

PRA Submission: HMRC consultation on the provisions of Article 6 of the WHO Framework Convention on Tobacco Control Protocol to Eliminate Illicit Trade in Tobacco Products (the “Protocol”)

1. Introduction:

- 1.1 The PRA is the leading trade representative body for the UK’s independent fuel retailers and forecourt operators. The association represents the interests and concerns of the industry without any obligation to commercial interest. PRA membership consists of; single-site owners, small, medium and large size dealer groups, motorway service area operators and Commission Operators.
- 1.2 The PRA is an association of the Retail Motor Industry Federation (RMI) which has been representing the automotive retail industry and its businesses for over 100 years.
- 1.3 The UK has around 6,000 independent fuel retailers currently in operation, however these businesses are continuously facing adverse challenges and competition from within the market place, pushing numerous independent forecourts into closure. Increasing regulation and intense competition from the growth of supermarket owned forecourts, has impacted on the industry despite the growth in vehicle volumes. The number of properties physically storing and dispensing fuel has now reduced from 40,000 in 1960 to less than 8,500 in 2015 (*Experian Catalist, November 2015*). These challenges are damaging businesses and therefore it is essential that independent retailers are supported by government policy, wherever possible, rather than hindered and penalised by it. The PRA is highly concerned that the introduction of a tobacco retailer licensing register would do just this.
- 1.4 As a result of market and regulatory challenges, the independent fuel sector is continuing to develop and expand its range of functions and services offered to consumers. This has led to an increased importance in retailers’ convenience stores, often attached to forecourts. A fuel retailer’s forecourt is now as important to the survival of their businesses as providing fuel; 45% of independent forecourts now have a well-known symbol brand supplier on the shop fascia.¹ It is essential that these considerations, towards a struggling industry, must be given by government when considering the implementation of regulations and legislations.

2. Declaration of Interests:

- 2.1 The PRA supports openness and transparency and therefore declares that it includes tobacco manufacturers/suppliers amongst its wide range of associates and retail members. The views within this response are widely shared by PRA members and should be considered as inclusive of their opinions and concerns; as such, the association requests that the Government gives this submission fair consideration as will be given to other participants.
- 2.2 The PRA also endorses the Tobacco Retailers’ Alliance’s (TRA) response to this consultation, with included survey², and has taken part in the TRA’s discussions with MPs, Nigel Evans MP for Ribble Valley and Simon Simon Danczuk, MP for Rochdale and Chairman of the All-Party Parliamentary Shops Group, on this important matter.

¹ Experian Catalist – November 2015

²3200 Tobacco Retailers’ Alliance members were emailed various questions regarding the Government’s proposals and the current effects of the illicit tobacco trade on their legitimate businesses. The survey took place throughout April, with results ending 10 May.

3. Industry Profile

- 3.1 Independent fuel retailers account for 68% (5,827)³ of the UK's total fuel retail outlets. The remaining 2,663 sites are comprised of major supermarkets, motorway service areas (MSA) and oil company (oilco) owned and operated facilities.
- 3.2 90% of PRA members stated that tobacco sales, including associated products, are important to their bottom line⁴.
- 3.3 The majority of company owned retailers moved into the independent sector from between 2001 to 2015 (around 3,000 sites). Therefore, in real terms, across the 15-year period, over 4,000 (60%) independent fuel retailers have had to close due to financial unsustainability.⁵
- 3.4 The importance of this legislation is centred on the forecourt retailers' reliance on the sale of tobacco and its affiliated products. After fuel, tobacco remains the second most important product category to forecourt retailers, contributing between 30-50% of overall shop revenue.⁶
- 3.5 If not introduced sensibly, tobacco regulations – including the proposal contained within this consultation - can often have a negative impact on legitimate retailers. These problems can range from financial burdens for compliance, through to loss of business, including losses created from an increase in illicit trade.
- 3.6 The PRA will continue to highlight the impacts of the illicit trade of tobacco and fuel on the sector.
- 3.7 Due to high member concerns regarding HMRC's licensing register proposal, the PRA met with 18 of its members to discuss their concerns further. The views of this selection were highly consistent with the survey conducted by the TRA, between April and May 2016. These views will be discussed within this consultation response.

4. Our Concerns

- 4.1 Following the Chancellor's 2016 Budget Statement, the PRA welcomed this consultation and supports any evidence based, reasonable measures, to tackle the illicit trade in tobacco products.
- 4.2 Additionally, the PRA welcomes the commitment of £31million prescribed in the Budget to tackle the illicit trade in tobacco products. As set out in the PRA's 2013 submission to the Home Affairs Select Committee, "the high profits and low risk involved in smuggling and counterfeiting tobacco allows criminals to make considerable returns"⁷. As such, for this investment to be effective, it is vital that government not only invests at the border but also reviews the penalties and sanctions for those involved in the illicit trade. Those sanctions must empower law enforcement from the border to local authority level and provide an effective deterrent.
- 4.3 This sentiment was echoed by PRA members during our meeting. One member stated that:

It would take far more than "imposing additional bureaucracy, red tape and costs on existing retail outlets [to] eliminate the distribution and sale of illegal tobacco products. The answer lies in unannounced, frequent and where appropriate, disruptive spot checks of premises', immediate

³ Experian Catalist – November 2015

⁴ PRA Membership Survey, 2014

⁵ Experian Catalist – November 2015

⁶ Ibid

⁷ PRA Submission to the Home Affairs Select Committee: Inquiry into Tobacco Smuggling, August 2013

confiscation of stock, coupled with much stiffer financial penalties and lengthy custodial sentences.”

