



HM Revenue
& Customs

Sanctions to tackle tobacco duty evasion and other excise duty evasion

Summary of Responses
November 2017

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1. Introduction

Background

- 1.1 Since the launch of the first strategy to tackle illicit tobacco smuggling in 2000, HM Revenue and Customs (HMRC) has had a significant impact in reducing illicit trade in tobacco products. The illicit market for cigarettes has reduced from 22% in 2000-01 to 15% in 2016 to 2017 and for hand rolling tobacco (HRT) from 61% to 28% over the same period. Revenue losses have reduced from £3.4 billion to £2.5 billion per annum.
- 1.2 This is a significant achievement, but tobacco fraud remains a problem and HMRC estimate that in 2016 to 2017 5.5 billion illicit cigarettes and 2,700 tonnes of illicit hand-rolling tobacco were consumed in the UK. The fraud is dominated globally by organised criminals and the illicit trade damages legitimate business, undermines public health and facilitates the supply of tobacco to young people.
- 1.3 The joint HMRC and Border Force strategy 'Tackling illicit tobacco: From leaf to light' was published in March 2015. This identified that we need to do more to maximise the use and impact of the full range of civil and criminal sanctions available to deter and punish those involved in the fraud.
- 1.4 While taking action to ensure that we make full use of existing sanctions, we also wanted to explore new ideas. At Budget 2016 the government announced that they would consult on sanctions to tackle illicit tobacco. Following an informal targeted consultation, HMRC ran a public consultation from 17 February to 12 May 2017.

Details of the consultation

- 1.5 The public consultation sought views on proposals to introduce additional sanctions to tackle tobacco duty evasion and other excise duty evasion.
- 1.6 This report provides an overview of the responses received to the questions in the consultation and the government's response.

- 1.7 Annex A lists the respondents to this consultation. The government is grateful to everyone who took the time to respond. It received 83 responses (including 11 from private individuals) from the following:

Type of respondent	Number of responses
Legal representatives on behalf of landlords and individual landlords	40
Public health bodies or anti-smoking groups	16
Local Government including (Trading Standards) or other enforcement agency	12
Tobacco trade and other excise regime	8
Not stated	2
Retail	3
Other	2

- 1.8 During the consultation period, HMRC held meetings with interested parties. Feedback from these meetings has been considered as part of the consultation exercise.

2. Responses to questions 1 to 5: Increasing financial penalties for repeat offenders

Question 1: Do you think that increasing financial penalties for subsequent tobacco wrongdoings will deter repeat offending? If not, why not and what more do you think we could do?

- 2.1 Thirty-eight respondents answered this question.
- 2.2 The majority of respondents from the tobacco industry, public health groups, local authority sectors and the retail sector believed that increasing financial penalties could deter repeat offending.
- 2.3 A number of respondents from Local Government and Trading Standards thought an increase could be effective in deterring repeat offenders at the border, but that a majority of retail offenders were unlikely to see increasing financial penalties as a deterrent. They felt a multiple agency approach that involved the sharing of offender details to encourage further sanctions across government could have greater impact than simply increasing the penalty amount.

Question 2: Should such a multiplier apply to wrongdoings in other excise regimes?

- 2.4 Thirty-five respondents answered this question.
- 2.5 The majority of respondents across the tobacco industry, public health groups, local authority sector and the retail sector thought such a multiplier should apply to other excise regimes.

Question 3: What do you think about the proposal to increase the penalty by a proposed multiplier of 100% of potential lost revenue for each subsequent repeated tobacco wrongdoing? Is this enough or should it be more?

- 2.6 Thirty-nine respondents answered this question.
- 2.7 A majority of respondents from across tobacco industry, public health groups, local authorities and the retail sector agreed that a 100% multiplier would be appropriate.
- 2.8 One respondent suggested an alternative proposal for a tailored approach for small and larger scale offenders. The respondent believed that small scale offenders may be deterred by financial loss, but larger scale offenders may only be deterred if penalties were approached in the same way as those for handling and selling illegal drugs.

