



Consultation on Sanctions to tackle tobacco duty evasion and other excise duty evasion

ASH Wales is the only public health charity in Wales whose work is exclusively dedicated to tackling the harm that tobacco causes to communities. Further information about our work can be found at <http://www.ashwales.org.uk/>

We are engaged in a wide range of activities including:

- Advocating for tobacco control public health policy
- Undertaking tobacco control research projects
- Training young people and those who work with young people to provide factual information about the health, economic and environmental effects of smoking
- Engaging young people and professionals working with young people through the ASH Wales Filter project
- Bringing health information and advice to the heart of the community

We also oversee the Wales Tobacco or Health Network (a network of over 300 individual members) and the Wales Tobacco Control Alliance (an alliance of 35 voluntary and professional bodies in Wales), providing forums for sharing knowledge and best practice. Our newsletters for those interested in tobacco control directly reaches 1,190 subscribers every month, whilst our combined social media channels have a following of over 6,400 individuals and organisations, with the content of our three websites being viewed around 6,000 times every month combined. ASH Wales has no direct or indirect links with, and is not funded by, the tobacco industry.

Consultation questions and responses from ASH Wales

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?

In the view of ASH Wales the current size of financial penalties associated with tobacco wrongdoings is insufficient to deter repeat offending. In general, tobacco smuggling and related wrongdoing may be viewed by those engaged in it as relatively low risk (because low penalty) behaviour. To counter this, fines for repeat offenders should not be limited by the potential lost revenue (PLR) in each individual case. We therefore support the HMRC proposal to introduce a penalty multiplier based on an additional 100% of PLR in each case.

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

ASH Wales has no views on this question.

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

ASH Wales agrees with this proposal for the reasons outlined in our answer to question 1.

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?

A reduction should only be considered where the individual on whom the penalty is levied is able and willing to provide useful intelligence on the illicit supply chain, which forms the basis of more systematic enforcement action.

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?

To be most effective the enhanced penalties for repeat offending should be made very clear at the first instance. We see no good reason to have a timescale as short as 12 months. Five years would seem more proportionate given the harm caused by the product concerned: tobacco kills more than half of all lifetime users prematurely and causes a very wide range of disabling diseases.

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?

ASH Wales has no views on this question.

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

ASH Wales supports HMRC's proposal to introduce civil penalties for fiscal mark wrongdoings, where criminal prosecution is not appropriate. However, we are also concerned that prosecutions are not occurring as frequently as they should, and we would strongly suggest that administrative rules and procedures will be required to ensure that civil penalties are not used as an easy alternative to prosecution where this would be appropriate. Repeated wrongdoing by people who attempt to profit from illicit tobacco should lead to criminal sanctions in most cases.

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

ASH Wales supports this proposal, but we would suggest that an additional punitive element on top of PLR may be appropriate in serious cases.

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

Tobacco manufacturers are subject to legislation making it a legal requirement for them to control their supply chain and subjecting them to a financial penalty of up to £5 million if they fail to do so. We would suggest that the maximum penalty for other actors in the supply chain should be the same as for the manufacturers for an individual offence. HMRC should publish the factors that will lead to the assessment of penalties in each case, which would include basing penalties on PLR with an additional punitive element where appropriate.

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?

In principle, the civil penalty should be available for use against all knowing or negligent actors in the illicit supply chain (see the answer to question 9 above).

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?

ASH Wales believes that 30 days is the maximum defensible period. For example, parking fines (Fixed Penalty Notices) are commonly doubled if not paid within 28 days.

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

ASH Wales would recommend that the penalty amount should be doubled in such cases – by analogy with Fixed Penalty Notices.

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

No. In our view HMRC/Trading Standard departments should not use scarce resources for this purpose.

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

If the penalty is not paid within the additional period, then it would be appropriate to reduce the amount of time in which higher penalties should be paid.

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

100% seems appropriate, again by analogy with FPNs.

