



ACS Submission – Tobacco Products (Traceability and Security Features) Regulations 2019

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to HMRC's consultation on The Tobacco Products (Traceability and Security Features) Regulations 2019. ACS is a trade association representing the 33,500 local shops across the UK. Our members include the Co-op, Nisa Retail, Costcutter, Spar UK and thousands of independent retailers. See Annex A for more information on ACS' membership.

While we welcome the introduction of 'track and trace' to tackle the illicit tobacco trade, we have concerns about the current time frames for implementation. There is now less than three months to go until 'track and trace' comes into effect on 20th May 2019 and the application process for identifier codes has not yet opened. We want to ensure that the implementation of the 'track and trace' system is introduced as smoothly as possible to ensure that it also has the smallest possible impact on convenience retailers. The current timeframes mean that an ID Issuer will have to process 50,000 applications for the convenience sector alone by 20th May 2019 in order for them to continue purchasing tobacco.

We are still awaiting guidance on how 'track and trace' will work in practice. The timeframe for implementation and the issuing of this guidance is fundamental to the success of 'track and trace'. At present, the whole supply chain only has less than three months to prepare for the implementation of these regulations, which we strongly advise is not sufficient time to communicate changes to the law. We believe that there needs to be a greater focus and resources placed on developing guidance for retailers.

Therefore, we encourage HMRC to consider whether there could be an extension beyond 20th May 2019 for retailers not only to apply for their identifier codes but also for larger retailers to establish scanning processes in their business. This is a viable option because it will take up to a year for tobacco products without unique identifiers to sell through the supply chain after the 20th May 2019 deadline. We will continue to work proactively with HMRC officials to communicate the regulations to convenience retailers.

Please see below for ACS' comments on the draft regulations.

(Draft) Tobacco Products (Traceability and Security Features) Regulations 2019

The comments below relate to Part 6 – Deactivation of identifier codes of the draft Tobacco Products (Traceability and Security Features) Regulations 2019.

Discretion to deactivate identifier codes

The regulations set out that only Commissioners for Her Majesty's Revenue and Customs may exercise the discretion set out in the Articles relating to the deactivation of codes. At a local level, action against the illicit tobacco trade is conducted by trading standards officers.

We would welcome clarity whether trading standards officers will also have the discretion to deactivate identifier codes. If trading standards officers do not have this discretion, we would welcome more information on how HMRC plans to enforce the regulations at a local/retailer level.

Circumstances in which economic operator identifier codes may be deactivated

We agree with the proposed circumstances in which Economic Operator Identifier Codes may be deactivated as they relate to illicit tobacco offences. We do not believe that these circumstances should be gold-plated and be extended to capture other offences. We would also welcome more information on when the circumstances in which Economic Operator Identifier Codes will come into effect? There may be confusion if the sanctions take effect from 20th May 2019 as it is currently unclear when HMRC/trading standards will be able to undertake enforcement visits at a retail level as a large quantity of tobacco product on the UK market may still not have security features or unique identifiers on the packaging before 20th May 2020.

We believe that HMRC should develop guidance for Economic Operators to understand the process on how and why Economic Operator Identifier Codes may be deactivated. To our understanding, an enforcement officer would issue written notice if a retailer has breached the regulations (or another circumstance where an Economic Operator Identifier Code may be deactivated), the Economic Operator then has the opportunity to make a representation/appeal the decision within 14 days of the written notice being issued. We would welcome confirmation from HMRC that our understanding on this process is correct.

The regulations set out that a deactivation period may be as long as it “is reasonable to protect the traceability system for tobacco products”. We would welcome clarity on whether this means that the length of a deactivation period will be determined on a case-by-case basis or whether there will be set lengths determined by HMRC.

Application to cancel a deactivation notice

As set out above, HMRC’s guidance should also clarify for the process regarding appeals, including how an Economic Operator can make an appeal and what the process is for doing so. We would also welcome more information regarding in what circumstances would an application to cancel a deactivation notice be granted?

Restriction on re-application

We welcome that the regulations look to restrict Economic Operators from applying for identifier codes during their deactivation period. In the alcohol licensing system, retailers who have had their licence revoked may have a relative or friend to reapply for the licence. Despite the licence having previously been revoked, the licence may be granted under a different name but for the same premises. We would welcome clarity on how HMRC plan to enforce this provision and prevent these incidents from happening under the ‘track and trace’ system.

