

Illicit tobacco

Updated May 2015



Key points:

- little is known about the extent of the illicit tobacco trade in Scotland but good estimates exist for the United Kingdom (UK) as a whole
- the illicit tobacco market in the UK has changed significantly since 2000
- illicit tobacco is linked to organised crime
- raising the spectre of the illicit trade is largely a lobbying tool used by the tobacco industry to deter policy makers from implementing effective tobacco control regulations
- 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

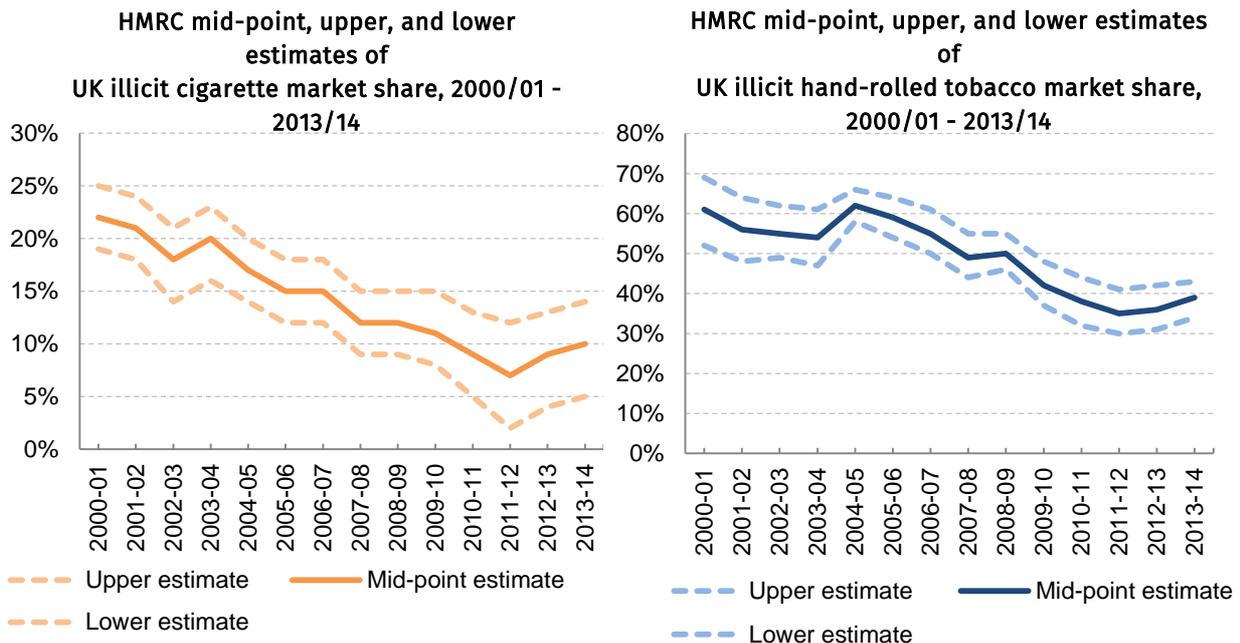
The main forms of tobacco smuggling are²:

- **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



HM Revenue and Customs (HMRC) estimate in 2013-14 the UK illicit market share for cigarettes was 10% and 39% 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 the 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 trade has changed markedly since then. Whereas in 2000, most large cigarette seizures consisted of genuine UK brands smuggled into the country, by 2012-13 most large seizures were of ‘illicit whites’.⁶ Illicit white cigarettes, also known as cheap whites, are brands produced mainly or solely for the illicit market. Jin Ling has become one of the best known illicit white brands in the UK. In 2010-11 HMRC seized 47 million Jin Ling cigarettes in the UK, a quarter of all seizures of illicit whites in that year.⁶

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.⁷ There is considerable evidence that illicit 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.⁸ 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 illicit cigarettes will comply with legislation prohibiting the sale of tobacco to underage persons. Around a third of regular smokers aged 13 and 15 in 2013 reported that at least some of the cigarettes they smoked were 'much cheaper tobacco' or 'fake fags'.⁹

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.⁷

The illicit tobacco trade leads to huge revenue losses for governments. It is estimated that in 2013-14 the illicit cigarette market was associated with UK tax revenue losses of £1.1 billion and revenue losses of around £1 billion for hand-rolling tobacco.⁴ The global illicit cigarette market is estimated to result 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 clear 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. Although all the tobacco companies claimed to be opposed to smuggling, it became clear both British American Tobacco (BAT) and Gallahers were complicit in the illicit trade in tobacco to one degree or another.¹⁶ Imperial Tobacco also 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