Question 4: Do you think that maintaining reductions for cooperation and the quality of information disclosed for repeat tobacco wrongdoings is helpful in providing an incentive for individuals to cooperate with HMRC? Do you think there is a case for allowing no mitigation?

- 2.9 Thirty-two respondents answered, with the majority feeling mitigation should be considered.
- 2.10 A number of respondents from public health groups and local authorities, thought the offer of a reduction should be allowed only where it leads to valuable and useful intelligence. The general consensus was that mitigation should only be allowed on one occasion and not for subsequent offences.
- 2.11 A representative from the retail sector believed that no mitigation should be allowed. They felt there should be no reason to reduce the fine even when an offender cooperates with the authorities and that offenders should be punished to the maximum that the law allows.

Question 5: What timescale should be considered from the first to second tobacco wrongdoing to trigger the ramping up of penalties? For example, does a 12 month period appear reasonable or a longer timescale to deter the repeat wrongdoers?

- 2.12 Thirty-nine respondents answered this question.
- 2.13 The majority of respondents across tobacco industry, public health groups, local authorities and the retail sector thought the timescale should be longer than 12 months, with a general view that this should be between 2 and 3 years.
- 2.14 Nine respondents across public health groups and Trading Standards suggested that 5 years would seem more appropriate given the harm caused by the product concerned.
- 2.15 Other comments included a response on behalf of a residential landlords association who thought the timescale should mirror that used for other criminal offences. A respondent from the tobacco industry felt that the time between offences should not be a factor in triggering a ramping up of penalties.

Government Response

A majority of respondents believed that an increase in the level of financial penalties would deter repeat offending, so further work will now be taken forward on these proposals. There were a number of comments on how this impact may vary depending on the customer group. There was also a drive for a wider, multi-agency approach. More work is required to consider the responses and the alternative approaches suggested.

HMRC will work with Trading Standards to explore issues raised and further evaluate the potential impact of increased financial penalties to address excise duty evasion. This will be informed by wider work in HMRC on behavioural penalties, for example to tackle the hidden economy.

3. Responses to questions 6 to 15: A new civil penalty for dealing in illicit product

- 3.1 The government invited views on a new civil penalty for fiscal mark wrongdoings for use by both HMRC and Trading Standards. The new penalty could apply where it is deemed that a case is not suitable for criminal prosecution but where a fiscal mark wrongdoing has clearly been committed.

Question 6: Do you consider it would be appropriate to extend this provision to those selling other illicit products on which excise duties should have been paid?

- 3.2 Seventeen respondents answered this question. The majority of respondents from across the tobacco industry, public health groups, local authorities and the retail sector favoured the introduction of a new civil penalty for dealing in illicit product. One respondent, representing the interests of those involved in the supply of excisable goods other than tobacco, suggested this may not be practicable due to the associated costs. A respondent from the tobacco industry believed that more detailed discussions with legitimate businesses and stakeholders involved in the supply of alcohol and oils would help determine how this may work in practice.

Question 7: Do you think that the new penalty would be an effective and proportionate sanction? If not, can you suggest an alternative approach?

- 3.3 Thirty-eight respondents answered this question and most felt that the proposed penalty would be an effective and proportionate sanction.
- 3.4 A representative from the retail sector proposed an alternative approach which was to give Trading Standards powers under the Customs and Excise Management Act 1979. No further alternative approaches were suggested by any respondents.
- 3.5 Other comments included a recommendation from Trading Standards that criminal prosecution should always be required. Also, a public health respondent supported issuing on the spot fines for small scale offending.

Question 8: Do you think that the new penalty should be on a sliding scale as determined by the potential lost revenue?

