultation:	Proposals for tougher, more effective, sanctions to tackle the sale of illicit tobacco, with a focus on deterring those small-scale regular offenders who play a key role in street level distribution.
Scope of this consultation:	To seek views on: <ul style="list-style-type: none"> • proposals for new sanctions linked to the UK's tobacco track and trace system, and • extending HM Revenue and Customs (HMRC) traceability enforcement powers to Trading Standards officers.
Who should read this?	The general public, representatives of businesses involved in the manufacture, distribution and sale of tobacco products, other government departments, devolved administrations, local authorities, enforcement agencies and public health groups.
Duration:	12 weeks starting on 1 December 2020 and ending 23 February 2021.
Lead official:	Neil Pedersen: HM Revenue and Customs - Indirect Tax.
How to respond or enquire about this consultation:	Email responses to tobacco.policy@hmrc.gov.uk Please send enquiries about the content or scope of the consultation, or requests for a hard copy to the above email address.
Additional ways to be involved:	HMRC welcome discussions with interested parties. If you're interested in discussing the issues raised in this consultation at a meeting, please send an email using the contact details above.
After the consultation:	HMRC will publish a summary of responses, together with any draft legislation as soon as possible after the end of the consultation period.
Getting to this stage:	At Spring Budget 2020 the government announced that it would publish a consultation in 2020 on tougher new sanctions to tackle tobacco evasion.

Previous engagement:

In 2017 the government consulted on options for tobacco sanctions, with a focus on repeat offenders. A majority of respondents believed that additional sanctions, including increased financial penalties, would deter repeat offending. Respondents also raised some interest in sanctions that could be jointly applied by HMRC and Trading Standards.

HMRC undertook to work with other enforcement agencies on the design of possible sanctions and to assess how these could be introduced alongside other policy developments, such as tobacco traceability.

The timings involved with the implementation of the UK's track and trace system for tobacco products meant it was not possible to introduce anything other than basic sanctions at launch in 2019. It was decided the best approach was to fully embed this system before looking again at options for tougher sanctions.

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Ministerial Foreword

Smoking is the single biggest cause of inequalities in death rates between the richest and the poorest in the UK. It is the largest cause of preventable illness and premature death, accounting for over 77,800 deaths in 2017.¹ Half of all long-term smokers will die as a result of smoking related illnesses.

High duty rates reduce the affordability of tobacco products and so support the government's public health objective to reduce smoking prevalence. Tobacco duty also makes an important contribution to the public finances. Revenues from tobacco duty were approximately £8.8 billion in 2019-20.

Evasion of tobacco duty both robs the Exchequer of revenues and blunts the effectiveness of tobacco duty as a tool to reduce smoking. Since its peak in 2000 the UK's illicit market for cigarettes has reduced by more than a third and hand rolling tobacco by nearly half. Despite this success, the government is not complacent and recognises that the risk presented by the organised criminal groups behind the illicit tobacco trade remains high and is constantly evolving.

In 2019 our Election Manifesto pledged to both consolidate and introduce new anti-evasion measures. At Spring Budget 2020, we introduced a package of measures to tackle illicit tobacco at street level. As well as providing a £1 million grant to support Trading Standards and additional investment in HMRC enforcement, including the creation of a UK-wide HMRC intelligence sharing hub, we also committed to consult on tough new sanctions for to tackle tobacco duty evasion.

I therefore very much welcome your views on the issues raised in this consultation and on the effectiveness of the proposed sanctions in tackling illicit tobacco sales.



Kemi Badenoch MP

Exchequer Secretary to the Treasury

¹ [NHS Digital, Statistics on Smoking, England, July 2019](#)

