



ACS Submission: Tobacco Illicit Trade Protocol – licensing of equipment and the supply chain

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to HMRC's consultation on tobacco illicit trade protocol – licensing of equipment and the supply chain. ACS represents 33,500 stores across the UK including One Stop, My Local, Spar UK, Nisa Retail as well as thousands of independent retailers.

ACS opposes the introduction of a tobacco licensing system for retailers. We do not believe that a licensing system or registration system would tackle the illicit tobacco market or support trading standards officers to provide advice and guidance to tobacco retailers about compliance issues. We support the use of the existing powers and sanctions already available to enforcement authorities to remove any retailer that engages in the illicit trade from the market.

The cost of the illicit tobacco trade to the Exchequer was £2.1 billion in 2013-14¹, as such, it poses a significant threat to the Government's public health objectives and undermines the legitimate retail trade. While we understand the need for HMRC to consult on tobacco licensing under the World Health Organisation Framework Convention on Tobacco Control, we believe that a licensing system would add further burdens on retailers that are already operating in a highly regulated market. Based on our experience of existing licensing systems in the UK, we believe that a new licensing system would have limited (if any) impact on the illicit tobacco market.

We welcomed the Minister for Public Health, Jane Ellison's MP commitment during a Westminster Hall debate that the next Tobacco Control Strategy would be unlikely to include "a package of legislative interventions"². Retailers are already burdened from a raft of legislative controls to reduce tobacco consumption, with many yet to be implemented or reviewed including the tobacco display ban, the standardised packaging of tobacco as well as the EU Tobacco Products Directive. Further regulations on tobacco, such as licensing will only further burden retailers.

HMRC have an extensive range of sanctions at their disposal already to tackle the illicit tobacco trade but HMRC's enforcement activity is limited to the disruption of large scale tobacco smuggling at UK borders. In comparison, trading standards teams are responsible for tackling inland illicit tobacco activity, but have extremely limited powers and sanctions to deal with illicit tobacco. This is most evident that despite 94% of all trading standards teams in councils are undertaking work in relation to illicit tobacco products,³ the most common action was verbal or written warnings (56%).

¹ [HMRC: Measuring Tax Gaps 2015](#)

² [House of Commons Westminster Hall Debate: Tobacco Control Strategy](#)

³ [CTSI: Tobacco Control Survey, England 2014/15](#)

ACS does not believe that verbal or written warnings act as a significant deterrent to the sale of illicit tobacco and strongly recommend HMRC review the powers that are available to trading standards officers.

ACS urges the Government to consider the following alternative proposals instead of the introduction of a tobacco licensing or registration system.

1. Review of sanctions used by trading standards

- More effective sanctions available to trading standards officers, including the revocation of alcohol licences for selling illicit tobacco.
- Additional powers to trading standards officers to sanction retailers by using the Customs & Excise Management Act 1979 (CEMA).
- Extension of the Restricted Premise Order to include illicit tobacco as an offence, creating a three strikes and you're out system for illicit tobacco.

2. Greater focus and funding for disruption of the inland illicit tobacco trade

- We welcome the £31 million contribution to tackle illicit tobacco as announced in the Budget, however this is too focused on UK borders.
- HMRC should have resources dedicated to disrupt inland illegal tobacco trade by removing illegitimate tobacco traders from the market, instead of focusing on confiscation of products, fines and prosecutions.

3. Deliver the recommendations set out by the Home Affairs Select Committee report into tobacco smuggling

- It is unclear whether all of the actions set out by the House of Commons Home Affairs Select Committee report into tobacco smuggling have been delivered by HMRC. Before further regulation is considered, these commitments should be met.
- Actions to share best practice and intelligence between HMRC, trading standards officers and the police should be made a priority.

ACS has responded to the relevant tobacco licensing consultation questions below:

Q1 – Are you:

- **a representative body – please specify**

ACS is a trade association representing local shops across the UK. Our membership includes a diverse range of convenience store retailers, from stand-alone family run independent stores to symbol groups and multiple convenience stores.

Q2 - If your business is in the trade of tobacco products or manufacturing equipment:

c) How many shops/branches do you have across the UK?

There are 51,524 convenience stores operating in mainland UK⁴, almost all of which sell tobacco products.

d) What proportion of your overall sales relate to tobacco products?

Tobacco makes up approximately 18.8% of convenience store sales⁵. This sales category has been slowly declining year-on-year as demonstrated in the table below.

Year	Tobacco Sales (%)
2013	20.1%
2014	20%
2015	18.8%

⁶

e) What is the approximate value of your tobacco product sales?

Tobacco sales on average represent 18.8% of convenience sales. Based on the total sales value of the convenience sector (£37.7billion), tobacco sales make up £7 billion of total market sales⁷.

Q3. Do you have any direct or indirect links to, or receive funding from, the tobacco industry?

ACS has a Premier Club commercial offer open to suppliers into the convenience sector. ACS Premier Club members buy a networking and events package, however it is important to note the Premier Club package does not provide suppliers any influence over ACS' public policy agenda. ACS' views on public policy issues, including tobacco licensing, are set by retail members through ACS' Policy Committee and Management Board.