- 3.6 Thirty-seven respondents answered this question. The consensus from the tobacco industry, public health groups, local authorities, the retail sector and private individuals was that the new penalty should be on a sliding scale as determined by the potential lost revenue.

Question 9: Do you think that any new penalty should be subject to a maximum amount?

- 3.7 Thirty-six respondents answered this question. Most respondents thought that any new penalty should be subject to a maximum amount. One respondent commented that the power to impose unlimited fines is reserved to the courts.
- 3.8 Several respondents, including the tobacco industry, public health groups, representatives and private individuals were of the opinion that any new penalty should not be subject to a maximum amount. The reasons provided ranged from:
- any penalty should reflect the seriousness of the crime, be proportionate to the amount of the fraud and take account of the potential profit received if the products were sold
 - the penalty must be relative to the amount of times duty has been evaded and how much has been evaded
 - fines need to be severe to act as a deterrent any penalty should be left to the discretion of the enforcement officer or magistrates to provide a greater deterrent

Question 10: Who in the supply chain that is found to be dealing in illicit tobacco do you think that the new penalty should be issued to? How far could it extend?

- 3.9 Thirty-nine respondents answered this question. The general consensus was that penalties should be applied to anyone knowingly dealing in the illicit supply chain. A respondent from Trading Standards commented that there should be no exemptions.
- 3.10 Several respondents made various suggestions regarding who in the supply chain that is found to be dealing in illicit tobacco should be charged a penalty and how far it could extend. These included:
- those involved in organising and planning of the supply
 - penalise where the regulations were broken
 - small scale offences
 - potential lost revenue should be a driver when deciding who the new penalty should be issued to
 - penalty should increase the higher up the supply chain and a lesser penalty for lower chain members

Question 11: Do you believe that 30 days is sufficient time to pay the new penalty or do you think a different time limit is appropriate, if so what and why?

- 3.11 Thirty-six respondents answered this question. The majority of respondents believed that 30 days was an appropriate length of time to pay a penalty. A respondent from a public health group, however, believed that 14 days was appropriate. They felt that a longer length of time could make it problematic when recovering the fine.

Question 12: What are your views on the higher penalty amount for failing to pay within 30 days?

- 3.12 The majority of respondents who answered, including the tobacco industry, Trading Standards and public health groups, supported a higher penalty amount for failing to pay within 30 days.
- 3.13 Three respondents from Trading Standards believed that an automatic fine of £500 would be appropriate if not paid within 30 days. One private individual felt that it should depend on individual circumstances.
- 3.14 One respondent representing an excise regime other than tobacco, didn't support the proposal for a higher penalty amount for failing to pay within 30 days. They felt that a parking ticket type approach wasn't suitable for what could be high penalties and complex situations and that an automatic increase could deter people from appealing.

- **Do you think HMRC/Trading Standards should issue a reminder letter to the responsible person before the 30 days are up?**

- 3.15 The majority of respondents from public health groups, local authorities, tobacco industry, the retail sector, and private individuals didn't support the issue of a reminder letter. The general consensus was that the recipient should address the issue of a penalty in the first instance.

- **Do you think 14 additional days is the right amount of time to pay the higher penalty? If not why?**

- 3.16 Thirty of the 83 respondents across the tobacco industry, local authorities, public health groups, the retail sector and a representative on behalf of landlords believed that the 14 additional days was the right amount of time to pay the higher penalty.

- 3.17 One respondent representing the retail sector didn't think this was appropriate and suggested that, if the 30 days doesn't appear to change people's behaviour, a shorter period should be considered.

- **At what level do you believe the second penalty should increase, for example, by 50% of the original amount, 100% or some other amount?**

- 3.18 Sixteen respondents, including public health groups, local authorities, tobacco industry, the retail sector and a private individual felt that an increase of 100% would be appropriate to encourage individuals to pay the fine on time. One respondent, however, recognised that there may be issues with the offender's ability to pay this higher fine. They suggested that it was probably sensible to

allow HMRC or the court to use their discretion to determine the increase on a case by case basis, but guided by the principle of a 100% increase.