1. Introduction

- 1.1 Since 2000, the government's anti-illicit tobacco strategies have successfully reduced the tobacco tax gap from 22% to 9% for cigarettes and 61% to 34% for hand rolling tobacco.² Revenue losses have reduced from an estimated £3.4 billion in 2000-01 to £1.9 billion per year in 2018/19.
- 1.2 This is a significant achievement but tobacco fraud remains a problem, with HMRC estimating that 2.5 billion illicit cigarettes and 3,500 tonnes of illicit hand-rolling tobacco were consumed in the UK in 2018-19. Illicit sales damage legitimate business, undermine public health and facilitate the supply of tobacco to young people.
- 1.3 Our strategic approach has been to continually adapt our operational response, considering changes in risk and our assessment of operational impacts. Tackling the threat presented by the criminality behind the fraud requires collaboration across government bodies as well as internationally. We work closely with law enforcement agencies across the globe via our Fiscal Crime Liaison Officers intercepting illicit tobacco before it reaches the UK and with agencies, such as Trading Standards and the police, sharing and developing intelligence to support joint activity at home.
- 1.4 HMRC has a wide range of sanctions to tackle those who manufacture, transport, hold or sell illicit tobacco. We focus efforts across government to attack duty evasion wherever it appears, targeting all levels of tobacco fraud. Our greatest impact is when focusing on the criminal elements that control the top-level national and international networks, disrupting their distribution supply chains and increasing their operating costs.
- 1.5 Although international and national criminal gangs coordinate the supply of illicit tobacco, most illicit sales in the UK are made by small scale operators. In 2018/19 local authorities received over 2900 complaints about local illicit tobacco sales in small retail shops, off-licences and

² [HMRC's Measuring tax gaps 2020 edition](#)

domestic premises. These three locations accounted for 75% of all tobacco complaints received by local authorities.³

- 1.6 Unlike HMRC, Trading Standards activities are conducted on a local level. In 2018/19, over 115 local authorities undertook some level of activity against illicit tobacco sales, with over 75% stating they had a specific strategy to tackle illicit tobacco.⁴ Trading Standards' ability to provide focused local activity and visibility, combined with local communications and knowledge, can help improve the public's perception of effective enforcement.
- 1.7 At Spring Budget 2020, the government announced measures to support more localised tobacco duty enforcement. This included the announcement of a ring-fenced grant of £1 million to fund National Trading Standards anti-illicit tobacco projects over the next two years and an additional investment in HMRC enforcement, including the development of a UK-wide HMRC intelligence sharing hub. The government also made a commitment to publish this consultation on sanctions linked to the track and trace system for tobacco products, that could be used by HMRC and, innovatively, Trading Standards.
- 1.8 Tobacco traceability is a requirement of the World Health Organization's Framework Convention on Tobacco Control Protocol to Eliminate the Illicit Trade in Tobacco Products, which the UK signed in 2013 and ratified in 2018.
- 1.9 In 2019, the UK introduced its track and trace system as part of an EU wide traceability system implemented by virtue of the Tobacco Products Directive (2014/40) to regulate the tobacco supply chain.
- 1.10 Since Budget, HMRC has held informal dialogue with Trading Standards colleagues on possible sanctions for consultation, including a possible fixed penalty of up to £10,000. We also informally consulted key stakeholders: the Department of Health and Social Care, the devolved administrations, as well as representatives from the health lobby and tobacco industry. All groups indicated strong support for HMRC to maintain and apply existing criminal and civil sanctions in the more serious fraud cases. All also agreed that a more co-ordinated, inter-agency approach, building on the new intelligence links and tougher new sanctions jointly

³ [Chartered Trading Standards Institute's Tobacco Control Survey, England 2018/19](#)

⁴ [Chartered Trading Standards Institute's Tobacco Control Survey, England 2018/19](#)

administered by HMRC and Trading Standards, could help drive the government's strategic aims.

1.11 The potential new sanctions that we are consulting on are as follows:

- Extending the ability to enforce selected track and trace sanctions to Trading Standards
- A new penalty of up to £10,000 for holding or possessing products that do not comply with the track and trace requirements
- Power to seize any track and trace compliant tobacco products where they are found alongside product that does not comply with the track and trace requirements
- The withdrawal of the track and trace operator ID from those retailers who are found with products that do not comply with the track and trace requirements
- The withdrawal of the track and trace operator ID from retailers that have had their ability to sell tobacco restricted or curtailed under any other legislation.

1.12 Subject to the outcome of this consultation, the government will propose legislation in Finance Bill 2021-22.

Northern Ireland

1.13 The government is willing to consider responses to this consultation that include suggestions that may require divergence from the law as it will stand at the end of the transition period. However, under Annex 2 to Article 5 of the Northern Ireland Protocol of the EU-UK Withdrawal Agreement, the Tobacco Products Directive (2014/40/EU) will continue to apply to the UK in respect of Northern Ireland. HMRC is separately engaging with stakeholders on the traceability provisions in the Tobacco Products Directive and arrangements for the tobacco track and trace system at the end of the transition period.

