

DÁIL ÉIREANN

AN COMHCHOISTE UM SHLÁINTE AGUS LEANAÍ

JOINT COMMITTEE ON HEALTH AND CHILDREN

Déardaoin, 23 Eanáir 2014

Thursday, 23 January 2014

The Joint Committee met at 09.30 a.m.

MEMBERS PRESENT:

Deputy Ciara Conway,	Senator Colm Burke,
Deputy Regina Doherty,	Senator John Crown,
Deputy Peter Fitzpatrick,	Senator Marc MacSharry,
Deputy Seamus Healy,	Senator Jillian van Turnhout.
Deputy Billy Kelleher,	
Deputy Sandra McLellan,	
Deputy Mary Mitchell O'Connor,	
Deputy Dan Neville,	

DEPUTY JERRY BUTTIMER IN THE CHAIR.

SECTION 39 ORGANISATIONS: MOTION

The joint committee met in private session until 10.15 a.m.

Section 39 Organisations: Motion

Chairman: I remind all those present to ensure their mobile phones are switched off for the duration of the meeting, as they interfere with the broadcasting of the proceedings. I apologise for the delay in starting the meeting and thank delegates for their patience.

Before we deal with the main business of the meeting, I have accepted an emergency motion in the name of the Joint Committee on Health and Children. Will a member of the joint committee, please, move it?

Senator Jillian van Turnhout: I move:

That the Joint Committee on Health and Children make contact with each of the section 39 organisations to invite them:

(1) to outline the funding model and breakdown of different sources of funding;

(2) to outline the remuneration received by all executive staff and the funding source from which such remuneration is derived in terms of public, private or fund raising sources or the percentage from each;

(3) to outline any demonstrable decline in public support for the efforts of section 39 organisations in terms of fund raising or other supports following revelations about other organisations in recent months; and

that we, as a committee, and I, as chairperson, make a statement to appeal for calm from the public pending ongoing investigations in order to avoid unnecessary and unintended collateral damage and that people continue to support our charitable organisations under section 39.

Senator Martin Conway: I second the motion.

Question put and agreed to.

Chairman: I ask the clerk to the committee to make contact with the section 39 organisations following the meeting. Is that agreed to? Agreed.

Public Health (Standardised Packaging of Tobacco) Bill 2013: Discussion

Chairman: The main item on the agenda is a discussion of the heads of the Bill on the plain packaging of tobacco products in Ireland. As members are aware, the general scheme of the Public Health (Standardised Packaging of Tobacco) Bill 2013 was referred to the joint committee shortly before Christmas for its consideration. The Minister for Health, Deputy James Reilly, and the chief medical officer made a presentation to the committee by way of an intro-

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duction to this important Bill. This is the first of a series of meetings we will be convening in the coming weeks to consider the heads of the Bill. Today we will be hearing about the potential effects of the legislation on areas such as counterfeiting, smuggling, criminal activity and enforcement. In this regard, I welcome from An Garda Síochána the assistant commissioner, Mr. Derek Byrne, national support service; Detective Chief Superintendent Eugene Corcoran, chief bureau officer, Criminal Assets Bureau; and Detective Chief Superintendent Patrick Kennedy, National Bureau of Criminal Investigation. I welcome from the Office of the Revenue Commissioners Mr. Gerard Moran, assistant secretary, indirect tax division; Ms Emma Clutterbuck, principal officer, excise branch, indirect tax division; and Mr. Michael Gilligan, principal officer, investigations branch. I welcome from the National Office of Tobacco Control of the Health Service Executive Mr. Gavin Maguire, assistant national director, environmental health and emergency planning; and Ms Laura Garvey, environment officer, National Office of Tobacco Control. I thank everybody for being present. This is very important legislation, on which we will be hearing in the coming weeks from a wide cross-section of those involved.

Witnesses are protected by absolute privilege in respect of their evidence to the committee. If they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person or an entity, by name or in such a way as to make him, her or it identifiable. I remind members of the long-standing rule of the Chair that they should not comment on, criticise or make charges against a person outside the Houses or an official, by name or in such a way as to make him or her identifiable.

I call on the assistant commissioner to make his opening remarks.

Mr. Derek Byrne: I thank the Chairman and members of the committee for giving me the opportunity to address them. I have submitted a paper to the secretariat and a submission from An Garda Síochána which I will supplement with some very brief opening comments.

The illegal tobacco industry is a global industry which amasses large amounts of money for organised crime gangs. We look at it in the context of organised crime. From our perspective, it has significant health issues, affects the legitimate labour market, returns to the Exchequer in various countries and legitimate brand holders. It requires a global response involving a multi-agency collaborative approach. I have provided a written submission for the committee, to which I wish to make two amendments, with the Chairman's permission.

Chairman: Go ahead.

Mr. Derek Byrne: The final sentence of the second paragraph on page 2 reads: "It also reduces the necessity to bribe public officials". I would like to replace the word "necessity" with "opportunity". The first paragraph on page 7 refers to the recovery of 9 million contraband cigarettes, but the actual figure was 10 million.

Chairman: I invite Mr. Moran, assistant secretary at the Office of the Revenue Commissioners, to make his opening statement.

Mr. Gerard Moran: I thank the Chairman for inviting me to address the joint committee. It will not come as a surprise if my remarks do not differ significantly from those of the assistant commissioner. In deciding between a narrow and broad approach to my presentation I have

opted for the broader approach in order to be helpful to the committee.

Tobacco tax is a key policy instrument in reducing tobacco consumption and a significant source of tax revenue. Given that illicit tobacco has a significant impact on these objectives, tackling it is a key priority for Revenue. As we collect €1.4 billion in tobacco tax and VAT from tobacco consumption annually, any material level of illicit tobacco consumption translates into a significant loss of tax revenue. It is important that developments such as the standardised packaging legislation are scrutinised to assess their impact on the illicit tobacco market. It might be helpful for the committee if I were to outline briefly the scale and character of the illicit tobacco problem and what we are doing to tackle it before dealing with the impact of the proposed legislation.

Every country with high tobacco taxes has an illegal tobacco problem. Ireland which has exceptionally high tobacco taxes and prices has a significant problem. To provide some international context, the World Health Organization estimates that 10% of the global cigarette market is illicit and this figure rises to over 50% in some countries. The European Anti-Fraud Office, OLAF, estimates that illicit cigarettes result in losses of over €10 billion annually in tax revenues in the European Union. This is a global problem which is particularly significant in a number of EU member states, including Ireland, which pursue a policy of high tobacco taxes. In Ireland the best estimate we have of the scale of the problem comes from the IPSOS-MRBI surveys conducted for Revenue and the National Tobacco Control Office. The most recent survey, conducted in late 2012, found that 13% of cigarette consumption was illicit. It also found that a further 6% of consumption was accounted for by cigarettes purchased abroad and brought into Ireland legitimately for personal consumption. The comparable figure for illicit consumption in 2010 and 2011 was 14%. While we have not been able to make dramatic inroads into the problem, it has been contained and some modest progress has been made.

