



ASH Scotland Illicit tobacco

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Key points:

- little is known about the extent of the illicit tobacco trade in Scotland but good estimates exist for the UK as a whole
- counterfeit cigarettes are a growing problem
- illicit tobacco is linked to organised crime
- illicit tobacco is an international phenomenon and requires an international solution.

Article 1 of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) defines illicit trade as 'any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity'.¹

The main forms of tobacco smuggling are²:

- **Large scale organised smuggling.** Usually involves the illegal transportation, distribution and sale of large consignments of tobacco products. This type of smuggling generally avoids all taxation.
- **Bootlegging.** Refers to the process whereby individuals or small groups purchase tobacco products in jurisdictions with lower tobacco tax rates, in amounts exceeding limits set by customs regulations, for resale in jurisdictions with higher tax rates.

The main types of illegal manufacturing of tobacco products are:

- **Illicit manufacturing.** The production of tobacco products contrary to law. The laws may be licensing, taxation or monopoly related laws that restrict the manufacture of tobacco products.
- **Counterfeit tobacco production.** A form of illegal manufacturing whereby tobacco products bear a trademark without consent from the trademark owner. Counterfeit cigarettes are normally produced in illegal factories particularly in China or to a lesser extent in Eastern Europe.³

The size of the problem

In the United Kingdom it is estimated that the illicit market share in 2007-08 for cigarettes was 12% and 48% for hand rolling tobacco.⁴ No separate estimates are published for Scotland so Scotland's share of the illicit tobacco market is unknown. Globally it is estimated that 11.6% of the cigarette market is illicit, equivalent to 657 billion cigarettes a year.²

In 2000 more than one in five cigarettes smoked in the UK was smuggled, costing the UK Government over £3bn in lost revenue³. HM Customs and Excise estimated at that time that large scale container fraud accounted for between 70% - 80% of illicit cigarette imports, with small-scale bootlegging accounting for much of the rest.⁵

While smuggling overall has declined since 2000, the proportion of counterfeit tobacco has increased as smugglers turn from genuine products to the more readily available counterfeit tobacco products.⁶ In 2007/08 51%⁷ of cigarettes seized in the UK by Customs were counterfeit compared to 15% in 2001/02.⁶

A recent development in the UK illicit tobacco market is non-UK brands of cigarettes, particularly cheap whites. Cheap whites are brands produced by small overseas manufacturers who do not legitimately supply the UK with any tobacco products. Cheap whites have been identified as a growing risk area by HM Revenue & Customs, UK Border Agency and multi-national tobacco manufacturers.³

Impacts of tobacco smuggling

Tobacco smuggling is not a victimless crime. It undermines the UK Government's policy of using tax to maintain the high price of tobacco in order to reduce smoking, especially among the young and those on low incomes who are more sensitive to price.⁸ There is considerable evidence that smuggled tobacco is targeted at the most vulnerable groups: young people and those on low incomes, and that the cost of tobacco is a major factor in any decision to start or quit, or in relapse.⁹ Low cost illicit tobacco weakens the influence of price on these decisions.

The illicit tobacco market can also undermine measures to limit youth access to tobacco as it is much less likely that vendors of smuggled cigarettes will comply with legislation prohibiting the sale of tobacco to underage persons. Furthermore the presence of smuggled cigarettes can put legitimate retailers under pressure to be less compliant with tobacco control legislation than they would be in the absence of black market competition.⁸

The illicit tobacco trade leads to huge revenue losses for governments. Tobacco excise fraud and smuggling cost the UK Government between £0.7 billion and £2.2 billion in lost tax revenue in 2007/08⁴, money which otherwise could be used to pay for schools, hospitals and other public services. It is estimated that the global illicit cigarette market results in government revenue losses of \$40.5 billion worldwide.²

Links to organised crime and terrorism

Tobacco smuggling has strong links with terrorist and paramilitary organisations, organised crime syndicates and insurgencies. The enormous profits to be made by evading tobacco duties make smuggling an attractive option for unscrupulous criminal interests. The Taliban, al-Qaeda, Hezbollah and the Kurdistan Workers Party (PKK) are involved in smuggling cigarettes as is the Colombian FARC.¹⁰ Both the Provisional IRA¹¹ and the splinter group the Real IRA¹² have been linked with tobacco smuggling as a way of

raising money to fund their activities. Chinese Triads are central to the traffic to the UK of counterfeit cigarettes produced in highly sophisticated factories in the Far East.^{13 14}

