



House of Commons
Home Affairs Committee

Tobacco smuggling: Government Response to the Committee's First Report of Session 2014–15

**Fifth Special Report of Session 2014–
15**

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Home Affairs Committee

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Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom

Committee staff

The current staff of the Committee are Tom Healey (Clerk), John-Paul Flaherty (Second Clerk), Dr Ruth Martin (Committee Specialist), Duma Langton (Committee Specialist), Andy Boyd (Senior Committee Assistant), Iwona Hankin (Committee Assistant) and Alex Paterson (Select Committee Media Officer).

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Fifth Special Report

On 14 June 2014 the Home Affairs Committee published its First Report of Session 2014–15, *Tobacco smuggling* (HC 200). The Government's response to the Report was received on 24 October 2014, and is published as an Appendix to this Special Report.

Appendix: Government response

Recommendation 1

HMRC and Border Force must continue to strengthen the lines of communication between the two organisations, to ensure that relevant and up-to-date information is passed between teams. In particular, it is vital that referrals be made to HMRC in all cases of seizures where it appears that there might be scope for sanctions to be imposed. HMRC and Border Force should create a platform where effective examples of joint-working with local police forces and partner agencies such as Trading Standards across the UK can be accessed for training and in order to share good practice. Without sharing information, raising prosecution and arrest rates for tobacco smuggling will be more difficult, if not impossible.

HMRC and Border Force recognise the importance of effective communication between the two organisations. To this end, this year we have made a number of changes to significantly improve intelligence sharing and joint working in response to the evolving threats from tobacco smugglers. We have refreshed joint protocols governing criminal investigation and intelligence, which provide: greater clarity on criminal investigation adoption criteria; improved processes for mandatory feedback; better joint management information; and improved joint approach to planning. We have also established joint intelligence teams to address specific intelligence priorities. Border Force refers all cases, where there is scope to impose sanctions, to HMRC to consider criminal or civil action. These referrals have significantly increased over the last 12 months. To further bolster this joint working HMRC and Border Force are putting in place a strengthened process, which we expect to be agreed by December 2014.

HMRC and Border Force work closely with other government agencies to tackle illicit tobacco. HMRC actively pursues opportunities for joint working with Trading Standards in order to have an impact on the illicit trade at the point-of-sale. Using the latest intelligence to identify high risk areas, HMRC officers will lead new inland enforcement operations in hotspot areas across the UK. These operations are intensive bursts of activity where officers will carry out checks on shops, warehouses, self-storage sites, businesses and workplaces suspected of being used to sell, store, supply or distribute illicit tobacco and alcohol. All six national hotspot actions undertaken this year plus numerous smaller scale local actions have involved Trading Standards officers. The police have also been engaged particularly in respect to local authority alcohol licensing or VOSA vehicle licensing activities. Immigration Enforcement officers have also attended on a number of occasions, which have resulted in the identification of immigration offences. In the Plymouth national hotspot Border Force undertook intensified examination of ferry traffic to maximize enforcement opportunities

simultaneous to the enforcement activity undertaken by HMRC and trading standards. In March 2014 HMRC led an exercise to target illicit tobacco sales in Kent which was supported by the police, Trading Standards and Medway council officers.

HMRC uses operational lessons to continually evaluate its effectiveness and develop and disseminate best practice as part of its new approach to tackling fraud inland. This ensures better planning and co-ordination of activities; intelligence exchanging; sharing of expertise and best practice and deployment of the full range of sanctions available.

Through the refresh of the joint HMRC and Border Force Tobacco Strategy we are developing revised standard operating procedures for an Inland Enforcement framework for tobacco. These procedures will be aligned to those of our partner agencies so that HMRC officers are able to identify and pursue the most appropriate high impact sanctions available for each tobacco offence tackled. We will ensure that the maximum benefit for both Enforcement and Intelligence is derived from this work by undertaking thorough post-operational reviews and dissemination of best practice to ensure the success of future activity in this area.