3.19 However, 14 respondents across local authorities, public health groups, the tobacco industry and a representative of landlords felt that the additional penalty should be set at a significant amount to be a deterrent. 50% was the preferred minimum. Three respondents from Trading Standards suggested there is a maximum penalty of £500.

- **How do you think HMRC should deal with offenders who fail to pay a second penalty within 14 days?**

Possible options HMRC is considering are:

- court order issued demanding payment known as Order of Recovery
- application to the court for an attachment of earnings order (allows money to be deducted from wages to pay the fine)
- application to the court to have deductions made from benefits to pay for the fine

3.20 Most respondents felt that any of the options were appropriate in dealing with offenders who fail to pay a second penalty within the 14 days.

3.21 Three respondents from Trading Standards suggested that HMRC take responsibility for the administration of the penalty scheme including all recovery issues, and one respondent suggested that the court order should be used in the first instance.

Question 13: What design model do you believe would have the most impact on encouraging behaviour?

3.22 This question relates to the models outlined in the consultation document and the above questions on section 3.

3.23 Twenty-four respondents from local authorities and public health groups thought the model outlined appeared robust. Some of these respondents mentioned that it would be more dissuasive if it was well publicised with real cases.

3.24 Six respondents from the tobacco industry and the retail sector believed that a reduction in the sum owed for prompt payment would potentially undermine the severity of the penalty and this arrangement should not, therefore, be offered.

3.25 One respondent from the local authority sector suggested either a licensing or prohibition system to encourage compliant behaviour. Another respondent from a residential landlords association echoed earlier comments at question 1. They believed that small scale offenders who handle goods for sale to others may be deterred by the risk of financial penalties. However, they believed that this would deter larger scale offenders only if penalties approached the type of penalty, not specified, applied to those handling and selling illegal drugs.

Question 14: Should payment by instalments be in your opinion considered? If yes, why?

- 3.26 Thirty-five respondents answered this question. Some respondents, including local authorities, public health groups, the retail sector, the tobacco industry supported payment by instalment applicable only in exceptional circumstances.
- 3.27 A smaller number didn't support any instalment policy as they believed it could undermine the severity of the penalty.

Question 15: Are there any potential wider consequences of introducing the new penalty that we have not identified?

- 3.28 Twenty-five respondents answered this question. Respondents including those from local authorities, the tobacco industry, the retail sector and a respondent from a residential landlords association could foresee a number of potential consequences including:
- the cost and training for officers and the need for good communication systems between local authorities and HMRC
 - the potential burden on Trading Standards
 - the potential for it to be seen as a 'money maker'
 - a new penalty could have the potential for making offenders homeless if they are unable to pay the penalty and an offender may be struggling to pay debts
 - the need to ensure that any new penalty is robust

Government Response

The government notes that most respondents were in favour of introducing a new civil penalty for dealing in illicit product. Respondents raised some interesting ideas on how this could be applied by HMRC and Trading Standards as well as identifying potential issues.

The design and administration of such a penalty require detailed consideration. HMRC will carry out further work with other enforcement agencies to develop this as an option to tackle tobacco and potentially other excise duty fraud, and further explore feasibility and cost effectiveness.

HMRC will consider the suggestions and concerns put forward by the respondents, and work with other enforcement partners to assess how these could work in practice. Supply chain licensing for tobacco is the subject of another published government consultation: 'Tobacco Illicit Trade Protocol – licensing of equipment and the supply chain'.

4. Responses to questions 16 to 19: Reducing the threshold for the publication of the details of people or companies that deliberately evade duty

Question 16: Do you think the potential lost revenue threshold figure of £15,000 is sufficient to have a deterrent effect on those who persist in evading excise duty?

