

Tobacco Register

Introduction

The Government, through HMRC, is consulting on whether the UK should adopt a licence system to control the retail and wholesale of tobacco, tobacco equipment and the supply chain. This Briefing will focus on the retail and wholesale of tobacco.

The Consultation was published on 25 February 2016 and runs to 20 May 2016.

A full copy of the Consultation is to be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503011/Tobacco_Illicit_Trade_Protocol_licensing_of_equipment_and_the_supply_chain.pdf

Why has this Consultation come about?

Retailers do not currently need a licence to sell tobacco in the UK.

The World Health Organisation Framework Convention on Tobacco Control (WHO FCTC) is an international treaty which aims to reduce tobacco related deaths and disease. As part of this, parties to the Convention have developed a Protocol to Eliminate Illicit Trade in Tobacco Products (the 'Protocol').

The Protocol covers three main areas:

- supply chain control;
- law enforcement;
- and mutual assistance

Article 6 of the Protocol is concerned with registration or licensing of participants who trade in tobacco and tobacco products and it requires parties to the Protocol "to endeavour to licensethose involved in the selling ... of tobacco products..."

The Government announced in its Autumn Statement that it was planning to consult on elements of Article 6 including whether wholesalers and retailers, of tobacco products should be licensed (or require equivalent approval).

Scotland

In Scotland, a Tobacco Retail Register was introduced in 2011 to enable identification of retailers to support efficient enforcement of the law. The Register enables enforcement officers to provide advice to retailers to avoid illegal sales and also take enforcement action.

The Register lacks the bite of a licensing system. Registration is free and can be done on-line. Anyone can be registered as there are no entry requirements. Application can be made for multiple premises.

Trading Standards Officers have the power to issue fixed penalty notices for offences. If a retailer is found to be in breach of the tobacco legislation three times within a two year period a Local Authority can apply to the courts to have the retailer banned from selling tobacco.

Those selling tobacco unlawfully (i.e. when not on the Register) can be fined up to £20,000 and sent to prison for up to six months.

As at August 2015, only five retailers had been banned from selling tobacco on a temporary basis. The order applies to the person and not the premises and so in at least one of these cases the shop has been leased to another person who has continued to sell tobacco.

Northern Ireland

A similar system is being introduced in Northern Ireland following a formal consultation. The Register will again provide enforcement to enforce tobacco legislation, gather data and provide an information service to members of the public with regards to tobacco retailers in their area.

Wales

The Welsh Government has also introduced plans to create a Register.

Retailers will have to apply and register with their local Registration Authority if they sell tobacco products (including e-cigarettes). It would be an offence to sell these products if they are not registered.

The primary purpose of the Welsh Register will be to protect under 18s from tobacco and nicotine products as well as reducing the risk of under 18s accessing these products.

Unlike the Scottish Register there will be a registration fee, believed to be £30.

Consultation

HMRC is looking to gauge opinion on whether a licensing system should be introduced to meet the UK's obligations under Article 6.

If, following this consultation, the Government believes that there is a case to introduce a retailer licensing system, then a further consultation will follow to determine the details of how this system will work.

HMRC is at pains to state that it wishes to ensure that burdens and costs on businesses are proportionate.

Questions

The consultation asks for views on whether a licence system is appropriate:

- Should it apply to all businesses in the chain i.e. retailer wholesaler, warehouse owners brokers?
- What type of licence would work best?
- If a licence system is to be adopted how is this to fit with the existing and planned registers in Scotland, Wales and Northern Ireland.
- What are the potential benefits of a licensing system in tackling the illicit trade in tobacco?
- What sanctions should be applied to businesses for non-compliance with the licensing system?
- Should a fee for a licence be levied?

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

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Conclusion

Tobacco retailers should consider responding to this Consultation.

The Government is considering, at this stage, a licensing system which potentially would go much further than a simple Register. Retailers may wish to question whether a licensing system with the inevitable costs and bureaucracy that this would entail would be proportionate given the experience to date in Scotland.

Please contact the Commercial Real Estate and Licensing Team at Winckworth Sherwood if you require any assistance in responding to the Consultation.

For further information, please contact:



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