The nominal cost in terms of lost tax revenues is approximately €240 million annually. This is a useful way of flagging and tracking the financial significance of the problem, but it is important to stress that this is a nominal cost, based on the unrealistic assumption that in the absence of cheap illicit cigarettes, smokers would consume the same amount of more expensive taxed cigarettes using money they are not currently spending on taxable cigarette consumption. These caveats aside, the problem is very significant in terms of its impact on the Exchequer and undermining the Government's demand reduction objectives. The tobacco industry produces much higher estimates of the level of illicit consumption and the associated Exchequer costs, but their claims need to be viewed in terms of their interest in minimising tax increases, while imposing significant price increases of their own. All estimation methodologies have their limitations, but we are satisfied that the IPSOS-MRBI surveys provide a reasonable indication of the extent of the problem and, in particular, that the consistency of the methodology allows us to track changes in illicit consumption levels.

As I noted, this a global problem. It is driven by a number of key regions in Asia, the Middle East and eastern Europe where there is large-scale production of cigarettes for illicit distribution to other countries or which serve as distribution centres for illicit product. I have circulated to members a European Commission map which illustrates the main international trafficking routes. Internationally and domestically, the field is dominated by organised crime groups.

Revenue's response to the problem includes a number of key elements. We work closely with our EU partners to tackle source countries and apply the maximum pressure on the governments concerned. We also work closely with EU and other member state law enforcement agencies, particularly OLAF, to get the best possible intelligence on illicit shipments into Ire-

land. We work closely with An Garda Síochána, the CAB, the PSNI and Revenue and Customs in the United Kingdom in identifying and tackling the illicit trade on an all-island basis. We examine shipping and passenger traffic on the basis of intelligence and risk profiling. In terms of detection technologies, we use scanning equipment and sniffer dogs at ports and airports. We conduct regular street level exercises to tackle illicit cigarette sales. Our enforcement activities are kept under continuous review by a tobacco executive chaired at commissioner level.

In assessing the adequacy of our response we have had a good deal of success in seizing illicit cigarettes intended for sale here or in the United Kingdom. In 2010 we seized 178 million cigarettes; in 2011 the figure was 109 million; in 2012, 96 million and in 2013, 41 million. These figures show a marked decline, reflecting a shift in the way illicit cigarettes are trafficked. It is believed criminal gangs have been moving away from very large consignments in favour of smaller volumes as a result of the number of large seizures being made throughout the European Union, including Ireland. However, the most important measure for us is the survey data for illicit consumption which indicate containment and some modest progress. Where possible, we prosecute those involved in smuggling, distributing or selling illicit cigarettes. In 2013, 100 people were convicted for smuggling or other illicit cigarette offences. The courts imposed custodial sentences in 38 cases and average fines of over €2,600 in 62 cases.

On the impact of the standardised packaging legislation on the illicit cigarette market, we are satisfied that it will not damage our efforts to tackle the problem. We rely on our tax stamp to identify tax paid tobacco products and the standardised packaging legislation will accommodate the stamp. We expect the new packaging rules to ensure effective security features to make counterfeiting very difficult. The tax stamp will certainly contain all of the features possible to minimise the risk of counterfeiting.

I assure the committee that tackling illicit tobacco is a key priority for Revenue. We are planning on the basis that Ireland will remain a very high tax country for tobacco products and will be undertaking a fundamental review of our tobacco strategy in the next couple of months.

Chairman: I ask the assistant commissioner, Mr. Byrne, to read his statement, given the importance of the subject matter.

Mr. Derek Byrne: I welcome the opportunity to read my statement. There is no evidence available to An Garda Síochána to indicate that implementation of plain packaging for all tobacco products sold in Ireland would lead to an increase in the trade in illicit tobacco. An Garda Síochána notes that Australia implemented similar provisions in 2013, making it the first country in the world to do so. However, it is not possible at this stage to ascertain from the Australian experience if there has been any impact on the trade in illicit tobacco because of this legislative change. It is also relevant to point out that the markets for illicit tobacco in neighbouring countries differ. Lessons learned from the Australian experience may not necessarily be directly transferable to the Irish context. It has been asserted by certain interested parties that the move to plain packaging may lead to an increase in the trade in illicit tobacco products in Ireland. However, An Garda Síochána has not been presented with evidence which supports this proposition. The quality of counterfeit goods which are readily available across international markets is so good that the identification of the authentic product is often difficult for experts in the field. Those involved in counterfeiting can counterfeit what they need and changes to plain packaging are not going to impact on this.

The growth in international markets of the sale of illicit whites is also relevant. This area is increasingly attractive for those involved in both the manufacture and distribution of these

products. Those involved in the manufacture of illicit whites are not in breach of copyright legislation. This means that they do not run the risk of law enforcement action for counterfeiting offences. It also reduces the opportunity to bribe public officials.

Representatives from Her Majesty's Revenue and Customs and OLAF, the European anti-fraud office, have recently given evidence to the House of Lords Select Committee on the European Union on this issue. Both organisations have significant expertise and experience in the illicit trade in tobacco products and stated clearly that there is no evidence to indicate that the introduction of plain packaging will lead to an increase in the illicit trade in tobacco products.

An Garda Síochána is always alert to the possibility that changes in criminal legislation and other regulatory statutes can cause changes in the behaviour of criminal enterprises. The illicit tobacco environment, post-implementation of the proposed legislation, will be monitored closely by An Garda Síochána. Where new challenges are identified, An Garda Síochána, in conjunction with its national and international partners, will respond appropriately to ensure compliance with legislation.

Turning to the Garda strategy for tackling smuggling in this regard, the 2014 policing plan of An Garda Síochána sets out its commitment to proactively target groups and individuals engaged in organised criminal activity, including the illicit trade in tobacco products. To this end, An Garda Síochána is committed to the use of intelligence-led operational tactics, including those of specialist national units. The monitoring of such groups is ongoing and kept under constant review.

The smuggling of tobacco is primarily a revenue offence and as such is enforced by the Revenue Commissioners - Customs. An Garda Síochána continues to commit to working closely with the Revenue Commissioners and other agencies, both national and international, to proactively target groups and individuals involved in organised crime, including counterfeiting, laundering and smuggling goods. An Garda Síochána provides support and assistance for the Revenue Commissioners on an ongoing basis.

An Garda Síochána continues to develop and implement operations and strategies aimed at targeting, dismantling and disrupting criminal networks, utilising advanced analytical and intelligence methodologies. Multidisciplinary approaches are utilised to ensure the activities of individuals and groups involved in criminal enterprise, including those involved in the importation, sale and distribution of illicit tobacco, are effectively targeted, including the use of the proceeds of crimes legislation, money laundering legislation and the powers of the Criminal Assets Bureau. Specifically, the 2014 policing plan outlines the organisation's commitment to improved intelligence gathering and surveillance and analysis capabilities; continuing to build on partnerships to share intelligence with appropriate national bodies and international law enforcement agencies; ensuring proactive policing interventions based on intelligence and analysis; utilising regional multi-agency capabilities to target persons engaged in crime; identifying and targeting organised crime groups; and targeting criminals by maximising the use of the Proceeds of Crime Act 1996, as amended, and asset recovery opportunities at national and regional level.