2. Background

- 2.1 Despite HMRC's long-term success in reducing tax losses associated with tobacco duty evasion, there remains a perception that this is low level fraud with perpetrators facing minimal risks.
- 2.2 Over recent years there has been an increasing trend of illicit sellers holding smaller quantities of product. This is a deliberate tactic to reduce their risks further, as it can make prosecution a disproportionate response and civil penalties less effective in changing behaviours and uneconomic to collect.
- 2.3 For example, a retailer may sell 10 packets of illicit hand rolling tobacco (HRT) each day but never keep more than two week's supply (around 100 packets) on their premises. Uninterrupted, that retailer would sell 2,600 illicit packets a year, evading approximately £20,000 in excise duty (excluding VAT). Assuming the retailer makes £1 on each illicit sale, they would make a profit of £2,600. The duty evaded on 100 packs is an estimated £800, an amount HMRC is less likely to prosecute over. Furthermore, the maximum civil sanction (assessment and penalties) for a first offence would be in the region of £1200, a figure which cannot guarantee a change in behaviour given the potential profits.
- 2.4 We estimate there are 44,000 retailers selling tobacco in the UK. The prospect of that same low-level offender being identified for a second compliance intervention under HMRC's national (risk-driven) targeting processes would be low. Even if a follow up visit was made, the outcome would most likely remain the same if the volumes of illicit product involved remained low.
- 2.5 In 2017, a consultation on sanctions to tackle excise duty fraud sought to target small scale repeat offenders and established an appetite for a tougher approach. The majority of respondents believed that additional sanctions, including increased financial penalties, would deter repeat offending. Respondents also raised some interest in sanctions that could be jointly applied by HMRC and Trading Standards.
- 2.6 HMRC undertook to work with other enforcement agencies on the design of possible sanctions and to assess how these could be introduced alongside other policy developments, such as tobacco traceability.
- 2.7 Tobacco traceability is a requirement of the World Health Organization's Framework Convention on Tobacco Control Protocol to Eliminate the Illicit Trade in Tobacco Products (hereafter referred

to as the Illicit Trade Protocol (ITP)). The UK ratified the ITP in 2018 and is one of 57 parties that include the EU Commission and all member states. To meet this requirement across the EU, the Tobacco Products Directive (2014/40/EU) introduced a pan-European track and trace system and on-pack security features in May 2019. These measures were designed to secure the tobacco supply chain by giving enforcement agencies the ability to monitor the manufacture and supply of legitimate tobacco products. This would guard against genuine products being diverted towards the illicit market and prevent illicit (non-compliant) tobacco products infiltrating legitimate supply chains. At the end of the transition period HMRC is making the minimal changes necessary for a traceability system to continue to operate in the UK.

- 2.8 Since May 2019, the track and trace system (TTS) has required every packet of cigarettes and HRT manufactured in, or imported into the UK, to be marked with a unique identifier (UID) and anti-counterfeiting security markings. An ID Issuer, appointed by HMRC, generates these UIDs, which it sells to manufacturers and importers for incorporation onto each unit packet in a scannable format. Each unit packet UID is then electronically linked to similar identifiers that appear on all aggregated packaging (carton, mastercase and pallet).
- 2.9 A legally specified 'sell through' period allowed stock manufactured or imported into the EU prior to May 2019 to remain on the market until 23 May 2020. After that date, the non-compliant old stock could not be legally sold in the UK.
- 2.10 The installation of scanning technologies throughout the supply chain allows each dispatch and receipt of tobacco products to be recorded and stored on a central repository. Scanning takes place from the point of manufacture to the final dispatch of the products to the first retail outlet. Tobacco products that do not carry legitimate UIDs cannot be scanned and so cannot enter the supply chain.
- 2.11 The ID Issuer also registers all economic operators and operators of first retailer outlets within the supply chain, issuing them with an economic operator identifier (EOID). Once registered the EOID can then be updated with identifiers for each facility where tobacco products are manufactured, stored or placed on the market.
- 2.12 Retailers must present their EOID when purchasing tobacco products wholesale. The wholesaler making the supply must scan the products out of their facility, recording it against the retailer's EOID. This is where the retailer's obligations end and there is no requirement under TTS for them to scan or record the tobacco sales they make to final consumers.