More recently an investigative report by the Organised Crime and Corruption Reporting Project¹⁸ accused Japan Tobacco International (JTI) of being involved in cigarette smuggling in the Middle East. This resulted in an official investigation by OLAF, the European anti-fraud agency, into possible breaches of a legally binding agreement between the firm and the European Union (EU).¹⁹

In November 2014 it emerged BAT had been fined £650,000 for oversupplying UK manufactured hand rolling tobacco into Belgium²⁰, a country with a low level of taxation on tobacco. This was the first time HMRC had issued such a penalty since supply chain legislation came into force in 2006 legally obligating tobacco manufacturers not to facilitate smuggling.

Additionally, raising the spectre of the illicit trade is often used as a lobbying tool by the tobacco industry to deter policy makers from implementing effective tobacco control regulations. One of the tobacco industry's main arguments against plain, standardised packaging of tobacco products is that the policy will lead to an increase in illicit trade. However, recent studies from the University of Bath^{21 22} demonstrate how the tobacco industry is 'exaggerating the threat of illicit tobacco by commissioning surveys whose methodology and validity remain uncertain, planting misleading stories and misquoting government data'. Neither Her Majesty's Revenue and Customs²³ nor the Trading Standards community²⁴ support the tobacco industry's claims that illicit trade will increase as a result of plain, standardised packaging legislation.

What can be done to combat illicit trade in tobacco?

Scottish Government strategy

In its 2013 tobacco control strategy²⁵ the Scottish Government stated it would continue to support strong national and local alliances to tackle the availability of illicit tobacco through the Enhanced Tobacco Sales Enforcement Programme (ETSEP).

UK government strategy

HM Customs and Excise and HM Treasury first produced a Tackling Tobacco Smuggling Strategy for the UK in March 2000⁵, and updated it in March 2006.²⁶ 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 joint strategy outlining how the UK Border Agency and HMRC would work together to tackle tobacco smuggling. In April 2011 a renewed strategy²⁷ for was launched by the agencies. Key measures included: expanding tobacco criminal intelligence and investigation capacity; introducing new technology, intelligence and detection capability; pursuing proceeds of crime and applying new powers of

assessment and penalties; reducing the minimum indicative levels for personal imports from the EU to 800 cigarettes and 1kg of hand-rolling tobacco.

HMRC and Border Force (formerly UK Border Agency) refreshed this strategy in March 2015²⁸ detailing how they will continue to work together to target, catch and punish those involved with the evolving illicit tobacco market. The strategy has the medium term objective to hold the cigarettes illicit market share at or below 10% and to contain the illicit market share for hand-rolling tobacco and reverse the recent upward trend. Measures contained within the strategy include: the establishment of a cross-government ministerial group on illicit tobacco; supporting the EU with ratification of the FCTC's Protocol on Illicit Trade; the commissioning of academic research to stimulate further international action; introducing new controls on raw tobacco; rolling out campaigns to increase public awareness of the criminality and wider impacts of tobacco fraud; and holding a consultation on sanctions to penalise those involved in the illicit trade.

European Union agreements with tobacco companies

The EU entered into legally binding agreements on illicit trade with Philip Morris International in 2004 and JTI in 2007. The UK became a signatory to both agreements in 2009.²⁹ The EU signed an anti-smuggling agreement with BAT in July 2010³⁰ and with Imperial Tobacco in September 2010.³¹ 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.³²

Framework Convention on Tobacco Control

Tobacco smuggling is an international phenomenon, and requires an international solution. A Protocol³³ to eliminate the illicit trade in tobacco products was adopted under the WHO FCTC¹ on 12 November 2012 at the fifth session of the Conference of the Parties in Seoul. The Protocol is currently open for ratification, acceptance, approval or accession by the Parties to the FCTC. The Protocol will come into force 90 days after gaining 40 parties, to date it has seven parties.³⁴

Under the Protocol global tracking and tracing regime will be established, with an information sharing point located at the Convention Secretariat. The Protocol includes other supply chain control provisions such as: licensing, due diligence, record keeping, security, and preventive measures. Measures relating to Internet sales, duty-free are also included; as are provisions on liability, prosecutions and sanctions, seizure payments and special investigative techniques and the disposal and destruction of confiscated products.

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%.³⁵

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