Owing to the transnational nature of counterfeit products, An Garda Síochána works with other State and private agencies to monitor new innovations in this type of criminal activity. This includes liaising with other policing and customs agencies in neighbouring jurisdictions. Cigarette smuggling has been identified as a low risk high profit enterprise for organised crime groupings within the European Union. An Garda Síochána continue to liaise with other na-

tional police forces, Interpol and Europol to keep abreast of developing transnational crime trends. Ireland, like the rest of the European Union, is dealing with three main types of illicit tobacco: first, genuine tobacco which has been smuggled or diverted owing to discrepancies in price between proximal jurisdictions; second, the smuggling of “cheap whites”, non-counterfeit cigarettes that are often produced legitimately and then smuggled, avoiding tax; and, third, counterfeit tobacco which has been manufactured covertly and smuggled into Ireland.

An Garda Síochána approaches the policing of illicit tobacco at both national and local level. On national operations, the intellectual property crime unit at the National Bureau of Criminal Investigation is responsible for the protection of intellectual property rights and ensuring a structured and co-ordinated approach in tackling the problem of counterfeit products and illicit tobacco. It liaises on a national basis with investigating gardaí and assist in all aspects of this criminality. It works closely with other police forces and agencies in the discharge of its functions. Members of the intellectual property crime unit are trained in the area of international intellectual property crime and actively involved in the provision of this training for members of An Garda Síochána in outside districts.

Also working at a national level to tackle the trade in illicit tobacco is the Criminal Assets Bureau which is a member of the Cross Border Tobacco Fraud Enforcement Group, CBTFIG. The group was set up to deal with the issue of cross-border cigarette smuggling. It was convened arising from a workshop recommendation made at the organised crime cross-border conference in Dundalk in 2009 and is operated under the inter-agency law enforcement cross-border initiative. Its meetings are attended by representatives from the PSNI, HMRC, SOCA, Revenue - Customs, An Garda Síochána and the Criminal Assets Bureau. The group is chaired by the Revenue Commissioners - Customs.

Arising from meetings of the group, a number of organised crime groups involved in the sale and distribution of tobacco products operating in both jurisdictions have been identified and targeted. Two organised crime gangs involved in the trading of illicit tobacco products have been successfully targeted to date as a result of this initiative. The Criminal Assets Bureau has been successful in seizing assets and raising revenue assessments against the persons involved in this criminal enterprise. Matters arising from these meetings are the subject of ongoing investigation at national crime units in An Garda Síochána. A recent intelligence-led operation, against an organised crime gang involved in the importation of illicit cigarettes into Ireland, conducted in conjunction with Europol and other international police agencies, is a great example of success in this area of operations. Operation Bonanza culminated on 17 September 2013 in the recovery of approximately 10 million contraband cigarettes, cash and a stolen agricultural vehicle. Four suspects were arrested and a file is being prepared for the Director of Public Prosecutions.

Operation Decipher relates to local, regional and district operations enforced by members of An Garda Síochána. In conjunction with co-operation at national level and high profile intelligence led initiatives, An Garda Síochána continues to target street level offenders and the distribution networks surrounding these criminal activities. Operation Decipher, led by the intellectual property crime unit, was established in 2013 to tackle across Garda divisions the sale of illicit tobacco products. The focus of the operation is directed towards the sale of illicit tobacco products through local markets, fairs, shops and by individuals. A national day of action was held on 12 September 2013 under the auspices of Operation Decipher. A total of 16 searches were carried out, 13 of which resulted in the seizure of illicit tobacco products. There is a nominated Garda inspector in each division to co-ordinate activities and liaise with the na-

tional point of contact at the intellectual property crime unit at the National Bureau of Criminal Investigation. The operation is increasing awareness of the illegal trade among operational gardaí. It is hoped that throughout 2014 there will be an increase in seizures of illicit tobacco products and a resulting increase in prosecutions of offenders. At a strategic level, building the policing of illicit tobacco sales through divisional policing plans will make this issue an ongoing priority for An Garda Síochána.

Chairman: I thank Mr. Byrne and invite Mr. Gavin Maguire to make his opening statement.

Mr. Gavin Maguire: I thank members of the joint committee for the invitation and the opportunity to address them today. We sent in a submission last week, as well as a short opening statement through which I now will bring members. The HSE strongly supports this Bill as another important step in the de-normalisation of tobacco smoking in Ireland. One in every two smokers dies of smoking-related illnesses in Ireland. These illnesses and deaths are preventable. Improving health and well-being is one of four pillars of reform outlined in Future Health, the government's health reform programme for the Health Service Executive, HSE. The programme involves a shift in policy and practice away from simply treating sick people to keeping people healthy and well. The HSE's actions in respect of tobacco control include tobacco-free campuses, targeted health promotion campaigns, the HSE QUIT campaign, brief intervention training, research and enforcement of the Public Health (Tobacco) Acts and tobacco control legislation.

The elimination of one form of advertising by tobacco companies - the use of attractive, glossy and sometimes cosmetic-like packaging designed to appeal to young people - is a hugely important step. The tobacco industry has invested heavily in pack design to communicate to this specific group. The evidence strongly suggests that standardised packaging will reduce the appeal of packaging and of smoking in general. Research further suggests that standardised packaging will go some way towards reducing consumer misperceptions regarding product harm, particularly the perception that one brand of tobacco is less harmful than another, and will help to make the legally required health warnings more visible. Tobacco companies have introduced extensive cigarette pack innovations in recent years. The introductions of these new types of package have posed serious challenges to the enforcement of current tobacco control legislation for the HSE. The clear stipulation of the pack features in this Bill will make enforcement much easier. The restrictions on the wrappers of tobacco products such as cigarettes and roll-your-owns will remove the current trend of highlighting lower pack price across the top of the product, suggesting to the customer that they are selling them at a reduced price and thus acting as a sales promotion device.

We welcome the inclusion in the Bill of the provision whereby the offence is committed by the manufacturer and the distributor, as well as the retailer. In many incidences, the supplier stocks the machine in the shop or wherever and the retailer may not look at the product packaging until it is requested by the customer. Therefore the onus must be on the retailer, the manufacturer and the supplier to ensure the product complies with the legislation. Fines and penalties must be sufficient to deter the tobacco companies from non-compliance with the law and we therefore welcome the levels of fines and penalties envisaged in the Bill. We also welcome the fact that, upon conviction, the court shall order the person to pay the costs and expenses associated with the inspections and the institution of legal proceedings.

Roll-your-own tobacco products are a growing segment of the industry. The increase in the pouch size to 20g per unit pack is important in the restriction of access to tobacco products by young persons and lower socioeconomic groups. We suggest that an additional requirement for

consideration should be standardisation of the pack size. This would make packaging for slims or smaller packs less attractive to the customer. Restrictions on the size of tobacco packaging are currently not captured under this Bill, although they are included in the Australian legislation. It would also prevent tobacco companies from making tobacco packs smaller, thus reducing the size of the required health warning, or indeed larger with the aim of increasing the size of the brand name or business or company name that appears on the pack. We also suggest that improved powers of enforcement for the environmental health services within the HSE may be necessary for seizing, removing and detaining non-confined products, as well as payment by the offender for destruction.

Chairman: I thank Mr. Maguire and now will hand over to members. Incidentally, I should relay the apologies of Deputy Kelleher, who is speaking on the Order of Business. Deputy Ó Caoláin sends his apologies, as do Senator Henry and Deputy Catherine Byrne. Senator MacSharry also was obliged to attend the Order of Business.

