

Sanctions to tackle tobacco duty evasion and other excise duty evasion – Consultation document

**Response from ARLA Propertymark
May 2017**

Background

1. ARLA Propertymark (Association of Residential Letting Agents) is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected and their money is safe.

Questions

Section 6 Statutory Duty of Care on landlords and landowners of properties of land

To help discourage illicit tobacco trading or other illicit excise trading, we are proposing to write to relevant landlord and landowners associations directly requesting that they voluntarily add a clause to their standard lease agreements.

Question 20: Would you be in favour of this approach?

2. ARLA Propertymark is not in favour of this approach. Tobacco duty evasion is a criminal offence and therefore is a matter for HM Revenue & Customs and the police to deal with, not landlords and letting agents.
3. The proposed clause already exists in our standard tenancy agreement and common industry practice is to inspect properties during the tenancy.
4. Furthermore, Right to Rent checks under the Immigration Act 2014 require landlords or letting agents to check identification of all prospective adult occupiers. Therefore substantive checks on individuals are already taking within the private rented sector.

Additionally or alternatively, we could legislate to impose a duty of care on landlords and landowners of properties or land, which are used in tobacco (or other excise duty) fraud and introduce a new civil penalty for non-compliance with requirements to take reasonable steps to ensure that their property is not used to evade duty.

Question 21: Do you think the examples above are on the right lines to ensure that the duty of care is reasonable and proportionate?

5. ARLA Propertymark believes that these proposals are overly burdensome for landlords and letting agents.
6. For landlords and agents to regularly check on their tenants to see whether illegal trade is taking place and even request to see their finances for instance would be logistically difficult and time-consuming to enforce.
7. The issue of sub-letting provides additional difficulties about how tenants are to be policed.

Question 22: What would be a reasonable expectation of the steps landlords/landowners should take and the timescale for doing this and for taking action if there are further transgressions?

8. If landlords or letting agents suspect that illicit activity is taking place at a private rented property then they should report the matter to the police.

Question 23: What sanctions should HMRC apply to landlords or landowners who have not taken steps to prevent illicit tobacco or other illicit excise activity on the property or land? For example, should HMRC impose a financial penalty?

9. Financial penalties can act as a deterrent to anyone looking to break the law. However, essentially these proposals are unenforceable unless the landlord or letting agent is knowingly allowing a tenant to sell contraband cigarettes from their rented property. If so, any resulting prosecution of the landlord would likely be a Banning Order offence based on the proposals within the Department for Communities and Local Government's consultation from earlier in the year.¹

Question 24: Are there any potential wider consequences of introducing a duty of care and a civil penalty that we have not identified?

10. We find it difficult to see what a statutory duty or voluntary clause in tenancy agreements would add in practice as tenancy agreements already include an obligation not to use a property for any illegal activity.
11. The Government must understand that landlords are not responsible for the actions of their tenants. Landlords or letting agents are not allowed to enter a rented property or even go onto its land during a tenancy without the tenant's permission. Furthermore, whilst landlords can include clauses in a contract around how a tenant should behave, in practice it is all but impossible to enforce such clauses through the courts.

¹ <https://www.gov.uk/government/consultations/consultation-on-proposed-banning-order-offences-under-the-housing-and-planning-act-2016>

12. Illegal tobacco importation is known to have links with organised crime. As tenancy agreements often have a landlord's home address on them, imposing a duty of care could put landlords, their families and their homes in serious danger.