



Working for a tobacco-free Scotland

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
- the illicit tobacco market in the UK has changed significantly over the last decade
- 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 in 2007-08 that the illicit market share for cigarettes was 11% and 49% 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 revenue.³ 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

However, the illicit tobacco market has changed markedly over the last decade. Since 2000 the proportion of counterfeit tobacco has increased significantly as smugglers have turned from genuine products to the more readily available counterfeit tobacco products.⁶ In 2009/10 48%⁷ of cigarettes seized in the UK by Customs were counterfeit, compared to 15% in 2001/02.⁶

Another recent development in the UK illicit tobacco market is cheap whites, also known as illicit white cigarettes. Cheap whites are brands produced by small overseas manufacturers, particularly outwith the European Union, who do not legitimately supply the UK with any tobacco products. According to HM Revenue & Customs and the UK Border Agency illicit white brands, along with counterfeits, represent the most significant threat to legitimate trade and tobacco revenues in the UK.⁷ Brands such as Jin Ling and Raquel have become established illicit white brands in the UK.⁷

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 is estimated to have cost the UK Government between £1.1 billion and £3 billion in lost tax revenue in 2008/09⁴, 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 Columbian 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

Under this programme six joint operations were carried out in 2008-09 resulting in the seizure of 16,760 cigarettes and 16 joint operations took place in 2009-10 leading to the seizure of 720,580 cigarettes.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 outlined how the UK Border Agency and HM Revenue and Customs would work together to

tackle tobacco smuggling. HM Revenue and Customs assumed 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 became 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.

In April 2011 a renewed strategy for tackling tobacco smuggling was launched by the government. Key objectives in the new strategy include:

- expanding tobacco criminal intelligence and investigation capacity by 20% to prosecute more of those involved in smuggling at all levels;
- expanding the Fiscal Crime Liaison Officer network; introducing new technology, intelligence and detection capability;
- pursuing proceeds of crime and applying new powers of assessment and penalties, including recovering lost taxes and charging penalties up to 100% of the tax evaded;
- bringing the UK into line with all other EU Member States by reducing the minimum indicative levels for personal imports to 800 cigarettes and 1kg of hand-rolling tobacco in the autumn.⁷

However no new targets or outcome measures for tackling illicit tobacco have been set by the government.

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.²¹ 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 2009.²² The European Union signed an anti-smuggling agreement with British American Tobacco in July 2010²³ and with Imperial Tobacco in September 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

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 Control.¹ 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.²⁶

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%.²⁷

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