Deputy Sandra McLellan: I welcome the witnesses. Their presentations have been highly informative and, as this is a thorough way of formulating legislation, it is of great importance to members. I apologise again on behalf of Deputy Ó Caoláin, who unfortunately is unable to attend today. The witnesses might bear with me as I come to the questions, which I will be asking on both his and my own behalf. As outlined in previous meetings, Sinn Féin is supportive of the planned legislation. My colleague at European Parliament level, Martina Anderson, has done similar work in respect of the tobacco directive. All members are clear as to the impact on health of tobacco and barely a family in the country has not suffered because of its horrific consequences. Moreover, there is a definite correlation with regard to socioeconomic groups in that the poorer one is, the more likely one is to have one's life destroyed by these consequences. As for any measures that can be taken to make it less appealing, there obviously must be ongoing monitoring to ascertain how effective they are in the future.

I have a number of questions. I note Mr. Byrne stated there is no evidence available to An Garda Síochána that would indicate that the implementation of plain packaging for all tobacco products sold in Ireland would lead to an increase in the trade in illicit tobacco. However, I have to hand a report from KPMG that appears to contradict these remarks. To run through a couple of points, it states that there has been no reduction in tobacco consumption; that there has been a decrease of 40% in consumption of non-branded tobacco, with increases in consumption of contraband and counterfeit cigarettes of 162% and 71%, respectively; that the illicit market has seen an increase of 13%, while illicit cigarettes have increased by 154%. As this appears to contradict Mr. Byrne's observations here, he may wish to comment on that report or whether he has an idea of who paid for it. I also note the comments by Mr. Byrne on whites and that those involved in the manufacture of illicit whites are not in breach of copyright legislation. Does this mean that in terms of plain packaging, the Garda will have fewer powers to secure prosecutions? Does it mean that certain copyright laws that now apply will no longer do so if this legislation is introduced? In respect of Garda recruitment, will some of the newly recruited staff work in the area of tobacco control - for example, in the intellectual property crime unit? On the individual policing of illicit tobacco sales through divisional policing plans, which play an important and practical role, will this project be prioritised and resourced adequately? Can the Garda indicate whether, on a global basis, the tobacco industry has been implicated in illegal tobacco trading? Will plain packaging reduce illegal trading in tobacco products and what percentage of illegally traded tobacco products are actually detected by the Garda? While these are my questions to the Garda, I have a few more for the Revenue Commissioners.

In 2010, 178 million cigarettes were seized, while in 2011, 2012 and 2013, the figures were 109 million, 96 million and 41 million, respectively, yet the consumption of illegal tobacco has remained fairly stagnant. Does this reflect a failure on the part of Revenue in which the criminals all are one step ahead and now are able to bypass its detection methods? How is Revenue addressing this negative trend? How are seized cigarettes disposed of? How does Revenue get them out of circulation? I would like to hear the Revenue Commissioners state they fully support the Government's demand reduction objectives because I am conscious that were the measure to be 100% successful it would cost Revenue €1.4 billion. I seek confirmation that everyone is on the same page in this regard. How much does tobacco-related illness cost the public Exchequer each year, and has this sum increased or decreased over the years? How much does the sale of tobacco products raise in taxes for the State and has this increased or decreased over the years? Members are aware of the loss of €240 million from tax revenue; how does this compare with other trades, such as music, food and clothing? What is the impact of the European Union's tobacco products directive? Is an all-Ireland approach needed in this regard and should members be encouraging the Northern Ireland Assembly Minister for Health, Social Services and Public Safety, Edwin Poots, to adopt similar legislation?

One in every two smokers dies of a smoking-related illness in Ireland. Will the witnesses remind the committee of the approximate cost of that to our health services?

On the level of fines, what is the proposed method of increasing the fines? Is it by further legislative amendments?

I ask Mr. Maguire to expand on the last two points made, namely, potential improvements regarding the standardisation of the pack size and increased powers of enforcement. Does he have specific ideas or recommendations in that regard?

Senator Jillian van Turnhout: I thank the Garda, the Revenue Commissioners and the HSE representatives for their presentations. The message I will take from the presentation by the Garda representatives is that the Garda, the European Anti-Fraud Office, OLAF, and many others believe there is no evidence to indicate that the introduction of plain packaging will lead to an increase in the illicit trade of tobacco products. That is the clear message that must go from these hearings.

In looking at illicit trade while researching and preparing to deal with this issue, I was startled to see that in 2002, evidence was given before the United Kingdom Public Accounts Committee by ASH UK which clearly showed that exports of tobacco to Andorra, for example, increased from 13 million in 1993 to 1,520 million in 1997. Every Andorran man, woman and child would have to smoke 130 cigarettes a day to make up that amount. That is a real example of the way this illicit trade is taking place. There is an over-supply by tobacco companies to certain countries. Last October, the Right Honourable Margaret Hodge appeared before the UK Public Accounts Committee and stated that the supply of some brands of hand-rolling tobacco to some countries in 2011 exceeded legitimate demand by 240%. The evidence is there for us to see.

Before asking specific questions I note what the HSE representative said about the size of the packets, which we will take into consideration in our deliberations. My questions are for the Revenue Commissioners, and if other witnesses wish to respond I would be happy to hear their comments. With regard to the Revenue Commissioners, has there been a decrease in resources to tackling smuggling? We all know that there have been cuts in some areas in the recession. If so, what has been cut? How much does Ireland spend each year on tackling smuggling? I was

surprised when I saw the number of prosecutions. With regard to tracking and tracing, which is one of the key provisions of the World Health Organization illicit trade protocol, which Ireland has signed up to, what is the readiness of the Revenue Commissioners in that regard?

I refer to Codentify, a system developed by a major tobacco company, Philip Morris. The company says it is a unique, secure 12-digit code printed onto the side of packages, but Philip Morris is donating money to organisations and agencies such as Interpol to promote and develop Codentify. I am aware that organisations such as the Irish Cancer Society see that as a major conflict of interest. What is the Revenue Commissioners' view on Codentify? Does a system developed by the tobacco industry not raise concerns about compromise and reliability?

I have a question on forestalling, which is a tax avoidance measure identified in the UK. It is a practice whereby excessive quantities of cigarettes are removed for home use on payment of duty because an increase in the rate of duty is expected. Is there any evidence of forestalling in Ireland? Finally, has the tobacco industry been involved at any point in training or advising the Revenue staff on illicit trade?

Senator John Crown: I welcome my Garda colleagues. I am sorry if I am being inappropriate but I would like to express my sympathy to them as it is close to the anniversary of the loss of one of their colleagues in the line of duty last year. I know it is in everybody's mind today.

The situation with respect to tobacco is unprecedented. If this product had been discovered during the 20th century it would never be legal. It is the ultimate example of something that was "grandfathered" into cultural acceptability. If tobacco was a component of refrigerator doors, we would not allow it to be legal now in the manufacturer of refrigerators. If it was a component of the paint used in cars, it would not be allowed - it is that carcinogenic - yet we allow people take it into their bodies. Every fibre of every organisation associated with the public good must realise that those who make it, distribute it and sell it - sometimes good people, sometimes misguided - are involved in something which is evil and must be stopped. We must also understand that a totally legal cigarette is just as likely to give one cancer as an illegally smuggled cigarette. There is no moral distinction in terms of what we are doing here.

