

**Sanctions to tackle tobacco duty evasion: HMRC is inviting views on proposed sanctions to tackle tobacco duty evasion and extending HMRC traceability enforcement powers to Trading Standards officers**

**ASH Wales Response**

**Question 1**

**Should Trading Standards officers have the ability to issue compliance notices and the discretion to deactivate EOIDs? Please provide your reasoning.**

Yes. The research we have undertaken in Wales has shown that TS play an integral role in the disruption of the illegal tobacco trade.

TS are at the forefront of tackling illicit tobacco in communities across the UK. Wales Trading Standards and ASH Wales undertook an analysis of activities around illegal tobacco by local authority area, during the financial year April 2016-March 2017. The survey was designed to assess the amount and quality of intelligence gathered and the current levels of resourcing available.

All 22 Welsh local authorities responded to the survey, with 82% indicating they undertook some enforcement activity around illegal tobacco. In Wales there were:

- 261 reports of illegal tobacco received
- 221 enforcement visits undertaken, of which 81 led to seizures
- 42 prosecutions
- 449,540 illegal cigarette sticks seized
- 1,528 kg of hand-rolling tobacco seized

Given this level of activity it is imperative Trading Standards have the ability to issue compliance notices and discretion to deactivate EOIDs under this legislation as part of the toolkit.

- We fully support the recommendation that Trading Standards:
- Have access to hand-held technologies to clarify if covert and semi-covert security features are applied in compliance with Part 4 of the Regulations
- Have access (directly or through a real-time portal with HMRC) to the database to clarify the EOID status of a trader
- Are able to engage in robust and efficient two-way communication with HMRC in order to inform and be informed of circumstances which fall under Section 18 of the Regulations.

**Question 2**

**The Tobacco Products (Traceability and Security Features) Regulations 2019 lists the circumstances under which an EOID can be deactivated. Which, if any, of these circumstances would not be appropriate for Trading Standards to administer and why?**

An ASH Wales report commissioned by Welsh Government in 2017 cited the 'devising of a workable enforcement model as a key element of an illegal tobacco programme. There are clear

benefits to a multi-agency approach, however, there also needs to be unambiguous mechanisms and for the handling and dissemination of intelligence to maximise impact.

There is a clear requirement for investment in the intelligence sharing arrangements across law enforcement agencies and other relevant stakeholders.

In order to facilitate compliance with the ITP, it would be appropriate for Trading Standards to have the power to administer deactivation of an EOID in any circumstances. However, there needs to be robust two-way communication to ensure that all parties have the information required.

Currently there is no national strategy or coordination on activity surrounding illegal tobacco. The existing mechanisms to promote the reporting of illegal tobacco are not being fully exploited at a local authority level and competing priorities are taking precedence over illegal tobacco. A national strategy across all nations and an intelligence sharing system would support all efforts to disrupt the illegal tobacco trade.

### **Question 3**

#### **Are there any other considerations or safeguards relevant to the extension of TTS (track and trace system) enforcement powers to Trading Standards?**

There is an opportunity to look beyond TS to the other enforcement agencies; the four Welsh Police forces do not have a specific role with regard to illegal tobacco however their broader law enforcement work means they encounter it on a regular basis.

Police forces are recording the information to an extent on their crime recording systems but mainly in text fields that are not easily searchable and there is no standardised recording procedure. The Niche Occurrence system, which is used for crime recording by South Wales Police, Gwent Police and North Wales Police has no current classification for the supply and distribution of illicit tobacco.

A 2014 report by ASH Wales, The Wales Illicit Tobacco Survey, asked whether people would report tobacco crime and to whom. There was found to be low awareness of where or how to report sale of illegal tobacco, however those that said they would, the vast majority (84%) chose the Police. Mentions of Trading Standards, HMRC, the Customs Hotline and Crimestoppers ranged between 3% and 13%.

As the police are the preferred option for the reporting of illegal tobacco by members of the public, to maximise the potential the handling and recording of this information it needs to be standardised.

In addition, there are two Police Regional Organised Crime Units (ROCU) operating in Wales. The ROCUs have a hugely important role to play in the flow of intelligence and in bringing enforcement agencies together to tackle serious organised crime.

Within each ROCU there is also a coordinator for the Government Agencies Intelligence Network (GAIN) to facilitate and oversee the exchange of intelligence between the police, law enforcement agencies, Trading Standards and other public bodies.

Currently there are no formal intelligence sharing arrangements around the illegal tobacco trade in Wales.