Another continued:

“There should be much tougher action by customs at ports and airports to combat this [illicit] trade, rather than increasing bureaucracy for businesses. If this is properly targeted, additional costs should be more than made up by increased seizures.”

4.4 These member comments are consistent with those from the TRA member survey:

- The top two recommendations for reducing the black market are stiffer penalties (83% support) and more enforcement action (79%). This compares to just 10% support for Tobacco Retailer Licencing (TRL).

4.5 With specific regards to this consultation, a number of questions fall outside of the scope of PRA members and/or do not apply to the PRA. As such, these questions have been omitted from this submission, which instead looks to make general observations based on the specific concerns of PRA members and the potential business implications of this policy.

4.6 The forecourt sector faces significant challenges and threats from illicit trade in both of its primary products: fuel and tobacco. The illicit trade of tobacco undermines responsible retailer businesses and is detrimental to those working within the confines of the law.

4.7 While responsible retailers follow the many regulations required for the sale of tobacco in their shops, for example age restrictions, preventing minors purchasing tobacco (or other age restricted products) those who sell illicit tobacco do not have such scruples.

4.8 The cost of the illicit tobacco trade to the Government was £2.1billion in 2013-14⁸. The damaging effects of the illicit trade are far reaching, not only impacting on individual retailers but the wider communities in which they operate.⁹

4.9 The associated criminal activity manifests in communities, increasing the threat of crime to retailers and consumers. Those activities have a detrimental effect on, not only the safety of retailers, but their general footfall, as consumers choose to shop elsewhere, impacting on other product sales, such as groceries. Ultimately, small retailers are deprived of key earnings at best or driven out of business at worst. During the PRA’s member meeting, this point of deprivation was raised. When asked whether members felt illicit tobacco products were harming their businesses, 16 replied yes, with one member adding that this was decreasing their sales revenue, of which 16 others subsequently agreed (17/18 in total).

4.10 Again, this is consistent with the views that were received in the TRA’s member survey:

- 87% of retailers regard the black market in tobacco as a threat

5. Licensing

The PRA does not support a tobacco retailer licensing system in the UK.

4.11 The PRA does not support the introduction of a tobacco retailer licensing system. However, if a system is to be introduced, the PRA believes this must be based on the Scottish Tobacco Retail

⁸ [HMRC: Measuring Tax Gaps 2015](#)

⁹ PRA Membership Survey, May 2016

Register. Although burdensome, this would be manageable and has been proven to be effective in reducing, not temporarily displacing, illicit trade.

4.12 The Scottish Tobacco Retailer Register which requires retailers to register to sell tobacco, does not carry a fee and retailers have the ability to make applications for multiple premises. There is a requirement for retailers to keep their details up to date.

4.13 The PRA supports the view of the Scottish Public Health Minister, Shona Robison MSP, who made clear her understanding prior to implementation stating:

“the need not to burden responsible retailers with needless bureaucracy. That’s why the registration process is simple to complete online and will be free of charge.”¹⁰

4.14 The PRA urges the Government to undertake a review of the policy in Scotland. At a minimum, such a review should cover its implementation; the efficacy of the policy in reducing, rather than simply temporarily displacing, the illicit trade and the enforceability and impact. The PRA believes it is essential that the registration, as in Scotland, is free of charge to help mitigate losses for retailers.

4.15 Following such a review, government will be better informed in terms of evaluating whether the proposed system is viable and better than an another alternative less burdensome approach.

6. Conclusion

5.1 In summary, the PRA does not support the introduction of a licensing system for retailers.

5.2 The policy first needs to be evaluated as to whether it effectively combats the illicit trade and does not simply displace the issue. However, if such a proposal is to be implemented, the PRA would wish this to be based on the Scottish model and avoid unnecessary financial or administrative burdens on retailers already operating in a highly regulated market.

5.3 It is clear that government needs to gain better control of the illicit tobacco trade and the PRA urges attention to be focused on the disruption of illegal supply chains and increasing the amount of arrests, prosecutions and convictions through effective penalties and sanctions. The PRA does not believe a licence register is the final answer but at most, a stepping stone in tackling this serious problem.

¹⁰ <http://stv.tv/news/north/3618-new-tobacco-legislation-requires-registration-by-local-sellers/>