People talk about precedents in tobacco control for other areas such as sugar and cholesterol. There are no precedents. If some misguided philanthropist sent containers of Big Macs to refugee camps in Africa where children were starving, the Big Macs would keep them alive. There is nutrition in the most unhealthy of foods. What causes the problem with unhealthy foods in general is having too much of it. Tobacco is in a case of its own. It brings no health benefits. It is an addictive, toxic, cancer-causing substance which has been allowed into our culture.

Spurious arguments are advanced against increasingly draconian measures such as the excellent measures the Minister, Deputy Reilly, is suggesting, and some of the other excellent measures Senators Daly, van Turnhout and I suggested, which for some reason have either been rejected or become terminally glued in the treacle-like bureaucracy of the health administration. However, these are good moves. The arguments often advanced against them is that they will decrease revenue and increase smuggling. The decrease in revenue argument is entirely spurious. If God appeared tomorrow on O'Connell Street and made everybody stop smoking, the Revenue Commissioners would be discombobulated for about a year but they would get used to it. The decrease in spending on health services would take a few years to kick in, but it would kick in and it would be a saving. The crazy argument is advanced that some of this

money would disappear. People who had money in their pockets that they were not spending on cigarettes would spend it on their families, their children, heat, education, better food and a number of socially advantageous things. If the entire trade disappeared tomorrow, we would be better off the day after tomorrow. It is that simple.

In terms of the questions that must be asked, I echo those of my colleague, Senator van Turnhout. I will stick my neck out - this is the wonderful thing about Seanad privilege - and say that on a global scale the tobacco companies like smuggling. They encourage it, foster it and make sure it happens because it is in their interest. Smuggling is great for them. Most of the product smuggled is their product. Ultimately, it is bought at their distribution or wholesale price from them. The people who lose out are the Revenue Commissioners and perhaps the shopkeepers in border areas between jurisdictions. The companies do not lose, and therefore I am sceptical when I hear that the companies want to lobby our Government on their concerns about smuggling. Smuggling does something else for the companies. It provides cheap, addictive product to impressionable children. It is easier to get people addicted to something that is cheap than to get them addicted to something that is expensive. All of these arguments trickle away.

With no disrespect to the representatives, when considering the health impacts of plain packaging and increasingly draconian measures, we should not even think about smuggling. It is great that the Revenue Commissioners, the Garda and the National Office of Tobacco Control do a good job interdicting it, but this unintended collateral consequence should not be what drives our public policy. It must be remembered - Senator van Turnhout alluded to this - that the arithmetic is overwhelming in that it suggests there is something extremely fishy about export patterns of tobacco to small countries from whence it mysteriously appears in other larger jurisdictions.

My father sold tobacco products in his little mom-and-pop shop in Brooklyn, New York, after he emigrated from Leitrim - his shop was called Jack's Cigar Store - so I understand the cultural influences that lead people into this line of trade. Everybody who sells these products from the local shop to the wholesaler to the importer to the shipper to the manufacturer is dealing in death and buying into a business which must recruit 50 children per day to make up for the people who die. Those here should remember the business plan of the tobacco industry; it comprises four words - they should write them down as the plan is easy to remember - "addict children to carcinogens". If the industry does not do that, it will be out of business.

Chairman: Five other members have indicated I will call them now starting with Deputy Mitchell O'Connor.

Deputy Mary Mitchell O'Connor: I thank the delegates for their presentations. I wish to ask about plain packaging and counterfeiting and direct this to whomever feels it is most appropriate to answer on that. Two statements were read out. The Assistant Commissioner said that the quality of counterfeit goods, which are already readily available across international markets is so good that the identification of the authentic product is often difficult for experts in the field. The following is the sentence I want him to address, namely, "Those involved in counterfeiting can counterfeit what they need". Mr. Moran from the Office of the Revenue Commissioners said that he was very confident that we could deal with this and that the tax stamp will certainly contain all the features possible to minimise the risk of counterfeiting. Has he faith in that process? What we are hearing and what we have read in a submission we received from shop owners and retail outlets is that plain packaging will serve to make the process of counterfeiting substantially easier and cheaper while providing a stimulus to the black

market. I would like Mr. Moran to comment on that.

I wish to cite what an unnamed senior customs official was reported as saying in the media. He said:

The Minister might be well-meaning, but he is playing right into the hands of the Real IRA and their criminal cronies. They won't have to copy hundreds of different packs any more - because they'll all look the same.

Does Mr. Moran share any of those concerns? Will the Garda and the Revenue need more resources if plain packaging is introduced? If that serves to make the process of counterfeiting easier, do the witnesses believe those resources will be available to them?

Plain packaging has been introduced in Australia. Has Mr. Gerry Maguire engaged with our Australian colleagues since the introduction of standardised packaging and can he report on the trends in Australia during the past 12 months? It has been stated by the HSE and, I believe, by the Minister, Deputy Reilly, that the long-term goal is to reduce smoking prevalence to 5% by 2025. Has he got medium-term targets set between now and 2025? With all the health education and everything that is being done by the HSE, Revenue, the Garda, Deputies, educationalists, the Irish Heart Foundation and all the various groups, why has the prevalence of smoking not decreased?

Deputy Ciara Conway: Many of the questions I intended to ask have been asked and I will not reiterate them. I congratulate the Garda on its success in the seizure under Operation Bonanza where 10 million cigarettes and cash were captured. Are there black spots in the country where such activity is more prevalent? I also have been contacted by a number of retailers who are concerned that the plain packaging will make counterfeiting easier, as outlined by my colleague Deputy Mary Mitchell O'Connor. In fairness, the people I met understand the damage cigarettes can cause. I got the impression from them that such activity was worse in some parts of the country than in others. Has the Assistant Commissioner information on that and what is being done to tackle those black spots to ensure that such counterfeiting can be curtailed? It is also a question for Revenue officials in terms of what it is doing to tackle this activity outside the greater urban areas. What level of resources are deployed to areas around ports and cities in close proximity to ports such as Waterford and Wexford to ensure they can capture any illicit trade that is taking place?

In terms of the HSE's programmes, I would agree with Mr. Maguire's point about standardised packaging because it is more difficult for slims and such products, by virtue of the nature of their packaging, to carry the health messages in bold print. That is a valid point and something we should take on board.

Following on from Deputy Mitchell O'Connor's point, why is smoking still so prevalent? It is particularly prevalent among young girls and is often prevalent among lower socio-economic groups in communities. What more can we do to tackle this problem? What types resources will the HSE allocate, particularly in light of what Senator Crown said, namely, that we know that the tobacco industry's *modus operandi* is to try to engage young children to take up smoking? What is the HSE doing to address that? I know of the cessation programmes and smoke-free campuses but that relates to adults. What is being done preventatively to ensure that young people do not taking up smoking?

Deputy Peter Fitzpatrick: I welcome Mr. Derek Byrne, assistant Garda commissioner, Mr. Gerard Moran, assistant secretary in the Office of the Revenue Commission, Mr. Gavin Ma-

guire, assistant national director of the National Tobacco Control Office and their staff. Most of the questions I intended to ask have already been asked but I would ask the following ones. Does increasing the price of tobacco products increase the level of smuggling? The Government has increased prices as have the tobacco companies. Will plain packaging, which will carry health warnings and other labels currently on the packets, increase illicit trade?