We currently have 44 suppliers that take advantage of our Premier Club commercial package, 4 of which are tobacco manufacturers. For the purpose of transparency, please see our full letter to Department of Health highlighting the nature of our commercial relationships with the tobacco industry [here](#).

Q14. We welcome your views on 4.1 – 4.10, and specifically:

a) What is your view on a licensing system? Do you think a 'licence' system is appropriate? If not, do you have any alternative proposals?

ACS does not support the introduction of a tobacco licensing system for retailers. Licensing systems have proven to be extremely burdensome on retailers and largely ineffective in reducing instances of the illicit trade or reducing compliance costs for enforcement agencies. The living example of this is the alcohol licensing system, which represents the biggest regulatory challenge for retailers and significant costs for local authorities to administer.

⁴ [ACS Local Shop Report 2015](#)

⁵ [ACS Local Shop Report 2015](#)

⁶ [ACS Local Shop Report 2013, 2014, 2015](#)

⁷ [ACS Local Shop Report 2015](#)

Regulatory Cost

ACS' recent submission to the Cabinet Office's review of local authority regulation⁸ sets out many of the challenges and costs that retailers have to contend with in relation to the alcohol licensing system. The most common problem relates to inconsistency of approach from different local authorities in terms of applications, licensing conditions, or using the system inappropriately to restrict certain licensable activity.

In the case of the alcohol licensing system in England and Wales, there are costs incurred by retailers on the initial application for an alcohol licence as well as annual fees (as outlined in the table below). However, these fees do not include the full cost of the application process. Many licensees find it difficult to manage the application process and instead use a solicitor or a licensing professional to process their alcohol licence application. Retailers must also pay an annual fee to retain their alcohol licence. Retailers not only incur this annual fee, but also additional fees for any variation made to the licence.

Alcohol Premise Licence Fees (England and Wales)⁹					
Band	A	B	C	D	E
Non-domestic rateable value	0-£4,300	£4,301-£33,000	£33,001-£87,000	£87,001-£125,000	£125,001+
New application and variation (premises)	£100	£190	£315	£450	£635
Application for the grant or renewal of a personal licence	£37	£37	£37	£37	£37
Annual charge	£70	£180	£295	£320	£350

The costs set out in the table above do not include implementation procedures to remain compliant with agreed conditions on a licence. Licensees will also have to incur the costs of staff training and pay any additional staff hours in order to ensure that they are compliant with the conditions on their licence.

As the alcohol licensing system has been amended and changed since its introduction in 2005, a significant number of unintended consequences have arisen within the licensing system. The licensing system now acts as a significant barrier to entry for new businesses, with complex compliance issues and additional costs to manage from the outset. For example, restrictive and often unjustified licensing conditions are added to premises licence applications that often require the retailer to legally challenge the local authorities' assertions and evidence base.

Licensing conditions are meant to account for unique local circumstances and ensure that the licensing objectives are upheld. For example, a licensing condition could be added to restrict trading hours at a premises or dictate the level of training. The Licensing Act stipulates that licensing conditions must be local, relevant and premise specific. However, retailers often report highly restrictive conditions that licensing officers attempt to apply in a formulaic way across all off-trade premises in order to restrict trading hours or sales of certain products.

⁸ [ACS Submission: Cabinet Office Review of Local Authority Regulation](#)

⁹ [Home Office: Alcohol Licensing Fee Levels](#)

Licensing Systems Do Not Prevent Illicit Trade

Licensing systems have not delivered significant reductions in illicit trade. Both negative and positive licensing systems have their flaws in relation to tackling the illicit trade and diligent enforcement activity is required to ensure they work effectively. Under the positive licensing system (registration scheme), rogue traders which process the largest volumes of illicit sales in the retail sector will not register and the same enforcement challenges will remain. Under a negative licensing system, the cost and administration burdens for both businesses and enforcement agencies misdirect efforts away from targeting the minority trading illegally who could be dealt with using existing penalties.

Alcohol Licensing System

Despite the introduction of the alcohol licensing system in 2005, there remains a significant problem with the extent of non-duty paid and illicit alcohol across the UK. Since figures were recorded (2008-09), there has been a steady increase in the tax gaps rate for alcohol. In 2008-09, the alcohol tax gap cost the Exchequer was an estimated £830m and this has since increased by 31% to £1.2 billion by 2013-14¹⁰. These figures highlight the ineffectiveness of negative licensing systems in tackling the illicit market.

ACS continues to argue that targeted and strong enforcement activity remains the key to tackling the illicit trade. Alcohol licensing authorities have the power to remove alcohol licences from retailers who participate in the sale of non-duty paid alcohol, however it is not often used. A Local Government Association (LGA) survey found that the majority, just under seven in ten respondents, had not used the Licensing Act to seek revocation¹¹.

Even when there are attempts to remove alcohol licences from retailers, few are suspended or revoked. Recent Home Office figures show that of the 800 alcohol licence reviews that took place between 1st April 2013 and 31st March 2014¹², only 25% of reviews resulted in a licence being revoked while 13% resulted in a licence being suspended¹³. This data includes all reviews, as it only lists the licensing objective breached and not the reason for the review.

