



**Memorandum of Understanding**  
**In Respect of the Exchange of Information**  
**between**  
**Her Majesty's Revenue and Customs (HMRC)**  
**and**  
**the Joint Alcohol Anti-fraud Taskforce (JAAT)**

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## 1. Introduction

1. Alcohol-related fraud is estimated to cost the UK taxpayer hundreds of millions of pounds in lost revenue each year. The sale of illicit alcohol in the UK harms the reputation of the legitimate trade, undermines brand equity and the profitability of honest, law abiding businesses.
2. This Memorandum of Understanding (MoU) sets out the high level agreement between Her Majesty's Revenue and Customs (HMRC) and alcohol industry members of the Joint Alcohol Anti-fraud Taskforce (JAAT). Its purpose is to set a framework supporting and promoting the exchange of enhanced information and associated collaboration, facilitating partnership working to tackle alcohol fraud. A full list of JAAT members including contacts can be found in Annex 3.
3. Although this MoU is not a contract nor legally binding, and does not in itself create lawful means for the exchange of information, it has an important role in documenting the processes and procedures agreed between the organisations. The agreement should not be interpreted as removing or reducing existing legal obligations or responsibilities on each party. Information will only be exchanged where it is lawful to do so. The relevant legal bases are detailed within this agreement.
4. HMRC considers that the disclosure of information to the parties subject to this MoU is necessary and proportionate because it will actively contribute to developing a better understanding of the current risks and emerging threats, and protection of public revenue.
5. A programme of joint initiatives with the JAAT will help tackle the illicit trade. This will benefit HMRC by reducing the tax gap in this trade population and for JAAT members it will encourage fair trade and honest business.

## 2. Legal

- 2.1. HMRC has specific legislation within the Commissioners for Revenue and Customs Act (2005) which covers the confidentiality of information held by the department, when it is lawful to disclose that information and legal sanctions for wrongful disclosure. For HMRC, disclosure of information is precluded except in certain limited circumstances as set out below. Unlawful disclosure relating to an identifiable person (including legal entities) constitutes a criminal offence. The criminal sanction for unlawful disclosure is detailed at section 19 of the Commissioners for Revenue and Customs Act 2005.
- 2.2. The Commissioners for Revenue and Customs have power to disclose information for the purpose of their functions (CRCA 2005, s.18(2)(a)).

Assurances were given to Parliament by Ministers that disclosures for HMRC ‘functions’ will take place only in controlled, limited circumstances. For a disclosure for the purposes of HMRC’s functions to be lawful, the HMRC official making the disclosure must take a separate decision whether or not to disclose in respect of each identifiable piece of information, or identifiable category of information in which all pieces of information have similar characteristics.

- 2.3. It is recognised that benefits to HMRC can arise from joint working, such as in relation to JAAT, and a reasonable level of non-identifiable information can be shared where it is necessary in order to maintain that benefit.

### **3. Data Protection Act 1998 (DPA) and Human Rights Act 1998 (HRA)**

- 3.1. Nothing in this Memorandum of Understanding will limit the receiving parties’ legal obligations under the Data Protection legislation.
- 3.2. All the information transferred by HMRC should be relevant, necessary and proportionate to enable JAAT members to carry out such tasks or processes that directly benefit HMRC’s functions.
- 3.3. HMRC will become the Data Controller (as defined in the glossary of terms) of any personal data received from JAAT members under the terms of this MOU.

### **4. Freedom Of Information**

- 4.1. HMRC is subject to the requirements of the Freedom of Information Act 2000 (FOI). In the event of HMRC receiving a FOI request that involves disclosing information that has been provided by JAAT, the former will notify the latter to allow it the opportunity to make representations on the potential impact of disclosure.
- 4.2. All HMRC FOI requests must be notified to Central Policy FOI Team who will engage with the central FOI team in the supplying organisation.

### **5. Information Handling**

5.1. Both parties

Without limiting the receiving organisation’s legal obligations under Data Protection legislation or otherwise, the organisation in receipt of information will ensure that they:

- will acknowledge every notification it receives;
- store data received securely, for example, in secure premises and on secure IT systems;
- ensure that only people who have a genuine business need to see that data will have access to it;
- notify the other organisation if they are planning to onwardly disclose the information to other parties that are not covered by the existing agreement(s) (without breaching any legal restrictions on onward disclosure);
- report any data losses, wrongful disclosures or breaches of security relating to information originating in the other organisation to the designated contacts immediately (within 24 hours of becoming aware). This includes both advising, and consulting with, the other organisation on the appropriate steps to take, e.g. notification of the Information Commissioner's Office or dissemination of any information to the data subjects;
- only hold data while there is a business need to keep it and destroy it when there is no longer a need to hold it;
- regularly review the assessment of risks to information and the effectiveness of measures taken to mitigate risks.