Tobacco industry involvement

Internal tobacco industry documents and court judgments show evidence of direct and indirect involvement by the tobacco industry in smuggling.¹⁵ The apparent complicity of the tobacco industry in smuggling was one of the areas investigated during the House of Commons Health Select Committee's Inquiry into the Tobacco Industry and the Health Risks of Smoking in 2000. During the inquiry, it became clear that although all the tobacco companies claimed to be opposed to smuggling, both British American Tobacco and Gallahers (acquired by Japan Tobacco in 2007) were complicit in the illicit trade in tobacco to one degree or another.¹⁶ Imperial Tobacco came under scrutiny at the House of Commons Select Committee on Public Accounts in June 2002 when the company was accused of lying over its complicity in smuggling.¹⁷

What can be done to combat illicit trade in tobacco?

Scottish Government strategy

In February 2009 the Scottish Government launched the Enhanced Tobacco Sales Enforcement Programme. Part of this initiative aims to tackle the availability of illicit tobacco products in local communities across Scotland. The scheme involves local authority trading standards services working in partnership with HM Revenue and Customs and sets targets for the number of joint operations to be carried out on illegal tobacco at local and national level between 2008-09 and 2010-11.¹⁸

In December 2009 a four-day operation across central Scotland involving HM Revenue and Customs officers and police from Fife, Lothian and Borders and Strathclyde led to the seizure of almost 92,000 counterfeit and smuggled cigarettes and 28.6kg of tobacco following raids on three markets, 55 businesses and 34 homes.¹⁹

UK government strategy

HM Customs and Excise and HM Treasury produced a Tackling Tobacco Smuggling Strategy for the UK in March 2000⁵, which was updated in March 2006.²⁰ During the first four years of the strategy, the illicit tobacco market share declined from 21% to 16%.³

In 2008 the UK Government published a new strategy which outlines how the UK Border Agency and HM Revenue and Customs will work together to tackle tobacco smuggling. HM Revenue and Customs now has overall responsibility for the collection and enforcement of tobacco duties, investigating criminal offences, and disrupting the supply of illicit tobacco inland. The UK Border Agency is responsible for detecting and seizing illicit tobacco at the UK border and arresting those suspected of smuggling. Both bodies are jointly responsible for developing intelligence and reducing revenue losses. However no new targets or outcome measures for tackling illicit tobacco have been set by the government.

A new tobacco control strategy for England²¹ was published by the Department of Health in February 2010 which aspires to achieve a lower market share for illicit tobacco. Under the strategy regional tobacco offices across England working in partnership with HM Revenue and Customs, local authorities, the National Health Service, police and businesses will all continue to play an important role in tackling the domestic trade in illicit tobacco. The strategy also commits the Government to publishing details of all policy-related meetings between the tobacco industry and any government official. However this excludes meetings to discuss operational matters to reduce the illicit trade in tobacco and bilateral meetings between tobacco manufacturers and HM Revenue & Customs which relate to the administration of their tax affairs.

In the North of England, Smokefree North West, FreshSmoke Free North East and Smokefree Yorkshire and the Humber have worked alongside trading standards groups, HM Revenue and Customs and the UK Border Agency and the police to develop and deliver the North of England Tackling Illicit Tobacco for Better Health Programme.²² The programme is a world first pilot project which sets out to address the challenges of illicit tobacco across three regions through eight areas of activity, including enhanced enforcement action, social marketing campaigns and direct engagement with communities where illicit tobacco is widely available.

European Union agreements with tobacco companies

The European Union entered into legally binding agreements on illicit trade with Philip Morris International in 2004 and Japan Tobacco International in 2007. The UK became a signatory to both agreements in 2009.²³ British American Tobacco signed an anti-smuggling agreement in July 2010.²⁴ The agreements give the companies clear incentives to address the smuggling of their products. The tobacco companies are required to control their distribution systems by approving contractors and by using track and trace measures; they are also required to make payments for any smuggled tobacco products seized.²⁵ Neither the UK Government nor the European Union has entered into a similar agreement with Imperial Tobacco, even though they have a dominant share of the UK cigarette market.