Existing Tobacco Licensing Schemes

There are tobacco licensing schemes already in operation or under development in the UK and internationally. The UK based schemes have yet to be reviewed but there is little evidence of their effectiveness in meeting their original objectives of tackling the illicit trade or increasing compliance with tobacco legislation.

One of the arguments for the introduction of tobacco licensing or registration scheme is that it will help support trading standards teams communicate advice to retailers about compliance with tobacco legislation. We do not believe that retailers look to trading standards teams for advice on regulatory compliance and engagement between business and trading standards officers is transactional.

¹⁰ [HMRC Measuring Tax Gaps 2015](#)

¹¹ [LGA Illicit Alcohol Survey 2014](#)

¹² [Home Office: Alcohol and late night refreshment licensing England and Wales 31 March 2014](#)

¹³ [Home Office: Alcohol and late night refreshment licensing England and Wales 31 March 2014](#)

ACS asked 1,200 retailers about the levels of engagement they have with their local trading standards officers in terms of receiving advice, guidance and support. Retailer's answers varied considerably, 38% of convenience retailers responded that they had no engagement with any trading standards officer in any capacity in the last year, while 24% of retailers responded that a trading standards officer regularly visits their store to discuss regulatory compliance and the challenges facing their business¹⁴. The creation of a tobacco licensing system or registration scheme will do nothing to enhance these relationships, in fact it is likely to divert resources away from providing advice and engagement with retailers.

Scotland Tobacco Retailer Register

There has been a retailer tobacco registration system in Scotland since 2011. This system requires retailers of tobacco products to sign up to the tobacco register online, which can be completed via head office for businesses with multiple sites, or individually for independent retailers. There is no cost associated when retailers sign up to the scheme but there is a requirement for retailers to keep their information and details up to date. In the development of the registration scheme in Scotland, the Scottish Government estimated that this would cost £413,500¹⁵, as well as ongoing annual staffing costs and database management costs.

There is very limited evidence, across all types of tobacco related offences, that the Scottish Tobacco Register has been effective despite being free for retailers to register. Within three years of the introduction of the register, only one business had been convicted for selling tobacco unregistered¹⁶. This highlights that a registration or licensing scheme does not mean rogue operators will be removed from selling illicit products. Data from Scotland also showed that in the same period, no registered premises had their right to sell tobacco removed as a result of selling to people that are underage. The statistics above are the most recent published data from the Scottish Government, however, a *Betterretailing.com* investigation¹⁷ suggests that only five retailers have been removed from the register in total. The article also estimates that the cost for setting up the tobacco register in Scotland was £449,500, which equates to £89,900 per retailer removed from the register. These funds could be used better elsewhere to tackle the illicit trade.

ACS contacted the Scottish Government seeking the most recent data on the number of retailers that have been removed from the register since its creation in 2011. The tobacco control team in the Scottish Government confirmed they have "no way of recording why a premises was deleted, only the date and time of the deletion is recorded." The effectiveness of the register is severely undermined if it cannot record and report for what reason a tobacco retailer has been removed from the register. Before the UK Government considers the introduction of a licensing system, further consideration should be given to the effectiveness of the registration scheme in Scotland.

The Scottish Government Tobacco Control Strategy includes a commitment to review their registration scheme by 2015¹⁸ but this has yet to be delivered. Registration schemes must have an independent and wide reaching impact assessment in order to ensure that their purpose is justified.

¹⁴ ACS Voice of Local Shops Survey February 2016

¹⁵ [Scottish Government: Tobacco Provisions to be contained in the Health \(Scotland\) Bill](#)

¹⁶ [Scottish Parliament: Written Answer S4W-18626](#)

¹⁷ [Better Retailing: Was the Scottish tobacco register worth it?](#)

¹⁸ [Scottish Government: Creating A Tobacco Free Generation: A Tobacco Control Strategy for Scotland](#)

Welsh Tobacco Retailer Register

The Welsh Government proposed the introduction of a tobacco registration scheme as part of their Public Health (Wales) Bill in 2015. The Bill did not pass through the Welsh Assembly, however Assembly Members have indicated they will revisit the Public Health (Wales) Bill in the upcoming Assembly session. The proposed registration scheme in Wales would have required retailers pay a fee to register, set at £30 for the first premise and £10 for each additional premise. Based on the number of convenience stores in Wales¹⁹, the cost to the convenience sector to register would be an estimated £90,000. Based on our experience of the existing local government fees structures, there would likely be significant pressure for this fee to increase over time as the registration scheme requires ongoing administration and review.

The Welsh Government justified the introduction of the fee on the basis that “by having access to a comprehensive list of all retailers who sell tobacco and/or nicotine products, trading standards officers and health authorities would be able to target advice, guidance and campaigns relevant to these industries more effectively, ensuring that all registered retailers receive this information.” ACS believe that retailers are unlikely to look to trading standards officers for advice on regulatory compliance. Often local authorities do not have dedicated resources to develop and communicate with the trade effectively.