It was stated that it is estimated that €240 million is lost in tobacco tax in the illicit trade in Ireland, which is broken into three categories: contraband - a genuine tobacco packet imported without paying tax and duty; a counterfeit product that appears genuine but is a fake; and illicit whites, which are cigarette products only for the black market.

In terms of standardising packages of tobacco, the aim is to reduce the appeal of tobacco and tobacco products, increase the effectiveness of the health warning on tobacco products, reduce the ability of the packaging of tobacco and tobacco products to mislead customers about the harmful effect of smoking in the public interest by providing for the standardisation of the labelling and physical features of the retail packaging of tobacco products and the requirement for the appearance of the cigarettes.

I want to outline a few statistics. Scientists have indicated there are approximately 4,000 different chemicals in cigarette tobacco and more than 70 of these cause cancer. Each year at least 5,200 people die in Ireland from tobacco-related disease. This represents almost one in five of all deaths. According to the Department of Health, 90% of lung cancers are caused by smoking and it has stated that it costs approximately €1 billion per year to provide health services for smokers. Smokers lose an average of between ten to 15 years from their life expectancy by smoking. The average cost of admission to treat a smoker in an inpatient setting for tobacco-related illness is €7,700 in Ireland. It is estimated that the workplace smoking ban introduced in 2004 has led to more than 3,500 deaths being avoided as a result of tobacco consumption. I also realise that the tobacco sector in Ireland accounts for approximately 5,500 jobs and is a major driver of the tax revenue, generating approximately €1.4 billion per year.

Deputy Seamus Healy: I welcome the delegates from the Garda Síochána, the Office of the Revenue Commissioners, the HSE and their staff to the meeting. One in ever two smokers dies of a smoking-related illness. It is shocking. We are dealing with an industry of death and for it to continue, it is necessary for it every hour of every day to get additional young people addicted to tobacco. I support the legislation promoted by the Minister and supported the targeting of young people to help prevent more of them becoming addicted to tobacco and reduce consumption overall.

I need confirmation from all agencies, including the Revenue Commissioners, the Garda Síochána and the HSE, that the introduction of plain packaging will not damage the campaign against the illicit tobacco trade. I also ask them to comment on the idea that the use of plain packaging will make enforcement easier. I believe it will not damage the campaign against the illicit tobacco trade and that it will make enforcement easier, but I would like the agencies present to respond to these questions. Can any or all of them comment on the involvement of tobacco companies in the illicit trade? There is a suggestion many countries are being oversupplied by the tobacco companies for re-export to other areas on an illicit basis. I seek clarification of the reduction in the number of cigarettes seized from 178 million in 2010 to 41 million in 2013.

I refer to the current penalties and those provided for in the Bill. Are the agencies satisfied that the penalties provided for are adequate and sufficient to deal with the problem?

The Garda Síochána referred to street level offenders, sales at fairs and car boot sales. There is a perception that there is little or no action being taken at this level. I am not sure the perception is the reality, but there is that perception and I would like a comment on it.

Senator Colm Burke: All of the questions that need to be asked have been asked. I refer to the drop in the number of cigarettes seized, from 178 million to 41 million. Does this mean that there is an ongoing trade but at a smaller scale such that the 41 million cigarettes seized is a small figure in real terms? Perhaps the smaller number makes the problem more difficult to identify. Are these figures an accurate reflection?

I speak to people working in medical services who deal with medical clinics on a daily basis. One person told me about someone who was smoking 300 cigarettes a week and said there was no way, on the income that person received, that they could buy cigarettes in shops. I have heard this from a number of medical personnel. Despite medical advice, people continue to smoke heavily and it is clear based on their incomes that they cannot afford to buy cigarettes in shops. Medical service professionals have not seen a drop in the level of consumption by the people with whom they are dealing.

With the growth in international communities in Ireland in the past 20 years, it is that much easier to keep an eye on Irish people involved in illegal activity. What strategies have the Garda Síochána and the Revenue Commissioners taken on board to deal with people from international communities given that they do not have the same inside line that they have with Irish people? What change in strategy needs to be adopted to deal with this issue? I recently raised the issue of recruitment to the Garda Síochána. Do we need to examine the recruitment of people from outside the European Union who are living in Ireland and now Irish citizens? They have inside knowledge of international communities. What strategy has been adopted in dealing with this issue?

Deputy Dan Neville: Most of the questions I want to raise have been asked. We campaigned very strongly for people to stop or not to start smoking. Are we doing enough to deal with the addictive nature of cigarettes and on how to help people to kick the habit? Alcoholics Anonymous deals with the problem of alcohol addiction, but I question whether the HSE is doing enough to help people to deal with their addiction. There is a sense that we are abandoning people who are severely addicted because nothing can be done.

As I must be elsewhere at 11.30 a.m., I will read the answers later.

Mr. Derek Byrne: I thank members of the committee for raising valid issues. I thank Senator John Crown for his kind comments as we approach the first anniversary of the death of our colleague, Detective Garda Adrian Donohoe, on 25 January.

Chairman: On behalf of the committee, I join the assistant commissioner in paying tribute to him and sympathising with his wife and family and other members of the Garda Síochána. It is a tragedy that people are not prepared to assist the Garda Síochána in taking those involved to task. We salute and support the Garda Síochána in its endeavours and thank the family for its courage and bravery.

Mr. Derek Byrne: We greatly appreciate the comments of the Chairman and the committee.

The Garda Síochána in no way disputes the medical findings on the effects of tobacco, as outlined by Senator John Crown and other members of the committee. From where we sit, this is a demand-led industry. In my opening comments I mentioned that our response was intelli-

gence-led to tackle the criminality end of the problem. We have challenges, like our colleagues in the Customs service and the Revenue Commissioners, in trying to deal with it.

I was asked how strategies had changed. We have intercepted containers. There is a relatively small outlay for quite a high profit margin and some have taken high risks and lost a lot of money. Separately, we have individuals arriving at air and sea ports throughout the State with suitcases full of cigarettes. Our colleagues in the Revenue Commissioners have had considerable success in dealing with that part of the problem.

Senator Martin Conway asked me about markets. There are little markets all over the country. We have worked with private investigation companies and Operation Decipher has led to considerable success, with 16 raids in one day and 13 successful seizures around the country at various markets and fairs.

Deputy Sandra McLellan asked me about the Garda recruitment campaign. It is a function of all members of the Garda Síochána to enforce the legislation. We think the current legislation is relatively robust.

Deputy Healy asked whether the new sanctions will prove beneficial. We see them as being in the serious crime category. At this stage it appears that the legislation will be quite sufficient for us to deal with the crime as an indictable offence. That also makes it an arrestable offence for us. The indications in the proposed legislation are that it is being treated as a serious crime, which is a welcome development.

Other issues were raised, including counterfeiting. Copyright is not a major prohibition for us. We have several other pieces of legislation to deal with casual trading or trademarks. We have sufficient legislation to deal with the matter. We will be strengthened by the proposed new legislation and the penalties that will be imposed. Earlier I said that we do not know the extent of the problem after the implementation of the legislation. However, we will watch the matter very closely. We must wait and see how enterprising criminal elements adapt to the legislation. It is at that stage that we will be able to give some greater indications of what the situation is likely to look like in terms of what must be done by the Garda Síochána, Revenue and Customs and Excise.

