



## **ACS Submission: Sanctions to tackle illicit tobacco: a discussion document**

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to HMRC's consultation on sanctions to tackle illicit tobacco. ACS represents 33,500 stores across the UK, including Spar UK, Costcutter Supermarkets, Nisa Retail as well as thousands of independent retailers.

Tobacco is an important product category for convenience retailers, representing on average 20% of sales in the UK convenience market<sup>1</sup>. Retailers work hard to ensure they retail these products responsibly through enforcing age restrictions using policies, such as Challenge 25, to ensure that anyone underage cannot buy tobacco. The illicit trade poses a threat to legitimate sales, as well as selling potentially harmful products, they are also not bound by age restrictions. Therefore, ACS welcomes the review of the current sanctions.

ACS supports a robust and flexible framework for tackling illicit trade and if retailers are found to participate in the sale of non-duty paid goods, they should be sanctioned.

We do not believe it is necessary or even required to have a fundamental review of sanctions for the sale of illicit tobacco. The current levels represent a significant deterrent, however, we urge HMRC to focus on communicating existing sanctions to retailers, including the loss of an alcohol licence, which ACS supports. We also believe that the introduction of a sliding scale and increasing penalties for repeat offenders would be beneficial.

We support the Home Affairs Select Committee's recommendations on enforcement from their first report on tobacco smuggling, found [here](#). More resource and time needs to be allocated on enforcement activity at local level. Those that engage in the sale of non-duty paid tobacco work flexibly crossing trading standards boundaries, and enforcement agencies must be able to match this.

Please see below for our response to the questions in the consultation.

### **Consultation Questions**

- 1. Do you think that the current financial penalties reflect a proportionate response to individuals and businesses smuggling tobacco into the UK for their commercial benefit?**

Yes, the flexibility of the existing regime means that enforcers can use their discretion and find out if the offender is habitual or a first timer. The removal of tobacco sales from a store

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<sup>1</sup> Association of Convenience Stores, Local Shop Report 2014

for 12 months would be enough to cripple the existence of most stores as it represents 20% of their sales and is a main footfall driver.

- 2. Do you consider penalties are currently set at appropriate levels? If not, do you think that we should legislate to:**
  - a. Increase penalties;**
  - b. Introduce a sliding scale depending on the volumes of product involved;**
  - c. Apply increased penalty levels for those who repeat the offence?**

ACS welcomes the introduction of a sliding scale depending on the volume of product sold and time spent selling. We would support increased penalties for repeat offenders with a focus on higher fines and increased custodial sentences.

- 3. Should we consider removing the need for HMRC to be able to demonstrate culpability, e.g. a full penalty applies for being in possession of illicit product regardless of whether this was deliberate evasion?**

Culpability is an important element of the justice system. All magistrates sentencing guidelines have an assessment of culpability, therefore we are uneasy about complete removal of a culpability assessment. However, we would support lowering the evidence threshold of culpability. Currently, culpability of evasion is based on its three characteristics, deceit, knowledge and gain. We would support the threshold of culpability being lowered when considering if the retailer has met two of the evasion characteristics, deceit and gain.

- 4. How do you think that we can better deter repeat offenders?**

ACS believes that increased penalties and custodial sentences would deter repeat offenders, as well as better communication of prosecutions and further funding for enforcement activity at a local level, instead of just the border force.

- 5. Do you think that there is a case to lower the current threshold (£25,000) for the provision to publish details of those evading duty in civil cases involving tobacco fraud?**

Yes, naming and shaming has worked effectively to deter offenders in other policy areas, including National Minimum Wage enforcement.

- 6. Are there other activities concerned with the illegal possession or sale of tobacco that you think should attract civil penalties?**

N/A

- 7. With reference to the examples of sanctions in section 3 above, do you wish to suggest other financial penalties or other types of sanction, i.e. not financial penalties that you think we should introduce for tobacco evasion?**

N/A

**8. What are your views on ‘on the spot’ fines – potential benefits and drawbacks?**

‘On the spot’ fines are not an effective measure to show that enforcement agencies are taking non-duty paid tobacco seriously. Whilst they may be a convenient tool for enforcement agencies to quickly dispose of low level offences, ‘on the spot’ fines send the wrong message to offenders and can be used inappropriately by enforcers.

It would be a missed opportunity to not investigate individuals and distributors who may well be involved in other offences, for example, selling tobacco to those underage, participating in alcohol duty fraud and alcohol licence breaches. In a report from Portsmouth City Council, they suggested that there was a clear correlation between retailers who engaged in alcohol duty-fraud with breaching other licensing conditions.

**9. How do you think an ‘on the spot’ fine should work in practice?**

If ‘on the spot’ fines were introduced (which ACS does not support), there must be a very clear set of criteria for the circumstances which they can be used by enforcers, such as first time offenders only with small monetary gain/volume.

**10. If introduced, what further action would you think we should take if people refuse to pay such fines when levied in the UK or at the border?**

N/A

**11. What are the benefits of and obstacles/drawbacks to ‘on the spot’ fines?**

We have little confidence in ‘on the spot’ fines as a deterrent, primarily because of the high percentage of fines that go unpaid. For example, of the 170,000 penalty notices for disorder fines issued in 2009, 48,000 were for retail crime and only 51% of these penalties were paid.

**CRIMINAL SANCTIONS**

We believe the criminal sanctions outlined in the consultation document are an appropriate deterrent to prevent retailers selling non-duty paid goods. We believe HMRC can do more to communicate these sanctions to retailers. Sanctions including the removal of an alcohol licence will have the most impact when targeting retailers. ACS is willing to support the communication of the criminal sanctions of selling non-duty paid tobacco to retailers in a similar fashion to our work with the Joint Anti-Fraud Alcohol Taskforce (see ACS’ Tackling Alcohol Duty Fraud guidance [here](#)).

**For more information on this submission, please contact Julie Byers, ACS Public Affairs Assistant at [Julie.Byers@acs.org.uk](mailto:Julie.Byers@acs.org.uk) or by calling 01252 515001.**