During the introduction of the tobacco display ban for small stores in England and Wales in 2015, trading standards teams, the Department for Health and the Welsh Government had no bespoke guidance for small retailers. They also did not have any dedicated communication resources to communicate the changes to small retailers. All of the parties relied upon trade associations such as ACS and others to promote the change in regulation²⁰. Guidance was then developed in collaboration with retailers to achieve high levels of awareness. This approach resulted in 90% of retailers²¹ across England and Wales having no concerns about display ban compliance issues.

Northern Ireland Tobacco Retailer Register

Northern Ireland have only recently launched their tobacco retailer register in April 2016. This system requires tobacco to register their business online or by post which can be completed via head office for businesses with multiple sites, or individually for independent retailers. There is no registration fee or other costs associated when retailers sign up to the scheme, but like the register in Scotland, there is a requirement for retailers to keep their information and details up to date. Since the register has only just launched, its effectiveness cannot be evaluated or be used to support the introduction of a tobacco licensing system in England.

Canadian Tobacco Licensing Scheme

Canadian Provinces operate tobacco licensing schemes, some of which charge for retailers to sign up, with costs ranging from \$50 to \$1500²²:

¹⁹ [ACS Welsh Local Shop Report 2015](#)

²⁰ [Business Companion: Tobacco & nicotine inhaling products](#)

²¹ [ACS Release: Retailers Report Successful Compliance with Tobacco Display Ban Regulations](#)

²² Canadian Convenience Store Association analysis of registration scheme fees

	Retail Vendor Permit	Name	Period	Fee Application/Renewal
Federal Government	None	N/A	N/A	N/A
British Columbia	Mandatory	Tobacco Retail Authorization	-	-
Alberta	None	N/A	N/A	N/A
Saskatchewan	Mandatory	Tobacco Vendor's Licence	-	-
Manitoba	Mandatory	Tobacco Dealer's Licence	-	-
Ontario	Mandatory	Tobacco Retail Dealer's Permit	1 year	\$200 / \$1500
Quebec	Mandatory	QST Registration Certificate	-	-
New Brunswick	Mandatory	Tobacco Retailer's License	1 year	\$100 / \$50
Nova Scotia	Mandatory	Tobacco Retail Vendor Permit	3 years	\$124.60
PEI	Mandatory	Tobacco Retail Vendor's License	-	-
Newfoundland	Mandatory	Tobacco License	-	-

Feedback from the Canadian Convenience Stores Association (CCSA) highlighted a range of difficulties for retailers with registrations schemes operating in their area. These included delays in the registration process when a business is sold, as well as the registration being required to be amended and updated. This can have implications for retailers' ability to sell tobacco until the registration has been updated or amended. CCSA also highlighted that tobacco licensing schemes have had little impact on the illicit tobacco trade. Canadian illicit tobacco rates are stubbornly high with the estimated loss of tax revenue to the Canadian Federal government at \$2.1 billion per year, despite having tobacco licensing schemes in place²³.

b) Do you think a licence system (or equivalent approval) should apply to all businesses in the chain? i.e. retailer, wholesaler, warehouse owners, brokers etc.

ACS' position only relates to the introduction of a licensing system at retail level, not at wholesaler or supplier level.

²³ [CSCA Pre-Budget Submission 2015](#)

c) If you feel a licensing system (or alternative proposal) is not appropriate, do you have any alternative suggestions to tackling illicit trade in tobacco products?

We believe that it would be more effective use of HMRC's time and resources to invest in the use of existing sanctions and the disruption of the inland illicit tobacco market instead of the creation of a new licensing system. This could be achieved by reviewing the appropriateness of existing sanctions available to enforcement agencies and dedicating more resources to tackling the inland illicit tobacco market.

Review of Sanctions Used by HMRC and Trading Standards Officers

ACS believes that current sanctions available to HMRC could be used more effectively before further interventions, including tobacco licensing, are considered. HMRC have a significant number of sanctions available to them to tackle the illicit tobacco trade such as seizure of goods, confiscation of assets, civil action, prohibiting the sale of tobacco for up to six months and naming and shaming. We believe that these penalties are not used frequently enough to deter retailers which engage in the illicit tobacco market. We believe that HMRC attention is focused too much at UK border level activity and not enough focused is placed on disrupting inland illicit tobacco sales.

Disruption of inland illicit tobacco trading is left to trading standards officers to deal with, however, they have very limited enforcement powers to tackle illicit tobacco. Trading standards teams only have the power to sanction retailers if they breach the Trade Marks Act 1994 (by selling counterfeit goods) or if they breach the Consumer Protection Act 1987 (by selling tobacco products which do not comply with UK labelling). With these two powers, the maximum sentence that trading standards officers can impose on a retailer is a summary conviction of imprisonment, for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

We asked 1,200 convenience retailers to indicate what trading standards priority issues should be and tackling the illicit tobacco trade was one of the top two priorities²⁴. This is unsurprising given how much the illicit tobacco trade can undercut legitimate retailers' businesses by drawing away customers.

While we are pleased that 94% of all councils²⁵ are focusing enforcement activity in relation to illicit tobacco products, we are concerned that 56% of actions²⁶ taken by trading standards teams to sanction retailers selling illicit tobacco are verbal or written warnings. If more powers were shared between HMRC and trading standards officers, this is likely to have a much greater impact in tackling the illicit tobacco market.