5.2. HMRC agrees to:

As part of Her Majesty's Government, to process personal data in compliance with the mandatory requirements currently set out in HM Government's [Security Policy Framework](#) when handling, transferring, storing, accessing or destroying information, ensuring they:

- do not disclose data supplied by JAAT members to any outside organisation unless permitted or required by law, nor make any such disclosure without prior approval by the relevant JAAT member(s);
- risk assess all information received and take appropriate action where it considers it is merited;
- consider the security and lawfulness of each disclosure before it is made, and take appropriate steps to maintain confidentiality;
- withhold a scheduled disclosure at any time if doing so contravenes policy or law in any way. For example, if during the reporting period the number of investigations/actions taken by HMRC on the basis of JAAT information is small enough to enable the identification of individuals from anonymised data.

5.3. JAAT members agree to:

- provide written, signed assurance that they have complied with these undertakings (as set out in 5.1) upon request;

- Provide HMRC with as much evidence as the department requires in order to provide assurance that information provided by HMRC is being used in a way that delivers the objectives of the JAAT.

## 6. Procedure

### 6.1. Both parties

- Sector specific information to be shared between HMRC and alcohol industry JAAT members will be scheduled (see Annex 5) to ensure the active management of any agreements. The schedule will be visible to all members of the JAAT, unless the parties to that agreement specifically request otherwise. The schedule will specify the information to be exchanged, the purpose and benefits of doing so, the methods of transfer, target times for response from parties, review dates, and identify the persons responsible in each case for the successful exchange of information.

### 6.2. HMRC to alcohol industry members of the JAAT (non-scheduled items):

- HMRC will share non-identifying information on the scale and nature of alcohol fraud, and trends in the fraud so that new joint anti-fraud measures continue to be generated and targeted on the areas of highest risk;
- HMRC will publish general feedback in the form of a quarterly report regarding the progress of the alcohol strategy. It will also use the report to keep the legitimate UK trade informed of significant successes achieved by their anti-fraud enforcement activities and of any new anti-fraud policy measures/regulations, and the performance of this MoU;
- Wherever possible, HMRC will also provide brand owners with information regarding the prevalence of their products in the illicit market, for example, indications from HMRC seizures data that their brands are being targeted for fraud. This practice to be reviewed after 12 months to assess its effectiveness, and a decision to be made to either continue or cease this provision;
- HMRC will share information with other Government departments, where it is lawful to do so, to promote joined up Government and ensure fraudsters face the full range of sanctions.

### 6.3. JAAT members to HMRC (non-scheduled items):

- JAAT members will support HMRC to develop a better understanding of the alcohol market, including how legitimate supply chains operate and current and emerging fraud risks.

- JAAT members will take an active role in identifying specific information (to be scheduled, or otherwise) and best practise that may be shared with others to help prevent or identify fraud risks.
- JAAT members agree to work together and with HMRC to identify, develop and implement potential joint initiatives to help tackle the illicit trade. This includes regular attendance and contribution at JAAT meetings.
- JAAT members representing specific sectors of the alcohol industry will engage fully with those they represent to ensure that the widest possible views and contributions on joint initiatives are brought to the JAAT for consideration.

## **7. Monitoring, Review and Termination Arrangements**

- 7.1. This agreement will be reviewed at least annually. Any changes needed in the interim may be agreed in writing and appended to this document for inclusion at the following review.
- 7.2. Reviews outside of the schedule can be called by representatives of either organisation.
- 7.3. External changes affecting the operational delivery responsibilities of the organisations will also necessitate the review and potential amendment of this agreement.
- 7.4. Annex 2 outlines the contacts for document control, the version history of this MoU and its review date.
- 7.5. Any party may terminate their association with the MoU by giving written notice to HMRC at any time. Provision of notice of termination shall have immediate effect.
- 7.6. HMRC may terminate this MoU at any time by giving written notice to signatories. Provision of notice of termination shall have immediate effect.

## **8. Issues, Disputes and Resolution**

- 8.1. Any issues regarding ongoing delivery aspects of the information supply, such as data integrity or quality, should be addressed through 'business as usual' channels as detailed in Annex 4.
- 8.2. Where a problem arises that cannot be resolved through the relevant 'business as usual' contacts, it should be reported, in writing, to the designated escalation contacts (listed in Annex 3). The contacts will endeavour to resolve the problem within 2 working days.