- 4.1 Thirty-three respondents across the tobacco industry, local authorities, public health groups and the retail sector were in favour of the suggested potential lost revenue figure of £15,000. They believed that this was effective in deterring those who persist in evading excise duty. Some of these respondents, commented that there needs to be strong publicity to strengthen the impact.
- 4.2 Three respondents felt the threshold should be lower than £15,000 as there should be no acceptable limit for dealing in illegal tobacco. A further 3 respondents suggested a lower threshold with 2 of these suggesting a limit of £10,000.
- 4.3 One respondent from the local authority sector didn't believe that a threshold would have any deterrent effect on the persistent offenders.
- 4.4 Another respondent from the tobacco industry made reference to Ireland where there is no threshold above which defaulter details are published. They suggested that a similar model could be implemented in the UK. They recommended that HMRC carries out a review of the effectiveness of this measure 18 months after implementation with a view to lowering the threshold to £5,000 or zero if it is deemed that the £15,000 threshold isn't an effective deterrent.

Question 17: What are your views on publicising the details of companies or people who have evaded duty?

- 4.5 Over 20 respondents supported publicising details of companies or people who have evaded duty. The general consensus was that publicity has a positive impact to discourage new entrants in the illicit trade and can generate intelligence.
- 4.6 Fourteen respondents didn't think that publicising the details of companies or people who have evaded duty was an effective deterrent. The majority of these believed that it would provide offenders with free widespread publicity.
- 4.7 Nine other respondents from local authorities and public health groups felt that further investigation was required to test the messaging and impact on public attitudes.

Question 18: Do you consider the naming of individuals or companies to be an effective deterrent and likely to change behaviour?

- 4.8 Most respondents across public health groups, local authorities, the tobacco industry and the retail sector considered the naming of individuals or companies could act as an effective deterrent and change behaviour. However, some local authority respondents believed that further investigation was needed before such a policy was implemented.
- 4.9 A representative on behalf of a residential landlords association believed that it may only act as a deterrent to small scale offenders. They suggested that there would be more impact if action was taken against an offender in some way to affect their credit score.

Question 19: HMRC would publish the details on GOV.UK. Do you have any views on this? Specifically:

- **Who else should HMRC inform - local press, local authority, local police, public health, tobacco manufacturers? Others?**
- 4.10 The majority of respondents who answered believed that any information of this nature should be shared as widely as possible.
- 4.11 One respondent suggested that HMRC should notify the head office of a symbol group (for example the Association of Convenience Stores Symbol Group Retailer member) where a retailer is selling illicit tobacco and is a member. This would allow the head office of the symbol group to consider if they want to take further action. For example, removing supply from that business. Other suggestions made to publish details on:
- social media channels
 - local GPs, local schools and the Medicine and Healthcare Products Regulatory Agency
 - Trade associations' literature
- **Do you think the message would have a greater deterrent if published by another source? If so, who and why?**
- 4.12 The majority of respondents from local authorities and public health groups felt that HMRC should retain control of the publicity. However, a respondent from the tobacco industry, and a private individual, didn't believe that a greater deterrent effect would be generated by publication by a source other than HMRC.
- **When publishing the details, should HMRC publish names in the community? If so, how and where?**
- 4.13 Several respondents from public health groups and local authorities thought that names should be published widely, through local press, adverts, and newspapers, with limited exceptions where this might cause a serious risk to

the individuals concerned. Public health respondents and Trading Standards referred to community publications that can be used to generate intelligence which is currently used by several Trading Standards departments in the form of local leafleting. This level of publication can be anonymised to protect individuals who may themselves be exploited by criminals.

- 4.14 One respondent that commented, on behalf of a residential landlords association, felt that it may be helpful to publish names in the community and suggested this could be done by notifying town and parish councils.

Government Response

The government recognises that responses to this proposal were very mixed. There were issues raised about how effective this would be as a sanction to punish and deter excise duty fraud, with some respondents believing it would be counter-productive. The government will consider further the potential impact of this sanction for excise duty evasion on those likely to be affected.

