

Certain proposals in the HMRC consultation document “[Sanctions to tackle tobacco duty evasion](#)” (the “Consultation”) appear to provide incontrovertible evidence that the government is extending what appears to be an unofficial policy of outsourcing law enforcement to reluctant “enforcers”, in this case, landlords² of UK property.

The Proposals

HMRC estimates that in 2015-16, five billion illicit cigarettes and 3,200 tonnes of illicit hand-rolling tobacco were consumed in the UK. The Consultation confirms that “the fraud is dominated globally by organised criminals and the illicit trade damages legitimate business, undermines public health and facilitates the supply of tobacco to young people”. None of this is good news, of course, and it comes as no surprise that HMRC wants to tackle the problem head on. However, the proposals in relation to landlords are deeply controversial and bear closer scrutiny and response:

- HMRC will write to landlords and landowners’ associations asking them voluntarily to add a clause to their standard leases prohibiting illicit tobacco trading and other illicit excise trading.
- New legislation is proposed which will impose a statutory duty of care on landlords and landowners of properties used in tobacco (or other excise duty) fraud. They would be under a duty of care to ensure that their properties are not used to evade duty and there would be a civil penalty for non-compliance.

The steps which the government envisages landlords taking in order to satisfy the new duty of care and avoid the landlord potentially incurring civil penalties include:

- Having provisions in all new leases making it clear that any illicit tobacco trading or any other illicit excise activity will allow the landlord to terminate the lease.
- Evicting any tenant in violation of these provisions.
- Carrying out periodic checks on the premises and requesting information relating to the tenant’s business.
- Taking steps to ensure that they are aware of illicit activity and contacting HMRC or Trading Standards if they have any concerns.
- Providing HMRC with a copy of the tenancy agreement to demonstrate that the required provisions have been included.

Unfortunately, this shifting of responsibility is not a new concept. In the residential letting context, landlords’ responsibilities have already been increased to require them to make checks in relation to their tenants’ immigration status and to take steps to evict tenants should their right to remain expire. However, tobacco smuggling is very different and these particular proposals raise some worrying questions for UK landlords who are unlikely to have access to the type of information which would be of any value in any sort of HMRC “sting”, nor the inclination to carry out the time-consuming, potentially dangerous and costly checks which are likely to be required to comply with the proposed duty of care.

Implications for Landlords

Unlike the current immigration related legislation, illicit duty evasion activities will only occur after the tenancy has been granted, by which time the landlord will already have incurred significant marketing and legal fees. Furthermore, to have to report and evict such a tenant presents a number of unacceptable risks:

- Eviction proceedings are lengthy and expensive with no prospect of cost recovery.
- Disgruntled tenants may cause damage to the property. Landlords have no better protection than retention of the deposit. In the residential context, a typical six weeks rent deposit does not go particularly far in reinstating damage; there may be no deposit at all in relation to commercially let property.
- Private and commercial landlords should never be put in harm’s way, much less in respect of ostensibly financially criminal activity. Those same “organised criminals” unscrupulous enough to engage in this sort of activity are unlikely to take kindly to a landlord trying to intervene in their illicit businesses by taking steps to evict them, presumably necessitating an allegation of illicit duty evasion as part of the court application.
- Disputes over rent deposits are contentious enough and there are no proposals to circumvent the procedures imposed by deposit protection schemes in these circumstances. Landlords will have to prove the loss – loss that may never arise if tenants were simply allowed the use of the property in the manner in which they are traditionally entitled.

Is it not unjust to impose civil penalties on landlords who unwittingly grant a tenancy to those who subsequently use their premises to engage in illicit duty evasion activities: placing landlords firmly between the HMRC “rock” and the criminal “hard place”?

¹ And other excise duty evasion.

² And landowners.

What Next?

What next, indeed? Drugs? Human trafficking? Undeniably abhorrent crimes, but the ramifications for private and commercial landlords in the context of proposals which seek to address these sorts of highly organised, criminal activities perpetrated by those with little concern for humanity represent an outrageous, oppressive, forced delegation of a uniquely state responsibility.

Landlords already commonly include lease clauses which prohibit illegal or immoral acts, but the decision whether or not to take active steps to evict tenants for breach is traditionally one for the landlord to make. Should landlords ever be required to actively police criminal activity? Who will protect landlords when they try to intervene with a law breaker? Ultimately, is a step closer to making civilians police their neighbours a step too far, or is this just a natural progression for an under-resourced government department? These all too interesting questions are about to become all too real for landlords.

Landlords, you have until **10 May 2017** to respond to the consultation (two days earlier than originally published): "[Sanctions to tackle tobacco duty evasion and other excise duty evasion – consultation document](#)".

Contacts

John Danahy

Partner, London

T +44 207 655 1105

E john.danahy@squirepb.com

Sally Coleman

Professional Support Lawyer, Birmingham

T +44 121 222 3136

E sally.coleman@squirepb.com