- 2.13 Illicit tobacco is tobacco on which UK duty has not been paid when legally due. It comes in many forms but can be broadly grouped in to one of three categories: smuggled unregulated products not intended for sale in the UK; genuine market leading brands which are duty paid overseas and smuggled into the UK; and counterfeit goods. All these products will not comply with the requirements of the TTS, as they will not carry a scannable UID or genuine security markings.
- 2.14 Due to the complexities involved in implementing the TTS, only those sanctions necessary to support economic operator obligations were introduced when the system was launched in 2019. It was decided the best approach was to fully embed this system and allow the sell through of old stock to conclude before looking again at sanctions options. It was important to understand how the controls introduced on tobacco packaging, and those who operate within supply chain, could be utilised to target those who choose to deal in illicit products and evade duty.

3. Extending track and trace enforcement powers to Trading Standards

- 3.1 Trading Standards is a key enforcement partner for HMRC, that plays an important role in tackling illicit tobacco at the local level.
- 3.2 To support effective administration of TTS in the UK, HMRC introduced the Tobacco Products (Traceability and Security Features) Regulations 2019. These Regulations provide HMRC with a range of enforcement powers, including the power to issue compliance notices and the forfeiture of tobacco products that fail to comply with any requirement in the Regulations. The Regulations also give HMRC discretion to deactivate EOIDs and defines the circumstances under which this can be done.
- 3.3 At Spring Budget 2020, the government announced a package of measures to tackle illicit tobacco, including increased resources for additional Trading Standards tobacco activities and the creation of a UK-wide HMRC intelligence sharing hub. The announcement also included plans to consult on the design of new sanctions linked to TTS, which would be available for use by HMRC and, additionally, Trading Standards to maximise the impact of their activities.
- 3.4 Extending existing TTS powers, along with any new sanctions, to Trading Standards would be especially useful in tackling retailers who hold an EOID but are repeatedly found with products that do not comply with the TTS requirements, as well as those who do not hold a valid EOID and are found with non-compliant products for the purpose of retail.
- 3.5 HMRC recognises that Trading Standards has a broad remit, extending beyond tobacco. All new policy design will therefore be considered in line with the government's new burdens principles

Question 1: Should Trading Standards officers have the ability to issue compliance notices and the discretion to deactivate EOIDs? Please provide your reasoning.

Question 2: The Tobacco Products (Traceability and Security Features) Regulations 2019 lists the circumstances under which an EOID can be deactivated. Which, if any, of these circumstances would not be appropriate for Trading Standards to administer and why?

Question 3: Are there any other considerations or safeguards relevant to the extension of TTS enforcement powers to Trading Standards?

4. A new track and trace-related penalty for holding non-compliant products

- 4.1 Since the announcement at Spring Budget to consult on new sanctions linked to TTS, HMRC has held a series of informal discussions with key stakeholders, including Trading Standards representatives, on a possible new £10,000 penalty that could be jointly administered. A similar level of penalty is currently available to HMRC for serious breaches of the Alcohol Wholesaler Registration Scheme (AWRS), which is aimed at tackling alcohol duty fraud.
- 4.2 Stakeholders agreed that effective penalties must be substantial enough to deter but also proportional to the level of offence and realistically recoverable. Although it was felt that the headline £10,000 penalty trailed within the Budget announcement would act as a significant deterrent, concerns were raised that this could be disproportionate if applied to all small-scale offenders, irrespective of circumstance. Stakeholders considered a better alternative to be a simple mechanism that allowed scale and behaviour to be considered, while still providing rapid escalation for repeat contraventions.
- 4.3 As well as proportionality, stakeholders wanted penalties to be simple to administer and easy to understand for customers. In discussions, the AWRS model, which includes levels of mitigation to reduce penalty amounts by set percentages, was considered too complex and difficult to replicate in a manner that could guarantee consistent decision making across multiple Trading Standards authorities.
- 4.4 Another key ask was for a penalty that could be effective against both high street retailers registered under TTS and those private individuals who make illicit sales from domestic premises, which is an increasing trend.
- 4.5 Based on this feedback we are seeking views on a new track and trace-related penalty of up to £10,000 for holding or possessing tobacco products that fail to comply with the TTS requirements.

