



Consultation on the anti-forestalling restrictions on home-use removals of tobacco products

Response from Action on Smoking and Health

1. ASH (UK) is a health charity working towards the elimination of harm caused by tobacco. ASH receives core funding from the British Heart Foundation and Cancer Research UK.

General Observations

2. For the purpose of this consultation response, we treat “forestalling” as meaning an increase in the clearance of rate of cigarettes and other tobacco products, so that they can be released into the UK market immediately preceding the Budget, with the intention that duty paid on these products will be at the lower pre-Budget rate. This is generally followed by lower than average release of products in the month of so after the Budget.
3. Forestalling has two important effects that militate against central objectives of tobacco taxation:
 - It reduces the total revenue from tobacco tax in any given year, and
 - It reduces the potential public health gain from increases in tobacco taxation, since it delays the effective date of tax increases and therefore any consequential price rises. Increases in the price of tobacco products are known to be the single most effective policy lever to encourage smokers to quit.¹
4. The recent extent of forestalling is well illustrated by HMRC’s Tobacco Bulletin for November 2013, which shows a spike in tax receipts in April levied at the pre-budget rate, followed by a sharp drop in May, for the financial years 2011/12, 2012/13, and 2013/14. It should be noted that this pattern is present for tax receipts from home produced cigarettes, imported cigarettes, cigars, hand rolling tobacco, and other tobacco products. This illustrates that measures currently in place to prevent forestalling are insufficient.
5. Therefore, ASH wishes to see the most effective possible measures taken by HMRC to reduce the extent of forestalling, and we wish to see these measures applied to all tobacco products.
6. It should be noted that that the 2012 fifth Conference of the Parties to the Framework Convention on Tobacco Control (FCTC) adopted a set of guiding principles and recommendations on the implementation of Article 6 of the FCTC (price and tax measures to reduce the demand

¹ [The Effects of Increasing Tobacco Taxation: A Cost Benefit Analysis](#): A report for ASH by Howard Reed, Landsman Economics.

for tobacco). Paragraph 8 (anti-forestalling measures) states that: *“Parties should consider imposing effective anti-forestalling measures”*.² The European Union collectively and all its Member States individually are Parties to the FCTC.

7. Since tobacco taxation has a profound impact on public health, we consider that Article 5.3 of the FCTC should apply in relation this consultation. Article 5.3 states that in relation to policies affecting public health Parties should: *“act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”*. This mandate was expanded further in the FCTC Conference of the Parties’ Guidelines for Implementation of Article 5.3.3. These state that Parties should implement measures to prevent interference by the tobacco industry in all branches of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control.⁴

Specific Questions

(Question 1 is not relevant to us)

Question 2: Do you have a preference from the list of potential controls? If yes, please specify which one and give your reasons why.

8. We have no specific preference from the list of potential controls. We recommend that the primary legislation gives the Government the power, by Public Notice, to introduce any of the three proposed controls, or any combination of them, as circumstances require.

Question 3: Do you have any alternative solutions for the pre-budget restrictions which will ensure a smooth pattern of clearances in the pre-Budget period? If yes, please provide details.

9. ASH is strongly opposed to voluntary arrangements, agreements or memoranda of understanding with the tobacco industry, which has repeatedly shown that it will not be bound by them. The solution to forestalling is to apply appropriate legislation, backed by appropriate penalties for non-compliance.

Question 4: Should the same restrictions apply to all businesses who remove cigarettes for home use regardless of the size of the business?

10. Yes, since making exemptions or variations for small businesses would simply create a loophole in the legislation which the industry would seek to exploit

Question 5: Should restrictions be extended to any other tobacco products e.g. hand rolling tobacco (HRT), cigars, pipe tobacco and chewing tobacco?

² http://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5%287%29-en.pdf

⁴ World Health Organization. 2003. WHO Framework Convention on Tobacco Control. Geneva: World Health Organization. Available at: <http://whqlibdoc.who.int/publications/2003/9241591013.pdf> and FCTC Conference of the Parties. 2008. Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Available at: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index...

11. Yes, since the evidence shows that forestalling occurs in relation to all tobacco products in the UK market.
12. In relation to the public health impact of tobacco taxation, it should be noted that in the UK market, there is evidence of a recent shift in consumption patterns towards hand-rolling tobacco and cheaper brands. Research by Professor Anna Gilmore et al of the University of Bath, based on General Household Survey data, showed that while the smoking prevalence rate across the UK dropped from 26.8% in 2001 to 20.8% in 2008, this decline was seen only among smokers of filter cigarettes, while the proportion smoking hand-rolled tobacco remained static. In consequence, the share of all smokers who consume HRT has increased since 1990. The proportion of smokers mainly using HRT increased from 25% of men and 8% of women in 1998 to 39% of men and 23% of women in 2009.⁵

Question 6: What impacts would extending the scope to other tobacco products have?

13. Apart from increasing tax revenue, it would also maximise the public health benefits of tobacco tax rises.

Question 7: If restrictions were to be extended to other tobacco products, should there be any exclusions and, if so, why

14. We can see no justification for excluding any tobacco product legitimately sold in the UK market from anti-forestalling measures.

⁵ Office for National Statistics. *General Lifestyle Survey Overview: A report on the 2010 General Lifestyle Survey*. 2012.