More generally, HMRC is exploring whether the existing sanction of publication of details is an effective and suitable deterrent. HMRC has commissioned external research to inform its position. The outcomes of this work will help determine whether any changes to the sanction to tackle duty evasion would be an effective and proportionate response.

The government welcomed the suggestions made on alternative approaches and will consider these further.

5. Responses to question 20 to 24: Statutory duty of care on landlords and landowners or properties or land

5.1 The government invited views on the option of requesting landlords and landowners, through relevant associations, to voluntarily add a clause to their standard lease agreements.

Question 20: Would you be in favour of this approach?

5.2 The majority of respondents were not in favour of this approach. The consensus from landlords, and from solicitors representing landlords, was that leases already contain a clause prohibiting illegal activities on the premises.

5.3 There was also uncertainty from a large majority of respondents on whether the consultation document was suggesting that rental agreements specifically mention evasion of tobacco duty. Many respondents felt this was inappropriate as if not drafted very carefully, within the context of the lease as a whole, it would have the effect of limiting the range of illegal activity that the existing prohibition would cover.

5.4 Twenty-three respondents were in favour of this approach, two of these respondents were from landlord associations.

5.5 Six respondents from public health groups and local authorities partially agreed with the proposal. They stated that the voluntary approach may be appropriate for larger well run companies but for those landlords whose business model is to not ask questions of tenants, it would have limited effect and would not be supported.

5.6 Other relevant comments received included:

- such a proposal should apply to commercial and domestic landlords
- the duty of care approach may prove more useful if HMRC seek a legal requirement to include a more generic clause around illegal activity

5.7 The government also invited views on introducing a new duty of care on landlords and landowners of properties or land, which are used in tobacco (or other excise duty) fraud. We proposed that this should include a new civil penalty for non-compliance with requirements to take reasonable steps to ensure that their property is not used to evade duty.

Question 21: Do you think the examples (Annex B) are on the right lines to ensure that the duty of care is reasonable and proportionate?

- 5.8 There were 76 responses to this question.
- 5.9 Respondents from public health groups, local authorities and the tobacco industry thought the examples outlined by HMRC were reasonable and proportionate.
- 5.10 A majority of respondents (mostly solicitors representing landlords and private individuals) didn't feel the duty of care examples were reasonable or proportionate for the following reasons:
- it places further administrative burdens and direct costs on landlords
 - it's disproportionate to the problem HMRC is trying to address
 - the proposal isn't a duty of care but a legal obligation
 - the landlord will not be the person who holds the evidence of evasion
 - the duty of care on landlord will not deter excise duty evasion
 - this is the job of the police and enforcement agencies and not for landlords
 - this would duplicate existing law/regulation and would contradict existing policy
 - this would create problems in the landlord and tenant relationship
 - the notice from a landlord or agent regarding a visit must be at least 24 hours so would allow tenants to remove or dispose of illicit tobacco products

Question 22: What would be a reasonable expectation of the steps landlords/landowners should take and the timescale for doing this and for taking action if there are further transgressions?

- 5.11 Most respondents that included landlords, landlord legal representatives, tobacco industry and other excise regimes echoed previous comments and felt that any steps imposed on landlords or landowners would be unreasonable.
- 5.12 A few respondents from public health groups and local authorities stated a reasonable expectation would be for the landlord to have a duty to inform HMRC of any illegal activities and require the tenant through documentation to cease the illegal activity. Others within the public health groups and local authorities felt that it would be reasonable for leases to be terminated on commercial or residential premises.

Question 23: What sanctions should HMRC apply to landlords or landowners who have not taken steps to prevent illicit tobacco or other illicit excise activity on the property or land? For example, should HMRC impose a financial penalty?

- 5.13 Most respondents across local authorities, public health groups and the tobacco industry stated an increase in financial penalties should be imposed in relation to the amount of times properties have been used for illegal activities.