- How do you think HMRC should deal with offenders who fail to pay a second penalty within the 14 days? Possible options HMRC are considering are:

1. Court Order issued demanding payment known as Order of Recovery
2. Application to the court for an attachment of earnings order (allows money to be deducted from wages to pay the fine or;
3. Application to the court to have deductions made from benefits to pay for the fine.

HMRC should be able to pursue any or all of these recovery options.

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

The proposed model should be dissuasive. It is important that people likely to engage in such wrongdoing should be aware of the potential penalties. Effective publicity for enforcement action magnifies its deterrent effect: HMRC needs to consider a PR strategy before and after the new penalty system is introduced.

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

Instalments should be considered in exceptional cases only, where immediate payment is demonstrably not possible or would lead to unacceptable hardship. However, HMRC should consider an appropriate level of instalment payment in each individual case, ensuring that the level is set at a dissuasive level for the person concerned.

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

We have no comment on this question.

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?

ASH Wales would welcome a reduction in the publication threshold, see our answer to Question 13 above.

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

At first sight this sounds like a good idea, particularly if it highlights the penalties that have been imposed. However, anecdotally there are concerns that publicity about the so-called 'illicit tobacco epidemic' in certain areas can increase the comfort level of those who may be tempted to sell illicit tobacco, reassured that it is common practice. Along the same lines publishing details of premises where illicit tobacco has been seized, whether by trading standards or HMRC, highlights the availability of illicit tobacco and may increase demand at those premises. Therefore this needs further investigation to test the messaging and the impact on public attitudes and likely behaviour (e.g. through focus groups with disadvantaged smokers) to determine whether such publicity will discourage rather than encourage participation in the illicit market.

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

See answer to Question 17 above.

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

1. Who else should HMRC inform - local press, local authority, local police, public health, tobacco manufacturers? Others?

The information should be shared as widely as possible including in local media for publicity purposes, and with local authorities and police. It is important that tobacco manufacturers are also informed, as this may provide useful evidence in future cases where the manufacturers are considered to have failed to control their supply chains.

2. Do you think the message would have a greater deterrent if published by another source? If so, who and why?

HMRC should retain control of publicity, working to a PR strategy as recommended in our reply to question 13 above.

3. When publishing the details, should HMRC publish names in the community? If so, how and where?

Names should generally be published, with limited exceptions where this might cause a serious risk to the individuals concerned (for example, if the penalties levied have been reduced because there has been useful information supplied to enforcement agencies). It should be noted that many newspapers and online sources report the names of motoring offenders, for example. The level of harm caused by illicit tobacco justifies this action.

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

ASH Wales supports this proposal, which should apply to commercial and domestic landlords. Currently it can be very difficult to identify the landlord and the introduction of a positive licensing system for retailers would be very helpful as it could include a responsibility to disclose the landlord. Social housing landlords such as housing associations and local authorities have a very important role to play if this approach is to succeed, given the concentration of illicit trade in low income communities. However, we would add that it would only be relevant to new leases or where existing leases already allow action to be taken. For example, housing associations generally have a provision in their lease agreements that tenants may be sanctioned for anti-social behaviour (not only criminal activities), which would clearly include using their properties to support engagement in the illicit tobacco trade.

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

Yes

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?

This would depend on the lease terms, but it would be reasonable in principle to terminate leases on commercial or residential premises where there is clear evidence of serious wrongdoing involving the use of such premises, or if there are repeat offences. Furthermore if the landlord becomes aware of the illegal activity they should have a duty to inform HMRC and require the tenant in writing to cease the illegal activity.

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?

We would support a reserve power for HMRC to require landlords and landowners to take effective action in relation to illicit activity on their land or in their premises. Alternatively, or in addition, consideration should be given to charging the landlord in such circumstances with being complicit in the principal offence via an 'act or default' provision.

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

We have nothing to add.

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

We have nothing to add.