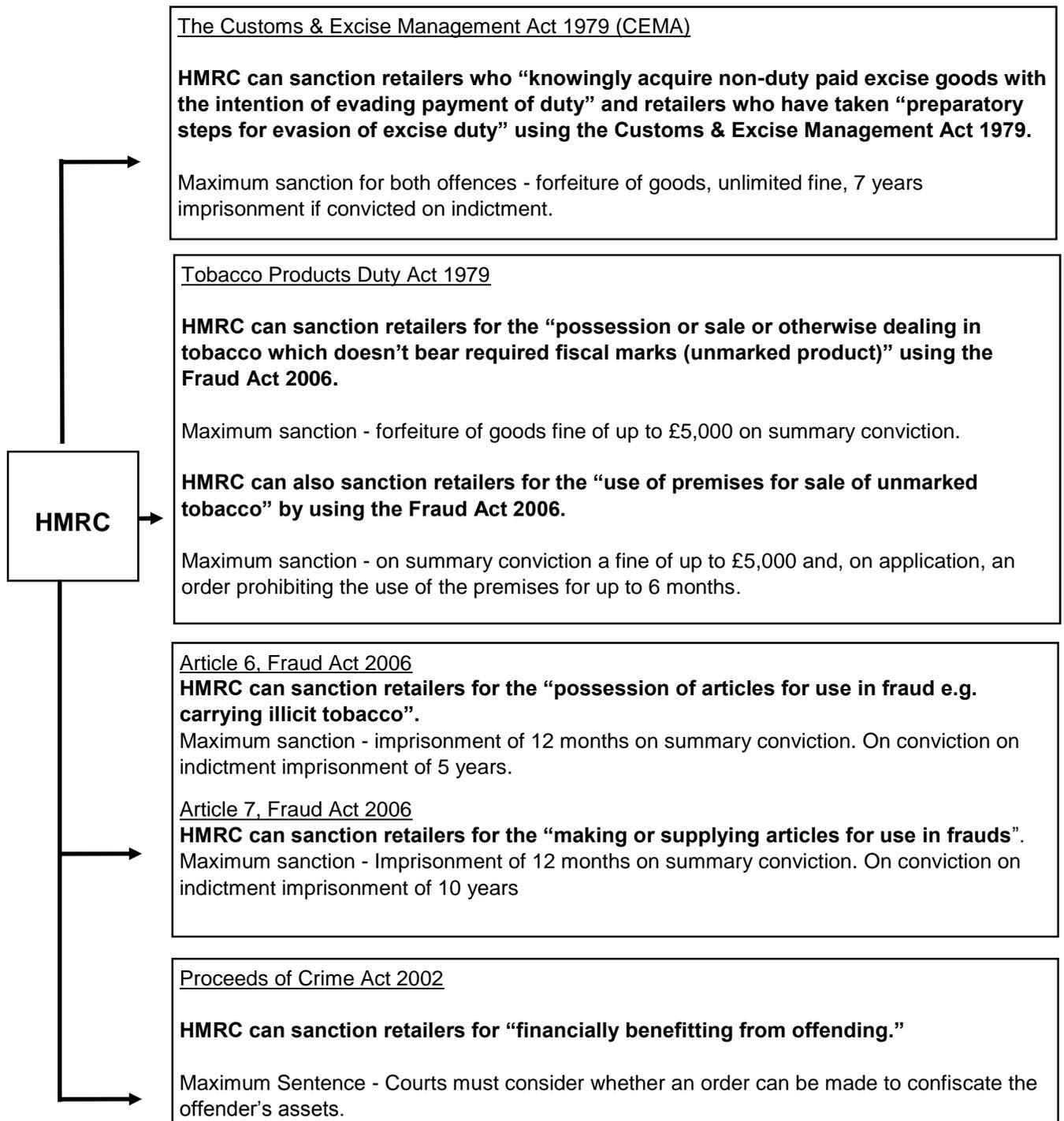
The diagrams below detail the current sanctions available to HMRC and Trading Standards officers:

²⁴ ACS Voice of Local Shops Survey February 2016

²⁵ [CTSI: Tobacco Control Survey, England 2014/15](#)

²⁶ [CTSI: Tobacco Control Survey, England 2014/15](#)

HMRC Powers & Sanctions Available



**Trading Standards
Powers & Sanctions
Available**

**Trading
Standards**

Consumer Protection Act 1987

Trading standards officers can use the Consumer Protection Act 1987 for breaches of the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002.

This Act stipulates that it is an offence to sell tobacco products which do not comply with UK labelling (i.e include health warnings).

Maximum sanction - summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale.

Trade Marks Act 1994

Trading standards officers can use the Trade Marks Act 1994 to sanction retailers selling counterfeit tobacco. The Act does not apply to non-duty paid tobacco.

It is an offence to sell counterfeit tobacco under the Trade Marks Act 1994.

Maximum sanction - on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both. Or on conviction on indictment to a fine or imprisonment for a term not exceeding ten years, or both.

Please note: Unlike HMRC, trading standards do not have the authority to use the Excise and Customs Management Act 1979 to sanction retailers participating in the sale of non-duty paid tobacco unless they have the permission from the Director of Public Prosecutions.