- 5.14 Some respondents across public health groups and local authorities, believed that there should be financial penalties for allowing the illegal practice to continue. These respondents suggested that there should be consideration to charging landlords with being complicit with the principal offence via an act or default provision.
- 5.15 A number of landlords and legal representatives for landlords didn't agree that sanctions should be applied to the landlords or landowners. Two of these respondents believed there should be no sanctions with regards to private landlords and residential properties.
- 5.16 Other relevant comments received were that if a landlord is found to be the guilty party he or she should be prosecuted and a public health respondent suggested that a £1000 fixed penalty would be appropriate.

Question 24: Are there any potential wider consequences of introducing a duty of care and a civil penalty that we have not identified?

- 5.17 Many respondents that included private landlords and legal representatives on behalf of landlords believed that introducing a duty of care would have expensive and, potentially, reputational consequences. A small number of respondents didn't identify any wider consequences or did not answer the question.
- 5.18 A respondent declared fears of their property being used for activities such as cannabis cultivation. The respondent stated, illegal tobacco is no different. The respondent asked the question, 'Should landlords endure the stress, costs, and damage to their property and also be held responsible? This echoed other landlords' views in relation to the landlord being responsible for the actions of the tenants. Another respondent from the tobacco industry expressed concerns about the rising amount of illicit tobacco being sold on social media. They asked if the duty of care would extend to the social media companies, which are effectively the landlord of these listings.
- 5.19 Various further concerns were raised by respondents. These included:
- landlords being unfairly treated
 - questioning if the government would pay for legal fees if the tenant sues the landlord or landowner when this entitlement of 'quiet enjoyment' is broken
 - questioning if training would be provided for them to undertake the duty of care, paid for by the government
 - the duty of care should fall to the letting agents controlling the property
 - the personal safety of landlords and agents
 - where the funding for the extra duties and responsibilities would come from and which government agency would 'bank' the penalties

Government Response

The government acknowledges the issues raised about the impact that a statutory duty of care would place on landlords and landowners, and whether these are reasonable and proportionate.

HMRC will discuss further with landlord and landowner representative bodies to determine how we can work together to address fraud. HMRC will also explore with them how current contracts to prevent illegal activities on their premises could be used as a basis to take action against those persistently involved in excise duty evasion. HMRC will assess whether other existing regulatory frameworks would offer options for sanctions and other opportunities to take further action.

6. Responses to question 25: Assessment of Impact

Question 25: Do you have any information that could inform the Impact Assessment?

- 6.1 The majority of respondents provided no comments.
- 6.2 One respondent from the tobacco industry believed the increased and continued enforcement measures by Border Force should be included. A respondent from Trading Standards commented about Magistrates Courts and the low value of fines against organised perpetrators.

7. Next steps

- 7.1 The government is grateful to all those who took time to respond to this consultation which provided many helpful, informative and constructive responses.
- 7.2 The government has fully considered these responses, as well as the outcomes of meetings with stakeholders. HMRC will now take forward further work on legislative and non-legislative options to strengthen the use of sanctions in light of the consultation feedback.
- 7.3 The refreshed strategy 'Tackling illicit tobacco: from leaf to light' sets out how we will continue to target, catch and punish those in the illicit tobacco trade and create an environment hostile to the fraud in the UK and internationally. Part of this approach is to encourage the most effective use of the range of sanctions available across government.

7.4 HMRC is currently working to increase the use of existing sanctions by developing:

- an operating model with Trading Standards to encourage the effective use of sanctions and powers to tackle repeat offending
- a mechanism to promote awareness of the powers and sanctions currently available to HMRC and through other agencies – this will also be used to create targeted training for operational colleagues

Next phase and timing

7.5 HMRC will take forward further work with key stakeholders and representative bodies on the options detailed in this consultation and other options proposed in responses. We expect to be in a position to confirm next steps early next year. The Department of Health (DH) has made a commitment in 'Towards a smoke-free generation: tobacco control plan for England' to look at sanctions for repeat offences at retail level for public health offences such as underage sales. HMRC will work closely with DH to develop a proportionate, coherent and effective approach across the wider tobacco control agenda.