Table 1: Potential Penalty model

	Category A		Category B		Category C		Category D	
	< 100 Unit Packets		100 to 299 Unit Packets		300 to 499 Unit Packets		500 + Unit Packets	
	Proposed new penalty	Current assessment and penalty	Proposed new penalty	Current assessment and penalty	Proposed new penalty	Current assessment and penalty	Proposed new penalty	Current assessment and penalty
1st Offence	£2,500	£1,200	£5,000	£3,600	£7,500	£6,000	£10,000	£8,000
2nd Offence	£5,000	£1,600	£7,500	£5,000	£10,000	£8,000	£10,000	£12,000
3rd Offence	£7,500	£1,600	£10,000	£5,000	£10,000	£8,000	£10,000	£12,000
4th Offence	£10,000	£1,600	£10,000	£5,000	£10,000	£8,000	£10,000	£12,000

Current assessment and penalty based on duty evaded on maximum number of 30g HRT packets in category, except Cat D which is based on 700 packets. First offence receives full duty assessment and mitigated penalty. Subsequent offences receive full assessment and full penalty.

- 4.6 The table above shows how a new penalty could be structured with penalty bandings, based on the volume of non-compliant unit packets. Compared to duty-based penalties this approach would significantly increase penalty amounts for contraventions that involve smaller quantities. For example, in the lowest band (< 100 packets) a penalty of £2500 would represent a 100% increase on the maximum duty-based assessment and penalty. Banding also helps address concerns over proportionality, with initial penalties increasing in line with the size of contraventions and further incremental increases for subsequent contraventions. Persistent breaches, even involving very small quantities, would quickly result in significant penalties.
- 4.7 At the other end of the scale, a first-time offence involving over 500 packets would receive an initial £10,000 penalty. This would still represent an increase on the current duty-gear equivalent, until approximately 900 packets, at which point the duty-based sanction would be higher. However, this model would still have the advantage of being easier to administer and available for use by Trading Standards.
- 4.8 In all scenarios HMRC and Trading Standards could reserve the right to pursue either a criminal prosecution or existing civil penalties, if considered to be more impactful.

Question 4:

- a) Excluding tobacco products brought into the UK by individuals as part of any travellers' allowance, are there any circumstances where a business or private individual could legitimately hold non-compliant TTS products?**
- b) What reasonable evidence could be provided to show this legitimate purpose?**

Question 5: Do you think the penalty model outlined in Table 1, with its initial fixed penalty amounts based on bands and previous compliance, would be a proportionate response?

Question 6: How could the model in Table 1 be altered to be more effective in combatting illicit tobacco activities?

5. Additional non-financial sanctions

- 5.1 Informal discussions with stakeholders revealed that, in addition to a new financial penalty, they were generally supportive of the other potential sanctions highlighted during the Spring Budget announcement. They felt that these could be used to further deter those who persistently fail to comply.

Seizure of TTS compliant products found alongside illicit product

- 5.2 Legally, HMRC only has powers of forfeiture over illicit products found on retail premises. This can mean that retailers who sell small quantities of illicit tobacco alongside legitimate supplies do so with minimal risk of losing their legitimate stocks.
- 5.3 A new power could make liable to forfeiture all TTS compliant product that is co-stored alongside non-compliant (illicit) product at a facility registered under an EOID. This sanction would be targeted at low level non-compliance, with an initial penalty notice being issued that clearly outlines the prospect of forfeiture if the person continues to be non-compliant. This would be a significant disincentive to those retailers that persistently engage in illicit sales, as it would disrupt the business and the cost of replacing the lost legitimate product would be materially more expensive than the current penalties.

Question 7: Are there any circumstances where an economic operator or first retail outlet could legitimately hold non-TTS compliant product, alongside compliant product, at a TTS facility?

Question 8: Would the power to seize TTS compliant product, where found alongside non-compliant stock, be an effective deterrent to tobacco fraud? Please provide your reasoning.

Withdrawing EOIDs on a temporary or permanent basis

- 5.4 Although HMRC can make an application to the courts for a six month banning order of tobacco sales, this is dependent on a criminal prosecution for excise evasion, which is not viable in most small-scale cases.