ACS believes that there needs to be a significant up-lift in inland enforcement activity by HMRC to reduce the illicit trade and additional powers should be given to trading standards officers in order to enforce more effectively. We recommend that trading standards be given the authority to sanction retailers participating in the sale of illicit tobacco using the Excise and Customs Management Act 1979.

This Act specifically addresses the sale of non-duty paid tobacco as an offence. Sanctions can be placed on retailers who “knowingly acquire non-duty paid excise goods with the intention of evading payment of duty” and retailers who have taken “preparatory steps for evasion of excise duty”. This Act would mean trading standards officers could sanction retailers with an unlimited fine and/or 7-years imprisonment if convicted on indictment.

The Government should also consider the extension of existing tobacco sanctions further in order to support trading standards officers’ deal with illicit tobacco:

Restricted Premises Orders

Trading standards officers already have powers available to them to make provision for Restricted Premises Orders (RPO) where there have been a total of three underage sales offences at a premises in a two-year period. This prohibits a retail premises from selling tobacco products for a period of up to 12 months. However, trading standards officers do not have the power to use RPOs to sanction retailers involved in the sale of non-duty paid tobacco products.

We recommend that the scope of the use of Restricted Premises Orders (RPO) and Restricted Sales Orders (RS) be extended to include illicit tobacco offences. The offence for breaching a RPO or RSO is far greater than the current powers available to trading standards officers. This would also mirror the existing sanctions for the Scottish Tobacco Registration scheme but without the additional burdens placed on retailers and local authorities to set up a licensing scheme or managing a registration database.

Revocation of Alcohol Licences

According to the most recent HMRC Tobacco Output (February 2016), only 51%²⁷ of individuals prosecuted for tobacco duty-fraud offences were convicted. It is often difficult and time consuming to prosecute an individual. ACS believes that it may be more effective and efficient if efforts moved towards revoking the alcohol licence of the premise involved. Removing a retailer’s alcohol licence is more of an effective deterrent for a retailer than any other sanction, as the loss of the ability to trade alcohol would have a detrimental impact on their ability to trade.

Removing alcohol licences for selling illicit tobacco and illicit alcohol is an underused sanction by all enforcement bodies. The reasons that enforcement bodies underuse this sanction are multi-faceted; it is not communicated that this sanction is available, the process to revoke a licence is viewed as complex and requires working across a number of local council departments. ACS strongly advocates greater use of the removal of alcohol licences from retailers for any engagement in the illicit market.

²⁷ [HMRC: Quarter 1 and 2 outputs: April to September 2015](#)

Alternative Powers

A number of trading standards teams have taken it upon themselves to find alternative ways to sanction retailers more effectively, from Islington Council focusing on revoking alcohol licences from illicit tobacco traders to Medway Council who use legal pressure to close premises selling illicit tobacco. Full details of Medway Council's approach to tackling illicit tobacco trade is available in Annex A. This reflects the need to review the powers they have available to them and in sharing best practice between council areas.

Sanctions to tackle illicit tobacco: a discussion document

We welcome HMRC's commitment to consider reviewing the sanctions available across Government to tackle the illicit market as outlined in their "Sanctions to tackle illicit tobacco: a discussion document". ACS responded to HMRC's consultation on sanctions to tackle illicit tobacco. Our submission can be found [here](#).

In our submission, we agreed that the criminal sanctions used by HMRC are an appropriate deterrent to prevent retailers selling non-duty paid goods. However, the sanctions must be communicated to retailers and effectively enforced²⁸. We await the consultation response, which will address how HMRC will take stock of current sanctions and consider how they can strengthen these or consider a fundamentally changed approach.

We also await the publication of another consultation announced in the Budget on tobacco sanctions.²⁹

Recommendations from Home Affairs Committee Tobacco Smuggling Report

The House of Commons Home Affairs Committee³⁰ undertook an inquiry into tobacco smuggling in the last Parliament. As part of the review, they published a report which included a number of recommendations, including the creation of a platform where best practice can be shared with enforcement agencies, as well as the introduction of the standardised packaging of tobacco products.

The table below details the recommendations made by the Home Affairs Select Committee for the Government to take action on as well as the Government's response. It is currently unclear if all of these actions have been completed and evaluated. The actions highlighted in red are incomplete and actions highlighted in amber are inconclusive.

Recommendation³¹	Government Response³²	Achieved?
HMRC and Border Force should create a platform where effective examples of joint working with local police forces and partner	We have refreshed joint protocols governing criminal investigation and intelligence, which provide: greater clarity on criminal investigation adoption criteria; improved processes	In HMRC "Tackling illicit tobacco: From leaf to light" includes similar objectives as

²⁸ [ACS Submission: Sanctions to tackle illicit tobacco: a discussion document](#)

²⁹ [Budget 2016: Tobacco Sanctions 2.142](#)

³⁰ [House of Commons Home Affairs Committee: Tobacco Smuggling First Report of Session 2014–15](#)

³¹ [House of Commons Home Affairs Committee: Tobacco Smuggling First Report of Session 2014–15](#)