(Draft) Explanatory Note

Guidance

The draft explanatory note states that “guidance on the implementation of these measures for businesses affected is being prepared by HMRC and will be published in advance of the start of the system on 20 May 2019.”

While guidance has been published on ‘Selling and Storing Tobacco Products’, we are still awaiting guidance on how the process will work in practice for retailers, including the application process for identifier, how retailers will exchange codes with their supplier, the sanctions for breaching the regulations, and how retailers can identify compliant stock ahead of the 20th May 2020 sell through period.

HMRC must also ensure that application process is straightforward for retailers to ensure a smooth implementation of ‘track and trace’. While the majority of the convenience sector is made up of independent retailers, 28% of the sector are multiple retailers¹ who will be required to apply for thousands of Facility Identifier Codes, not just for each store but also for each of their distribution centres. To ease the application process, there must be a bulk upload/application functionality. This will reduce the administrative burden on all retailers which have more than one store.

ACS will be developing guidance for the convenience sector regarding their obligations under the ‘track and trace’ system and how they can comply with the regulations. Until there is further information on how the ‘track and trace’ system will work, ACS cannot develop this guidance to communicate to retailers in the convenience sector. This could mean that fewer retailers are aware of the regulations ahead of 20th May 2020, which is problematic given that there is less than three months until implementation. We urge HMRC to publish further guidance on how the ‘track and trace’ system will work for all Economic Operators as soon as possible.

Regulating Small Business

The draft explanatory note states: "To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken by the EU legislation is that retailers trading in tobacco products (the vast majority of the small businesses affected by these measures) may have an identification number obtained on their behalf by a supplier. The basis for the final decision on what action to take to assist small businesses is that the action described above will make implementation straightforward for small retailers."

While we appreciate that the regulation allows for third parties, such as wholesalers, to apply for the codes on behalf of retailers, we do not agree that allowing third parties to apply on behalf of retailers will mean that implementation of ‘track and trace’ will be straightforward for small retailers. Retailers will still be required to ensure that they have an Economic Operator Identifier Code and Facility Identifier code if their wholesaler does offer to apply for their codes on behalf of them.

The more likely scenario is that smaller retailers will not be offered this service by their wholesaler or supplier and will be required to understand their obligations under the regulations and apply for their codes. It is important that HMRC raise awareness amongst smaller retailers about their obligations under the regulations. Even though trade associations, including ACS, will raise awareness amongst our membership, we believe that

¹ ACS Local Shop Report 2018

the government should also communicate the regulations to smaller retailers to ensure a smooth transition.

For more information, please contact Julie Byers, ACS Public Affairs Manager by emailing Julie.Byers@acs.org.uk or calling 01253 515001.

ABOUT ACS

The Association of Convenience Stores lobbies on behalf of over 46,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS' membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.

Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary parades, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.



WHO WE REPRESENT

INDEPENDENT RETAILERS



ACS represents over 19,000 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions.

These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent forecourt operators are included in this category.

SYMBOL GROUPS AND FRANCHISES



ACS represents over 14,000 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits.

Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

MULTIPLE AND CO-OPERATIVE BUSINESSES



ACS represents over 12,000 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls and others.

Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiples and commission operated stores are included in this category.

THE CONVENIENCE SECTOR



In 2018, the total value of sales in the convenience sector was £39.1bn.

The average spend in a typical convenience store transaction is £6.50.



There are 46,262 convenience stores in mainland UK. 72% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.



The convenience sector provides flexible employment for around 365,000 people.

24% of independent/symbol stores employ family members only.



24% of shop owners work more than 70 hours per week, while 19% take no holiday throughout the year.

70% of business owners are first time investors in the sector.



Convenience stores and Post Offices poll as the two services that have the most positive impact on their local area according to consumers and local councillors.

81% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between August 2017 and May 2018, the convenience sector invested over £814m in stores.

The most popular form of investment in stores is refrigeration.

OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 1,200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

ACS INVESTMENT TRACKER

Regular quarterly survey of over 1,200 independent and symbol retailers which is combined with responses from multiple businesses representing over 3,000 stores.

ACS LOCAL SHOP REPORT

Annual survey of over 2,400 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 7,669 stores. The Local Shop Report also draws on data from HIM, IGD, Nielsen and William Reed.

BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.