- 8.3. Where it is not possible to resolve the issue within 2 working days or the issue is of such severity that individuals may be negatively affected, the issue will be escalated to the senior management team for each partner. They will be notified with an explanation of why the dispute has not been resolved so that they can take appropriate action for resolution or plan contingency arrangements.



**9. Signatures**

SIGNED BY:

For, and on behalf of,  
Her Majesty's Revenue and Customs

For, and on behalf of,  
[JAAT Member]

\_\_\_\_\_  
Dr Laura Pollard

(Deputy Director Alcohol and Tobacco Policy)

\_\_\_\_\_  
(Trade Association)

Date \_\_\_\_\_

Date \_\_\_\_\_

## 10. Annex 1 – Legal Bases for the Sharing of Information

10.1. Section 18 of the Commissioners for Revenue and Customs Act (CRCA) sets out the specific circumstances in which HMRC may disclose information. These are:

- where HMRC has a statutory legal gateway permitting the disclosure of information to a third party;
- for the purposes of HMRC’s functions;
- where the person or organisation that the information relates to has given their consent<sup>1</sup>;
- where disclosure is for the purposes of civil proceedings or criminal investigation or proceedings;
- where disclosure is made in pursuance of a court order binding on the Crown;
- where disclosure is to a body with the statutory power in CRCA to inspect HMRC; or
- where disclosure is made in specific circumstances that are defined as being in the ‘public interest’ as set out in CRCA.

10.2. The main legal basis permitting HMRC to disclose information for the purposes set out in this MOU will be CRCA 2006 18(2)(a). A disclosure “which is made for the purposes of a function of the Revenue and Customs”.

10.3. The legal bases listed in 9.1 above should not be used in isolation, but with regard to the following:-

- Data Protection Legislation, including the Data Protection Act 1998
- Human Rights Act 1998

And for fraud purposes:

- Police and Criminal Evidence Act 1984 together with its Codes of Practice (England and Wales only)
- Regulation of Investigatory Powers Act 2000
- Criminal Procedures Investigation Act 1996 together with its Code of Practice (England and Wales only)
- [Other relevant legislation]

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<sup>1</sup> Consent needs to be fully informed and freely given (i.e. there must be a viable alternative). It is also permissive – HMRC is not obliged to disclose the data.

11. Annex 2 – Document Control

11.1. Document Control Personnel

Key personnel	Name	Organisation (Team)
<b>Author</b>	Aaron Gould Myra Ward Peter Latham	HMRC (Central Policy) HMRC (Central Policy) HMRC (Indirect Tax)
<b>Approvers</b>	Aaron Gould Mike Hunter Laura Pollard	HMRC (Central Policy) HMRC ( Data Guardian) HMRC ( Indirect Tax)
<b>Review Control</b>	Peter Latham Andrew Tighe	HMRC ( Indirect Tax) British Beer and Pub Association(BBPA)

11.2. Version History

Version	Date	Summary of changes	Changes marked
2.0	13/07/2015	Final version	No

11.3. Review dates

Version	Approval date	Review date
2.0	13/07/2015	31/07/2016

12. **Annex 3 - Contacts**

1. Business As Usual

JAAT Member	Single Point of Contact	E-mail

2. Escalation

JAAT Member	Escalation Contact	E-mail
HMRC	Peter Latham	<a href="mailto:peter.latham@hmrc.gsi.gov.uk">peter.latham@hmrc.gsi.gov.uk</a>

13. Annex 4 - Glossary of Terms

Abbreviation	Description
CRCA	The Commissioners for Revenue and Customs Act
MoU	Memorandum of Understanding
FoI	Freedom of Information
HMRC	Her Majesty’s Revenue and Customs

Definition	Interpretation
“Data Controller”	has the meaning set out in section 1 of the Data Protection Act 1998, i.e. ‘a [natural or legal] person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed’.
“Data Protection Legislation”	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner
“Law”	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body
“Regulatory Bodies”	means those government departments and regulatory statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence matters dealt with in this Agreement and “Regulatory Body” shall be construed accordingly

**14. Annex 5 – Schedule of Information Exchange**

14.1. Live Schedule

<b>Information exchanged</b>	<b>Purpose and benefit</b>	<b>Transfer method</b>	<b>Target times for response</b>	<b>Review date</b>	<b>Responsible person</b>