³² [House of Commons Home Affairs Committee: Tobacco smuggling: Government Response to the Committee's First Report of Session 2014–15](#)

<p>agencies such as trading standards across the UK can be accessed for training and in order to share good practice. Without sharing information, raising prosecution and arrest rates for tobacco smuggling will be more difficult, if not impossible.</p>	<p>for mandatory feedback; better joint management information; and improved joint approach to planning. We have also established joint intelligence teams to address specific intelligence priorities. Border Force refers all cases, where there is scope to impose sanctions, to HMRC to consider criminal or civil action. These referrals have significantly increased over the last 12 months. To further bolster this joint working HMRC and Border Force are putting in place a strengthened process, which we expect to be agreed by December 2014.</p> <p>Through the refresh of the joint HMRC and Border Force Tobacco Strategy we are developing revised standard operating procedures for an Inland Enforcement framework for tobacco. These procedures will be aligned to those of our partner agencies so that HMRC officers are able to identify and pursue the most appropriate high impact sanctions available for each tobacco offence tackled. We will ensure that the maximum benefit for both Enforcement and Intelligence is derived from this work by undertaking thorough post-operational reviews and dissemination of best practice to ensure the success of future activity in this area.</p>	<p>the Government response.</p> <p>HMRC will be <i>“developing a toolkit of sanctions for roll out in 2015, to ensure that officers consider all criminal and civil sanctions available to them to maximise impact and deterrent effect and will tighten policies where offenders are exploiting potential loopholes to avoid the full impact of sanctions. This will include ensuring cross-tax impacts are considered, to check the tax liabilities and benefit entitlement of offenders, and using those sanctions which agencies other than HMRC and Border Force may be able to deploy.”</i>³³</p>
<p>We recommend that HMRC publish a clear set of criteria setting out the circumstances in which it would normally impose a fine and that an immediate review be taken against all historic and ongoing cases against this criteria in order to ensure those who have committed an</p>	<p>A list of the relevant criteria and the approach HMRC takes when considering potential action under the supply chain legislation is already published in Notice 477 “Tobacco products duty: control of supply chains”. Any decision to issue a warning notice or penalty requires HMRC to consider all relevant factors, both positive and negative, on a case-by case basis. HMRC continually monitors and reviews all four UK major</p>	<p>No changes were made to Notice 477 “Tobacco products duty: control of supply chains”.</p> <p>The last update took place in 2009.</p> <p>HMRC “Tackling illicit tobacco: From leaf to light” states</p>

³³ [HMRC: Tackling illicit tobacco: From leaf to light](#)

<p>offence do not go unpunished.</p>	<p>tobacco manufacturers' compliance with the legislation and will take action where appropriate.</p> <p>HMRC is reviewing the current guidance to help improve the tobacco manufacturers' understanding of how their compliance with the legislation will be evaluated.</p>	<p>that HMRC <u>will</u> “work with tobacco manufacturers to enhance supply chain control of UK product and to robustly challenge where appropriate.”³⁴</p>
<p>As part of their new communications strategy, HMRC and Border Force should publicise prosecutions and enforcement action more widely to deter potential offenders. It is important that the agencies work together to ensure that those who offend are named and shamed and that the public money, spent combating this crime, is shown to have been used effectively.</p>	<p>HMRC and Border Force frequently publish details in national and local media of successful operations, seizures, prosecutions and convictions where publication does not compromise ongoing investigations.</p> <p>HMRC is currently revising its communications strategy to take a more targeted approach, focussing appropriate media messages on the specific risks presented by specific trade sectors, social groups and geographical areas.</p>	<p>There has been increased media activity of the prosecutions and seizures made by HMRC and Border Force.</p> <p>However, there have also been a number of reports where illicit retailers are given unduly lenient sentences.</p> <p>Enforcement must be consistent for this recommendation to work.</p>
<p>We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this</p>	<p>On 26 June 2014, the Government published a consultation that will inform the decision on whether to introduce standardised packaging.</p>	<p>Will come into effect 20 May 2016</p>

³⁴ [HMRC: Tackling illicit tobacco: From leaf to light](#)

<p>were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging.</p>		
<p>We recommend that any future legislation to introduce standardised packaging should include a requirement for appropriate security and tracking features, in accordance with the EU Tobacco Products Directive and best evidence.</p>	<p>The new European Tobacco Products Directive (TPD) includes requirements for traceability of tobacco products and for the incorporation of tamper-proof security features on tobacco products. The European Commission has powers to ensure that Member States' domestic implementation acts set out the detail of how these requirements are to be implemented on a Europe-wide basis. The Department of Health and HMRC are currently working closely with the European Commission and other Member States to implement the Directive.</p>	<p>Is being adopted by the UK as one of the measures of EU TPD2.</p> <p>Government still to consult on how track and trace would work in practice.</p>

While progress has been made by the Government to address the recommendations made by the Home Affairs Committee, the majority of the Government's responses have either yet to be introduced or have had insufficient time from introduction to be evaluated. Until greater progress has been made on these recommendations by HMRC, we question whether it is necessary to introduce new regulatory measures.

ACS will be writing to the Home Affairs Select Committee to request that they revisit what action has been taken by HMRC to address their original recommendations.