- 5.5 The Tobacco Products (Traceability and Security Features) Regulations 2019 gave HMRC the discretion to deactivate EOIDs for repeated failures to meet obligations. Withdrawing a retailer's EOID removes their ability to legally purchase wholesale tobacco products and therefore consequently hold products on their premises. This would be a serious deterrent to retailers who would no longer have access to legitimate product to sell. As well as the lost tobacco sales they would also lose the valuable footfall that tobacco sales generate.
- 5.6 Currently the discretion to deactivate EOIDs has limited application at retail level as very few TTS obligations apply. There is also limited scope to stop those who have had their EOID removed from automatically re-applying.
- 5.7 A new sanction would link deactivation of the EOID to the new penalty for holding non-compliant TTS stock. Deactivation could be automatic on the second or third occasion, depending on penalty banding. In addition, the retailer would be prevented from re-registering either themselves or their premises under an EOID on a temporary or permanent basis.

Question 9:

- a) **Do you agree that where non-TTS compliant product is discovered at a facility covered by an EOID, on more than one occasion, then the corresponding EOID should be deactivated?**
- b) **Are there any circumstances where this may not be appropriate?**

Question 10:

- a) **Would you agree that a period of six months would be an appropriate length of temporary EOID deactivation?**
- b) **Are there any circumstances when withdrawal should be longer or even permanent? Please provide your reasoning.**

Question 11:

- a) **What appeals processes do you think are necessary before an EOID can be deactivated?**
- b) **Do you think a warning notice should be required in all cases?**

5.8 The table below sets out how these two non-financial sanctions could be aligned to the penalty model in Table 1.

Table 2: Non-Financial Sanctions

	Category A			Category B			Category C			Category D		
	< 100 unit packets			100 to 299 unit packets			300 to 499 unit packets			500 + unit packets		
	Proposed New Penalty	Seize genuine	Remove EOID	Proposed New Penalty	Seize genuine	Remove EOID	Proposed New Penalty	Seize genuine	Remove EOID	Proposed New Penalty	Seize genuine	Remove EOID
1st Offence	£2,500	N	N	£5,000	y	N	£7,500	Y	N	£10,000	Y	N
2nd Offence	£5,000	Y	N	£7,500	Y	N	£10,000	Y	Temp	£10,000	Y	Temp
3rd Offence	£7,500	y	Temp	£10,000	y	Temp	£10,000	Y	Temp	£10,000	Y	Perm
4th Offence	£10,000	y	Perm	£10,000	y	Perm	£10,000	Y	Perm	£10,000	Y	Perm

Question 12:

- a) Do you think the sanctions model in Table 2 could be effective in combatting illicit tobacco activities?
- b) Can you suggest how this model could be improved to make the sanctions more effective?

6. Deactivation of EOIDs for failure to comply with health regulations

- 6.1 The Tobacco Products Directive (2014/40/EU) aims to control the manufacture and supply of tobacco products as a way of reducing deaths associated with smoking. HMRC has led UK implementation of the Directive's track and trace elements as these also play a role in tackling the duty evasion, a key factor in maintaining the effectiveness of high taxation as a smoking cessation tool.
- 6.2 Trading Standards currently enforce health related tobacco regulations on behalf of the Department of Health and Social Care, such as enforcing age restrictions on tobacco sales and policing the legal requirements on tobacco displays. In the devolved administrations, health related compliance is also linked to national retailer licencing schemes.
- 6.3 Previous cross-agency compliance activity indicates that those retailers who repeatedly ignore health regulations are significantly more likely to deal in illicit tobacco and vice versa. This consultation provides the opportunity to consider ways to bolster compliance activity for health related tobacco control and anti-fraud strategies by reinforcing the message that non-compliance will receive a multi-agency response.
- 6.4 We would like to hear views of how, in duly justified cases, the deactivation of a retailer's EOID could support all forms of tobacco compliance, especially tackling duty evasion.

Question 13: Where a retailer is in receipt of a banning order preventing tobacco sales or has been excluded from a national tobacco licencing scheme for persistent non-compliance, do you think Trading Standards should have the ability to deactivate the retailer's EOID for the period that they are excluded from making tobacco sales?

Question 14: How would deactivation of a retailer's EOID in these circumstances help tackle tobacco duty fraud?

7. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2020/21	2021/22	2022/23	2023/24	2024/25
	-	Nil	Nil	Nil	Nil
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals, households and families	These proposals have no impact on compliant individuals and are designed to support action against the illicit tobacco market and associated criminality and to reduce associated harm to individuals, communities and legitimate business. Customer experience is expected to remain broadly the same as this measure is aimed at non-compliant individuals. Compliant individuals will see no change to how they currently interact with HMRC. Given tougher and increased penalties, there could be an impact on family formation, stability or breakdown.				
Equalities impacts	Because of differences in consumption there may be a small equalities impact that reflects consumption trends across the adult population. However, this measure will only impact on those involved or purchasing from the illicit tobacco market.				
Impact on businesses and Civil Society Organisations	These proposals have no impact on compliant businesses or civil society organisations other than a one-off cost to familiarise themselves with the changes. There are expected to be no continuing costs. This measure is designed to support action against the illicit tobacco market and associated criminality and to reduce associated harm to individuals, communities and legitimate business. Customer experience is expected to remain broadly the same as compliant businesses are expected to see no change to what they currently do.				
Impact on HMRC or other public sector delivery organisations	Any potential operational impact or additional costs to HMRC and others, for example Trading Standards and Ministry of Justice, will need to be established as policy design develops. All new policy design will be considered in line with the government's new burdens principles.				
Other impacts	<p>Any other impacts will be reviewed considering consultation responses and as the shape of any option is developed.</p> <p>Devolved Administrations- No differential impacts. (see page 8 for discussion on Northern Ireland).</p>				

8. Summary of Consultation Questions

Question 1: Should Trading Standards officers have the ability to issue compliance notices and the discretion to deactivate EOIDs? Please provide your reasoning.

Question 2: The Tobacco Products (Traceability and Security Features) Regulations 2019 lists the circumstances under which an EOID can be deactivated. Which, if any, of these circumstances would not be appropriate for Trading Standards to administer and why?

Question 3: Are there any other considerations or safeguards relevant to the extension of TTS enforcement powers to Trading Standards?

Question 4:

- a) Excluding tobacco products brought into the UK by individuals as part of any travellers' allowance, are there any circumstances where a business or private individual could legitimately hold non-compliant TTS products?**
- b) What reasonable evidence could be provided to show this legitimate purpose?**

Question 5: Do you think the penalty model outlined in Table 1, with its initial fixed penalty amounts based on bands and previous compliance, would be a proportionate response?

Question 6: How could the model in Table 1 be altered to be more effective in combatting illicit tobacco activities?

Question 7: Are there any circumstances where an economic operator or first retail outlet could legitimately hold non-TTS compliant product, alongside compliant product, at a TTS facility?

Question 8: Would the power to seize TTS compliant product, where found alongside non-compliant stock, be an effective deterrent to tobacco fraud? Please provide your reasoning.

Question 9:

- a) Do you agree that where non-TTS compliant product is discovered at a facility covered by an EOID, on more than one occasion, then the corresponding EOID should be deactivated?
- b) Are there any circumstances where this may not be appropriate?

Question 10:

- a) Would you agree that a period of six months would be an appropriate length of temporary EOID deactivation?
- b) Are there any circumstances when withdrawal should be longer or even permanent? Please provide your reasoning.

Question 11:

- a) What appeals processes do you think are necessary before an EOID can be deactivated?
- b) Do you think a warning notice should be required in all cases?

Question 12:

- a) Do you think the sanctions model in Table 2 could be effective in combatting illicit tobacco activities?
- b) Can you suggest how this model could be altered to make the sanctions more effective?

Question 13: Where a retailer is in receipt of a banning order preventing tobacco sales or has been excluded from a national tobacco licencing scheme for persistent non-compliance, do you think Trading Standards should have the ability to deactivate the retailer's EOID for the period that they are excluded from making tobacco sales?

Question 14: How would deactivation of a retailer's EOID in these circumstances help tackle tobacco duty fraud?

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 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 in chapter 8.

Responses should be sent by 23 February 2021, by e-mail to tobacco.policy@hmrc.gov.uk

Telephone enquiries 03000 540830 (from a text phone prefix this number with 18001)

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 email 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 2018, General Data Protection Regulation (GDPR) 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.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation.

Your Data

The data

We will process the following personal data

Name

Email address

Postal address

Phone number

Job title

Purpose

The purpose(s) for which we are processing your personal data is: Sanctions to tackle tobacco duty evasion.

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will not be shared by us.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue and Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

[The Consultation Principles are available on the Cabinet Office website](#)

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

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

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

Annex A: Relevant (current) Government Legislation

Relevant (current) legislation

[Tobacco Products \(Traceability and Security Features\) Regulations 2019](#)