Framework Convention on Tobacco Control

Tobacco smuggling is an international phenomenon, and requires an international solution. Currently a protocol to eliminate the illicit trade in tobacco products is being negotiated under the WHO Framework Convention on Tobacco Control²⁶. Key measures included in the draft text of the protocol include:

- an international system that enables the tracking and tracing of tobacco products
- licensing schemes for participants in the tobacco business
- 'know your customer' laws, which oblige participants in the tobacco
- business to identify their customers and keep records of transactions

- obligations for tobacco manufacturers to control their supply chain with penalties for those that fail to do so
- criminal and civil sanctions sufficient enough to deter participation in illicit trade
- programmes to enhance law enforcement.²⁷

A cost-benefit analysis of implementing the Protocol on Illicit Trade in Tobacco Products estimates that a comprehensive and widely adopted protocol could be worth £5.7 billion to the UK in net present value terms over a 50 year period, save 760 lives annually and reduce smuggling by up to 80%.²⁸

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³ HM Revenue and Customs and UK Border Agency. *Tackling tobacco smuggling together: an integrated strategy for HM Revenue and Customs and the UK Border Agency*. [online]. London: The Stationery Office, 2008. Available from:

<http://ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/tobaccostrat08/tobacco-2800.pdf?view=Binary> [accessed 3 August 2010]

⁴ HM Revenue and Customs. *Measuring tax gaps 2009*. [online]. March 2010. Available from: <http://www.hmrc.gov.uk/stats/measuring-tax-gaps.pdf> [accessed 28 July 2010]

⁵ HM Customs and Excise and HM Treasury. *Tackling tobacco smuggling*. [online]. London: The Stationery Office, 2000. Available from: <http://www.hm-treasury.gov.uk/media/B/9/433.pdf> [accessed 28 July 2010]

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⁷ HM Revenue and Customs. *Department Autumn performance report 2008*. [online]. 2008. Available from: <http://www.official-documents.gov.uk/document/cm75/7509/7509.pdf>

⁸ Joossens, L., et al. Issues in the smuggling of tobacco products. In: Jha, P. and Chaloupka, F. eds. *Tobacco control in developing countries* [online] World Bank, 2000. Available from: <http://www1.worldbank.org/tobacco/tcdc/393TO406.pdf> [accessed 28 July 2010]

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¹⁰ Wilson, K. Terrorism and tobacco: extremists, insurgents turn to cigarette smuggling. In: International Consortium of Investigative Journalists. *Tobacco, terrorism, & illicit trade*. [online]. Washington: Center for Public Integrity, 2009. Available from:

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¹¹ Webster, P and Hurst, G. IRA still in the business of murder, arson and smuggling. *The Times*. [online]. 25 May 2005. Available from: <http://www.timesonline.co.uk/tol/news/uk/article526213.ece> [accessed 30 June 2009]

¹² Sharrock, D. Real IRA suspects arrested in Spain. *The Times*. [online]. 8 May 2006. Available from: <http://www.timesonline.co.uk/article/0,,2-2170028.html> [accessed 30 June 2009]

¹³ Library of Congress. *Transnational activities of Chinese crime organisations*. [online]. 2003. Available from: <http://www.loc.gov/rr/frd/pdf-files/ChineseOrgCrime.pdf> [accessed 30 June 2009]

¹⁴ Chen, T-P. China's Marlboro county: a massive underground industry makes China the world leader in counterfeit cigarettes. In: International Consortium of Investigative Journalists. *Tobacco, terrorism, & illicit trade*. [online]. Washington: Center for Public Integrity, 2009. Available from:

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¹⁷ House of Commons Select Committee on Public Accounts. *Minutes of evidence: examination of witnesses (questions 560-579)* [online]. 19 June 2002. Available at:

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¹⁹ IP Crime Group. *IP crime annual report 2009-2010*. [online]. Newport: Intellectual Property Office,

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²² *North of England Tackling Illicit Tobacco for Better Health* [online] Available from:

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²³ HM Treasury. Government signs agreements to tackle tobacco smuggling. *Press notices*. [online]. 20

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²⁴ *Cooperation Agreement between British-American Tobacco (Holdings) Limited and The European Union as represented by the European Commission and The Signatory Member States*. [online].

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²⁶ WHO Framework Convention on Tobacco Control [online] Geneva: World Health Organization, 2003.

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²⁷ WHO Framework Convention on Tobacco Control. *Draft protocol to eliminate illicit trade in tobacco products*. [online]. 21 March 2010. Available from: [http://apps.who.int/gb/fctc/PDF/it4/FCTC_COP_INB-](http://apps.who.int/gb/fctc/PDF/it4/FCTC_COP_INB-IT4_7-en.pdf)

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