#### **Question 4**

**a) Excluding tobacco products brought into the UK by individuals as part of any travellers' allowance, are there any circumstances where a business or private individual could legitimately hold non-compliant TTS products?**

**b) What reasonable evidence could be provided to show this legitimate purpose?**

N/A

#### **Question 5**

**Do you think the penalty model outlined in Table 1, with its initial fixed penalty amounts based on bands and previous compliance, would be a proportionate response?**

With the new model, persistent breaches would attract quite significant penalties even when small quantities are uncovered each time. There needs to be an effective system to ensure fines are paid, and Trading Standards should work closely with HMRC to set this up.

#### **Question 6**

**How could the model in Table 1 be altered to be more effective in combatting illicit tobacco activities?**

In many parts of Wales there is the problem of illicit sellers operating from domestic premises it is therefore it is important that there are appropriate sanctions to address this issue.

The current operating model of many illicit tobacco traders includes an assistant who will deny any knowledge or responsibility. It may be appropriate to consider that the penalty for possessing and/or selling illicit tobacco be imposed on both the assistant and the responsible person, thereby doubling for those businesses whose owner cannot be traced. Often managers swap their "ownership" of the premises to another and the activity continues. Therefore additional sanctions should be considered.

The selling of tobacco to young people should be dealt with more appropriately with more severe consequences for the seller, especially if they are found to be regular offenders.

#### **Question 7**

**Are there any circumstances where an economic operator or first retail outlet could legitimately hold non-TTS compliant product, alongside compliant product, at a TTS facility?**

N/A

#### **Question 8**

**Would the power to seize TTS compliant product, where found alongside noncompliant stock, be an effective deterrent to tobacco fraud? Please provide your reasoning.**

Yes. In the illicit tobacco trade, deterrent is key and disruption to business is crucial. This power needs to be included to prevent criminals mixing the non-compliant and compliant stock which can be a deterrent to enforcement activity. It is difficult for officers in an enforcement situation to have the time and resource to separate compliant stock. Although tobacco sales in general are on the long term decline, and the amount of profit that a retailer makes from tobacco sales is very low, any threat of seizures of product – and thereby removal of stock for sale – will act as a deterrent.

#### **Question 9**

**a) Do you agree that where non-TTS compliant product is discovered at a facility covered by an EOID, on more than one occasion, then the corresponding EOID should be deactivated?**

Yes. There should be zero tolerance for a repeat offence. The current system – as outlined in the consultation document – is not as effective as it could be therefore it makes sense to introduce a more straightforward approach.

**b) Are there any circumstances where this may not be appropriate?**

No. There are no circumstances where this may not be appropriate.

#### **Question 10**

**a) Would you agree that a period of six months would be an appropriate length of temporary EOID deactivation?**

This seems to be an appropriate level of time for a first offence and would bring about the level of disruption required to act as a significant deterrent.

**b) Are there any circumstances when withdrawal should be longer or even permanent? Please provide your reasoning.**

If further instances of non-compliance are uncovered after reinstatement of an EOID following a temporary deactivation, then a second withdrawal should be permanent

#### **Question 11**

**a) What appeals processes do you think are necessary before an EOID can be deactivated?**

As per Part 8 of the Regulations.

**b) Do you think a warning notice should be required in all cases?**

No. We do not think a warning notice should be required in all cases.

#### **Question 12**

**a) Do you think the sanctions model in Table 2 could be effective in combatting illicit tobacco activities?**

Yes, the sanctions model could be effective. However, it could be altered to make the sanctions even more effective.

**b) Can you suggest how this model could be altered to make the sanctions more effective?**

We would propose the inclusion of a permanent deactivation of the EOID following a second offence for any quantity.

We also propose that the removal of the EOID should be automatic if a retailer or private individual is found with 500+ unit packets, regardless of whether it is a first offence. Such a quantity of non-compliant product indicates the extent of the involvement in illicit trade and the sophistication of the operation.

In order to increase the effectiveness of the deterrent, communications with both retailers and the public is essential. The sanctions will only act as a deterrent if they are known about and this lessens the likelihood of a suspected offender claiming lack of knowledge.

### **Question 13**

**Where a retailer is in receipt of a banning order preventing tobacco sales or has been excluded from a national tobacco licencing scheme for persistent non-compliance, do you think Trading Standards should have the ability to deactivate the retailer's EOID for the period that they are excluded from making tobacco sales?**

In principle, yes. We really welcome the element of the consultation document which recognises the importance of tobacco legislation in protecting health as well as reducing duty evasion.

### **Question 14**

**How would deactivation of a retailer's EOID in these circumstances help tackle tobacco duty fraud?**

Along with other offences proposed through the TTS, this would provide a further deterrent to illicit tobacco sellers.

We have no links with the tobacco industry or its affiliates. We note that the consultation does not require respondents to declare links with the tobacco industry and its partners and we would urge HMRC to include this declaration in any future tobacco consultations in order to ensure the Government's compliance with Article 5.3 which is aimed at protecting policies from the vested interested of the tobacco industry.