7.6 We will also continue to work closely with enforcement partners and internal stakeholders to maximise the use of existing sanctions and powers to deter those who trade in illicit tobacco.

Annex A: List of stakeholders who responded

HMRC is grateful to the following who provided written responses to the consultation.

1. Allen & Overy
2. ARLA Propertymark
3. ASB Law
4. ASH
5. ASH Scotland
6. ASH Wales
7. Association of Convenience Stores Limited
8. Berwin Leighton Paisner
9. Bond Dickinson
10. British American Tobacco
11. British Property Federation
12. Burges Salmon
13. Cancer Research
14. Chartered Trading Standards institute
15. Cheshire East Council
16. Clyde & Co
17. CMS Cameron McKenna
18. Consumer Packaging Manufacturers Alliance Limited
19. Cornwall Residential Landlords
20. Cripps
21. Doncaster Council - Public Health
22. Eversheds Sutherland
23. Fieldfisher
24. Fladgate
25. Forsters
26. Fresh North East
27. Hartlepool Borough Council - Smoke Free Hartlepool Alliance
28. Herbert Smith Freehills
29. Howard Kennedy
30. Hull City Council
31. Hunters & Frankau Limited
32. Imperial Tobacco
33. Imported Tobacco Products Advisory Council (ITPAC)
34. Investment Property Forum
35. Japan Tobacco International
36. Lewis Silkin
37. Middlesbrough Council - Public Health and Public Protection Service
38. Middlesbrough Council Environmental Health & Trading Standards
39. Nabarro
40. National Farmers Union
41. National Landlords Association
42. Newcastle City Council - Public Health Team
43. North East Public Protection Partnership

44. North East Trading Standards Association
45. North Tyneside Council - Public Health and Wellbeing
46. North Yorkshire Trading Standards
47. Petrol Retailers Association
48. Philip Morris Limited
49. Pinsent Masons
50. Public Health Barnsley Council
51. Public Health South Tyneside Council
52. Redcar & Cleveland Borough Council
53. Revo Community
54. Royal College of Physicians
55. Scottish Civil Justice Council
56. Scottish Courts and Tribunal Service
57. Shakespeare Martineau
58. Shoosmiths
59. Simmons & Simmons
60. Smoke Free County Durham Tobacco Alliance
61. Stockton on Tees Borough Council
62. Taylor Wessing
63. The City of London Law Society
64. The Wine and Spirit Trade Association
65. Thurrock Council - Public Health
66. Tobacco Manufacturers Association
67. Tobacco Retailers Alliance
68. Trading Standards North West
69. Training for Professionals
70. Walford Homes Limited
71. Wrexham Trading Standards
72. Yorkshire and Humber Trading Standards Group

HMRC also received 11 responses from private individuals.

Annex B: When a duty of care may apply (question 21, paragraphs 5.8 to 5.10)

The duty of care would only arise once the landlord or landowner has been notified that the tenant has evaded tobacco duty (or other excise duty).

This may involve a landlord or a landowner taking steps such as:

- having provisions in all new leases making it clear that any illicit tobacco trading or any other illicit excise activity will terminate an existing lease
- undertaking periodic checks on the premises and request information relating to the tenants business
- evicting anyone who subsequently violates these provisions.
- taking steps to ensure they are aware of illicit activity and contacting HMRC or Trading Standards immediately if they have concerns
- providing HMRC with a copy of the tenancy agreement with provisions relating to illicit tobacco or other excise products

To minimise the burden on the landlord or landowner we would provide for a defence for landlords or landowners who have taken reasonable steps to prevent future wrongdoings in or on their property.