Conclusion/Recommendation 2

It is astonishing that no UK tobacco manufacturer has ever been fined for oversupply of products to high-risk overseas markets, and that only one statutory warning letter has been issued. The penalties available are too weak and enforcement too rare. We find it farcical that a respected enforcement agency such as HMRC has not imposed tougher punishments on those over-supplying overseas markets. We recommend that HMRC publish a clear set of criteria setting out the circumstances in which it would normally impose a fine and that an immediate review be taken against all historic and ongoing cases against this criteria in order to ensure those who have committed an offence do not go unpunished.

The Tobacco Products Duties Act supply chain legislation has succeeded in its objective to reduce tobacco manufacturer supplies to high-risk markets. The law provides for proportionate action to address non-compliance, with penalties up to £5m. A list of the relevant criteria and the approach HMRC takes when considering potential action under the supply chain legislation is already published in Notice 477 “Tobacco products duty: control of supply chains”. Any decision to issue a warning notice or penalty requires HMRC to consider all relevant factors, both positive and negative, on a case-by-case basis. HMRC continually monitors and reviews all four UK major tobacco manufacturers’ compliance with the legislation and will take action where appropriate.

At the time of the committee oral evidence hearing on 11 March one tobacco manufacturer was in receipt of a statutory warning letter stating that they were in breach of their obligations under the supply chain legislation and could be subject to penalty at the end of the review period if they failed to adequately address the breaches identified. Following expiry of the review period, HMRC has issued the manufacturer involved with a penalty.

HMRC is reviewing the current guidance to help improve the tobacco manufacturers’ understanding of how their compliance with the legislation will be evaluated.

Recommendation 3

The lack of media reports relating to prosecutions and enforcement activity in this area is disappointing for two organisations held in high public regard. As part of their new communications strategy, HMRC and Border Force should publicise prosecutions and enforcement action more widely to deter potential offenders. It is important that the agencies work together to ensure that those who offend are named and shamed and that the public money, spent combating this crime, is shown to have been used effectively.

HMRC and Border Force frequently publish details in national and local media of successful operations, seizures, prosecutions and convictions where publication does not compromise ongoing investigations.

HMRC is currently revising its communications strategy to take a more targeted approach, focussing appropriate media messages on the specific risks presented by specific trade sectors, social groups and geographical areas. Publicising successful HMRC and Border Force operational activity will be a key feature of this approach, and communications will be tailored to build public confidence, deter potential offenders and change attitudes to illicit tobacco.

Government agencies will continue to work with other enforcement bodies and use all available channels to educate, change perceptions and make the UK a hostile environment for those trading in illicit tobacco, where it is perceived to be a high risk and socially unacceptable activity.

Recommendation 4

We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging.

On 26 June 2014, the Government published a consultation that will inform the decision on whether to introduce standardised packaging. The current consultation asks, in particular, for views on anything new since the last consultation that is relevant to the development of this policy, including in relation to illicit tobacco. The Public Health Minister has encouraged anyone with an interest to respond to the consultation.

HMRC is also undertaking an assessment of the potential effect of standardised packaging on the illicit tobacco market. This assessment will feed into the Department of Health consultation to inform the Government's policy. It will enable HMRC to prepare for any potential changes in the illicit market that are identified. The HMRC/Border Force strategy to tackle tobacco smuggling will adapt to any changes in risk as it has done over many years.

Recommendation 5

An effective track and trace system could potentially mitigate many of the possible risks which have led the Government to adopt a more cautious approach to standardised packaging. Any increase in criminality should be avoided at all costs and considerations on standardised packaging must be taken on health and commercial grounds. Therefore, we recommend that any future legislation to introduce standardised packaging should include a requirement for appropriate security and tracking features, in accordance with the EU Tobacco Products Directive and best evidence.

The new European Tobacco Products Directive (TPD) includes requirements for traceability of tobacco products and for the incorporation of tamper-proof security features on tobacco products. The European Commission has powers to ensure that Member States' domestic implementation acts set out the detail of how these requirements are to be implemented on a Europe-wide basis. The Department of Health and HMRC are currently working closely with the European Commission and other Member States to implement the Directive. Transposing the track and trace elements of the Directive into UK legislation will need to be completed by 2019 for hand-rolling tobacco and cigarettes. This will also discharge the UK's obligations under the World Health Organisation Framework Convention on Tobacco Control Protocol, which the UK signed up to in December 2013.