Ring fenced funding to disrupt inland illicit tobacco trade

ACS has welcomed recent announcements made by the Chancellor of the Exchequer in Budget 2016 to invest an additional £31 million from 2016-17 to 2019-20 in a new group of Border Force officers and intelligence officials.

We recommend further ring fenced funding to disrupt inland illicit tobacco trade. According to the latest HMRC Tobacco Outputs (February 2016)³⁵, inland seizures of illicit tobacco only represent 4% of the total volume seized. We would welcome specific funding for future partnership operations between HMRC and trading standards to target inland illicit traders.

³⁵ [HMRC: Quarter 1 and 2 outputs: April to September 2015](#)

Q15. If you are replying on behalf of a business:

a) Where do you think costs and burdens are likely to arise for your business?

As highlighted throughout our submission, a tobacco licensing system would place undue burdens on legitimate, responsible retailers. Financial, administrative and operational burdens, similar to those which burden alcohol licensees, would be placed on retailers.

Without a detailed proposal on how a tobacco licensing system would be implemented, it is difficult to anticipate the costs of a tobacco licensing system without reflecting on the experience of alcohol licensees.

Barriers to Establishment

Working from our experience of the alcohol licensing system, local authorities have attempted to use the system to create barriers to entry for new business premises. We are concerned that the introduction of a tobacco licensing system may result in similar outcomes. We object to assertions that density of tobacco outlets directly relates to health related harms and that restricting availability will reduce tobacco consumption. The reduction in smoking rates is influenced by a range of social and economic factors and there continues to be an ongoing decline in tobacco sales³⁶. Smoking rates in other European countries are far higher than UK smoking rates, however their density of premises is significantly lower than the UK.

Whilst tobacco products are a core part of a convenience store's product mix, convenience stores offer a wide range of grocery products and essential community services like Post Offices, free to use ATMs, bill payment services and parcel collection³⁷. Restricting new business from entering the market or businesses to grow would deny communities access to the significant range of services offered by convenience stores. Convenience stores are included in the top three most value services by their communities alongside Post Offices and pharmacies, therefore blocking their expansion is socially and economically counter intuitive³⁸.

d) If you have an alternative proposal (Q14), would this impact the administrative burden?

ACS' alternative proposal would restructure the existing enforcement regime and refocus powers on disrupting the inland tobacco regime. This change would have no administrative impact on convenience retailers apart from those that engaged in the sale of illicit tobacco products. Increased enforcement activity would require additional funding from central government to support HMRC.

For more information on this submission, please contact Julie Byers, ACS Public Affairs Executive at Julie.Byers@acs.org.uk.

³⁶ [ACS Local Shop Report 2015](#)

³⁷ [ACS Local Shop Report 2015](#)

³⁸ ACS Community Barometer

ANNEX A - Addressing the Proliferation of Shops Selling Illicit Tobacco

Case Study - Medway Council³⁹ (full text in Annex D)

Medway experienced a proliferation of shops selling illicit tobacco. Medway Trading Standards officers decided to change up their enforcement activity by ending their enforcement cycle which was proving ineffective. Their enforcement cycle would include a visit, seizure of illicit goods, interview, report, prosecute, forfeit, then the cycle would repeat.

“It failed to recognise the fluid and ambiguous nature of those involved in the business; the minimal value in the stock that was being seized; their ability to immediately restock illicit goods; comparatively limited punishment prospects; and the huge profits being made.”

- *Medway Trading Standards*

Once the retailers selling the non-duty paid tobacco products acquired small retail shops, they gained a new stream of customers and had the perception of legitimacy.

Medway Trading Standards recognised that if the venue for their criminality could be removed then the scale and nature of their operation would be changed. It would no longer have the palatability of a retail transaction; it would have to be a nefarious deal.

Instead of using the traditional enforcement cycle to sanction the retailer, they considered whether legal pressure could be applied to the letting agents and landlords that were permitting their premises to be used as venues for the commission of criminal offences.

The provisions of The Proceed of Crime Act 2002 relating to *Money Laundering* were reviewed and it was considered that if a disclosure mechanism was created to place landlords and letting agents on notice that their tenants were using the property for the commission of offences and that the rent that was being paid to them was 'criminal property' within sections 327 to 334 they would acquire a legal liability of money laundering.

A project was devised to operate from July 2015 to December 2015 to make a concentrated effort to address illicit tobacco by collecting evidence to challenge the landlords and letting agents who were leasing the properties.

A process was adopted where three tobacco seizures would be made from those shops chronically selling illegal tobacco to illustrate that a persistent criminal conduct was taking place. A disclosure bundle detailing our actions was then presented to the landlord and/or letting agent placing them on notice that the rent which was being collected was the proceeds of crime. It was explained that this payment of money represented criminal property within the Act and that the acceptance of any further payments exposed them to a potential criminal offence

There was a level of reluctance by some landlords to terminate the tenancy, as the shops which these businesses use are often small and difficult to rent. However, the cumulative process of disclosure used in Medway created a situation where the continued occupancy by illicit tobacco sellers became untenable.

³⁹ [Trading Standards Today \(April 2016\): This is a No Smoking Venue....](#)