We are very closely aligned with Interpol and Europol for some of the international operations and attend various meetings. We have hosted two conferences on intellectual property crime in Ireland, late last year and four years earlier, and 650 delegates attended from over 50 countries. This illicit trade was very high on the agenda and is very high on our agenda. We are very much linked with Interpol and Europol in terms of enforcement methodologies. Profiling and tracing takes place across jurisdictions to see if we can intercept illegal tobacco products entering the jurisdiction. Of course if we gather information there is a process whereby we will act on it immediately to detect activity, prevent the loss of Exchequer funding within the jurisdiction and prosecute the offenders.

Several other issues have been mentioned. I am not sure if I have missed any but I am more than happy to address them if I have not done so already. I am accompanied by the chief bureau officer from the Criminal Assets Bureau and the Detective Chief Superintendent from the National Bureau of Criminal Investigation. We are more than anxious to answer any further questions if I have not touched on some of the issues raised.

Chairman: Do any Members wish to comment or are they happy to defer?

Deputy Ciara Conway: I wish to comment.

Chairman: I shall allow the Deputy to contribute again later.

Mr. Eugene Corcoran: The Criminal Assets Bureau has a very specific statutory function regarding the proceeds of crime and depriving criminals of the proceeds, which includes, in this instance, people engaged in the illicit tobacco trade. I shall address some of the issues from that perspective. It is difficult to view the illicit tobacco trade in isolation when dealing with organised crime because it presents a considerable opportunity to earn large profits by those engaged in this type of criminal activity, whether they are organised criminals or connected to dissident groups.

With regards the specific issue of plain packaging and its likely impact on people involved in the trade, it is quite difficult for us to address the matter because we have had little or no international experience of doing so, apart from in Australia. The current packaging presents little or no difficulty for illicit traders to carry on trading. Whether plain packaging presents an easier route for them to disguise the packaging is a moot point. They are largely indifferent to packaging in terms of the trade that they engage in and that is all I can say for the moment.

Mr. Gerard Moran: I have written down most of the questions and hope that I can read my scrawly writing. I shall try to respond satisfactorily to as many of the questions as possible.

One of the first questions came from Deputy McLellan and related to the drop in numbers that I quoted. It is important to bear in mind that figures for any particular year - particularly going back a few years - are easily distorted by the seizure of a small number of huge consignments. That is why I must stress that the far more important measure for us is the survey results on the incidence of illicit consumption. We need to highlight that fact even though the organisation has tended to highlight the seizures because everybody likes to talk about their successes. The important measure is the survey data on the incidence.

In my statement I said we believed that the reduction in the volumes - particularly in the most recent year - are associated with an evolution in the way organised crime groups are operating and, in particular, supplying the Irish market. Before now, some stuff might have been routed through Ireland for the UK market. Some of the seizures that we made in the past few years were so large that they could not have been destined for the Irish market. Now, instead of being used as a route to other markets, the Irish market may well be served in smaller quantities from the continent or the UK. The business of traffickers is constantly evolving and reflects their experience of the way enforcement authorities get on top of a certain situation and respond. Traffickers keep changing their tactics. I hope I have explained what the numbers mean and how we interpret the data.

A question was asked about how we dispose of seized cigarettes. I can confirm that they are incinerated.

We were asked whether we supported the Government's demand reduction policy. The question was asked as though there were an assumption on the part of some people that the Revenue Commissioners are revenue maximisers. We are not. We simply implement the law and follow Government policy. The job of the Revenue Commissioners is to collect whatever tax is payable and deal with whatever evasion and fraud is associated with tax.

An interesting question was asked about the notional loss of €240 million. I want to stress the term "notional loss" and how it compared with the tax gap or loss in other sectors. Tobacco

is probably unique in being the only area that we tend to quote a loss for because it flags for Revenue internally and for the wider public the significance of the problem. We have good solid survey data that allows us to do this work. Generally we do not do tax gap analysis because it is fraught with enormous difficulty. Some tax administrations do so but they always heavily qualify the work by saying that it is usually to be relied on more as an indicator of trends than as an estimation of the quantum. That latter bit always tends to be forgotten.

A question was asked about whether we needed an all-Ireland or all-island approach. We have already adopted such an approach, and the assistant commissioner gave details. All of the law enforcement agencies North and South meet on a quarterly basis to ensure good co-ordination and sharing of intelligence and information. My information is that the scheme works effectively, and the assistant commissioner mentioned some of the results that have flowed from its work.

A question was asked about the need for supply chain controls and their desirability. That is a key issue. Revenue is really interested in supply chain controls and a track and trace regime that will operate in the global black spots located in the source and transit countries. There is probably not a lot to be gained from a very high-tax country like Ireland investing heavily in a domestic track and trace system if the source and transit countries are not brought on board. A big job of work needs to be done at EU level or through whatever forum. We must seize an opportunity to pursue what we view as problem countries at the G20 or G8 forum in order to put pressure on them.

It is clear from the European Commission's communication on the issue that it speaks about enhanced co-operation with source and transit countries. Members of the committee can decode this for themselves.

There was a question on whether there had been a drop in the level of resources. Revenue has had a significant drop in the level of resources, probably from about 6,700 to 5,800 or 5,700 - I do not have the exact number. In achieving that reduction in recent years we have maintained the number of staff involved in compliance work. That includes the staff available to work on illegal tobacco issues, smuggling and street level activity, with which we have to contend. We have preserved these numbers in the face of a big aggregate reduction and are committed to doing this so far as we possibly can do so.

There was a question about the readiness of Revenue to take on track and trace functions. The policy and shape of the administrative arrangements or regime are settled on for the European Union, but they need to go a little further. From Revenue's perspective, our interest is in the supply chain in source and transit countries rather than in high tax countries. If somebody starts to try to source cigarettes in Ireland to sell them in eastern Europe, he or she will go out of business quickly, unless they are diverted, as we police the area very tightly.

I hope I am not taking too long to respond. If so, the Chairman may interrupt me.

Chairman: Mr. Moran is okay.

Mr. Gerard Moran: There was a question about our attitude to a tobacco industry sponsored supply chain or a track and trace system. Public policy on this issue needs to be settled by the various public bodies and Departments concerned. We are not particularly interested, therefore, in engaging with tobacco interests on it. There was a question on whether we had been talking to them. I am aware that they have made offers to us, but we are not inclined to nibble.

A key question, repeated by a number of Deputies and Senators, was related to the suggestion there was an increased risk that counterfeiting would be much easier with standardised packaging. To repeat what I said in my opening statement, we rely on the tax stamp. If they can counterfeit the packages already available, they can counterfeit the others. We do not see a dramatic change in the landscape. What is of primary importance for us is that we have a state-of-the-art tax stamp that is highly resistant to counterfeiting and that the technology include secret features that our scanning devices can identify. That is what we rely on, not whether it is counterfeit. In the future we will also rely on the tax stamp.

I think it was Deputy Mary Mitchell O'Connor who quoted an anonymous Customs and Excise source who said this was playing into the hands of criminals. I do not agree; this follows from the remarks I have just made.

There was a further question about resources. I think I have dealt with that issue. We have sought to maintain the level of resources. I hope I stressed sufficiently in my opening statement that tackling this problem is a serious priority for Revenue. There are two dimensions to it - lost tax revenue which is very significant and the fact that it undermines public policy on smoking in that it results in making product more freely available at a time when pricing is a key instrument in trying to reduce demand.

I thought I was nearly finished, but I still have two pages left. I will go through them quickly.

There was a question on whether there were black spots. The answer is not particularly; that is our take on it. It is a problem across the country. It may be more intense in some places rather than in others, but it is widespread across the country. There might be a socio-economic dimension to the precise availability or degree of saturation in some places compared to others.

There was a question about the spread of resources, whether we were concentrating on the main ports and ignoring the rest of the country. That is definitely not the case. Our compliance staff and enforcement teams that undertake this work are distributed on a regional basis. They are deployed at small ports and airports on a risk assessed basis. All interventions and examinations we conduct are in the first instance on the basis of intelligence or risk profiling. Whenever we have information that suggests some activity is warranted at a particular location, we will do it. We also undertake regular campaigns at street level, some of which are localised and others on a national basis, to target visible activity.

There was a further interesting question from Deputy Peter Fitzpatrick on whether increased prices resulted in increased smuggling. Certainly, they increase the incentives. It means that there is a bigger margin for the traffickers. They can pitch at a price that is well south of the price of legitimate cigarettes and still have a huge margin to make super-normal profits. Undoubtedly, the bigger the price differential, the greater the incentive. It needs to be borne in mind that the price of legitimate cigarettes in some eastern European countries is probably about €2.20 per packet, whereas here the price is €9.50 or €9.60. One can find cheaper cigarettes and the cheapest one will find will be close to €8. The idea would be for prices in these countries to migrate in a northerly direction, but all of these countries tend to face problems with their neighbouring non-EU countries which have even cheaper priced cigarettes. It is, therefore, a difficult problem.

There was a question about plain packaging and the illicit trade and a further question about the figure of €240 million. I answered that question. I am picking up on it again, but it gives me another opportunity to stress that it is a nominal figure. It is useful to flag it, but it is a nominal

figure based on unrealistic assumptions. Senator John Crown also covered the issue. People who have money would spend it on something else if they were not spending it on this product.

We were invited to comment on the involvement of tobacco companies in the illicit trade. A number of years ago there was a massive oversupply by the main tobacco companies in places such as Andorra, but the activities of these companies have been brought under control by co-operation agreements that penalise them if their cigarettes are found available illicitly in countries other than those for which they are produced or distributed. If anyone wants me to come back in on a particular question, I can do that.

Mr. Gavin Maguire: Like other contributors, I hope I can pick up on all the questions asked. If the Chairman agrees, I will ask my colleague to deal with one or two questions.

Chairman: Sure, and if any members want to come back in, they are more than welcome.

Mr. Gavin Maguire: Deputy McLellan asked some specific questions regarding health but before I address those, she also asked a question regarding the correlation between price and illegal trade. A number of international studies dispute the study she quoted in terms of the correlation, although undoubtedly there is a correlation. Most international experts would say that the price of cigarettes is a very important element in regard to discouraging tobacco use. Many international reports say there is some correlation between price and illegal trade, but it is still worth increasing price.

On the specific health issues, the Deputy said the one in every two smokers dying from tobacco-related illness was a shocking figure. It is incredibly shocking. On the cost of tobacco related illness to the HSE, a 2009 European study estimated the cost at over €600 million. However, it is not just an issue of cost, but of the destruction of lives. The Deputy asked a question about increased fines being included in the Bill. The HSE does not have a role in that, but we would encourage the Minister to ensure the fines are at the upper end of the scale. We are involved in enforcement of current legislation on tobacco and we frequently feel that the levels of fines imposed do not act as a sufficient deterrent. Therefore, we would call for them to be increased, particularly in the case of this Bill because we are referring to tobacco companies with very deep pockets.

I will defer now to my colleague, Laura Garvey, on the next question concerning the two recommendations made in our opening statement.

Ms Laura Garvey: In regard to the size of cigarette packages, as we know the tobacco industry has invested hugely in package design and in trying to encourage new and young smokers to take up the habit. They have invested heavily in pack innovation. We talk about perfume or cosmetic type packages which are very small and contain the slim cigarettes. When these packages came out on the market originally, they resembled a tobacco product but were thinner. On the face of it, they looked the same as a tobacco product, but then innovation changed them and they are now a very small packet which can be quickly put into a handbag and are obviously geared at the female market. In our research, we looked at the situation in other countries. Australian legislation has restricted the size of a cigarette packet and there is a minimum and maximum length, depth and height. When considering regulations, we should look at the physical features of a cigarette packet so we can introduce similar restrictions.

The tobacco industry has moved forward significantly with the roll-your-own products. This product is now in a large box, which includes the pouch, tobacco, the cigarette papers and

the cigarette rolling machine or the filters and the tubes. These large boxes currently have significant branding, colour and advertising and the product name is in large print. This legislation should help move away from this final form of advertising. Now that we have moved away from point of sale advertising and from gantry advertising, this final form remains, but hopefully it will be abolished by this Bill and we can move away from branding of tobacco products. Normalising the size of the tobacco package is also very important.

The other recommendation we made concerns the powers within the Bill. The heads of the Bill describe the powers in section 48 of the Public Health (Tobacco) Act and suggest that the new Bill will permit us to seize products for examination. The new legislation should ensure we can seize, remove, detain and, if necessary, destroy tobacco products. Currently there is a two-pronged approach. If products come into a port and are seized by Revenue, and the duty is paid on them, but they are seen as illegal imports from the point of view of the Public Health (Tobacco) Act, such as niche products or snuff or illegal products such as oral tobacco products, this would be under the remit of the HSE and we would work closely with the Revenue on this. However, stronger powers are needed in this regard. We also need stronger powers to deal with retail shops selling tobacco products that are illegal under the Act, for example, where warnings are not sufficient.

Mr. Gavin Maguire: Deputy Mitchell O'Connor asked whether we have engaged with Australia in regard to its experience. We are part of various networks involved in this. Initial research coming from Australia is very encouraging. Australia has seen a decline of approximately 15% in the number of what is described as table displays of cigarettes. This is mostly due to a 23% decline in the percentage of patrons who smoke. What is even more striking is that Australia has noticed that calls to its quit lines soared by 78% for a period shortly after the introduction of the new packaging. Obviously, there is an important relationship between people who make that first contact to a quit line and those who are ultimately successful in quitting tobacco.

The Deputy also mentioned the Department of Health's tobacco free policy document, Tobacco Free Ireland. I was a member of the group that drafted that document and it was our aim to achieve a 5% prevalence of tobacco smoking by 2025. The question was whether we should have an interim staged approach to the implementation of that. The document outlines a broad range of measures designed to get us to that goal and a group is working currently on identifying how the action required should be staged between now and 2025 to get to the 5% prevalence. That work is in progress and is well advanced.

A number of committee members asked why the prevalence of smoking does not seem to be reducing, but we think it is. No single study has monitored this over the years, but the various studies commissioned show a downward trend. For example, the 2007 SLÁN study showed a prevalence of 27% or 28%. Our most recent HSE studies, in 2012, show a prevalence of 22%, down from approximately 24% the previous year. Therefore, we see a downward trend.

We see as equally critical the study of health behaviour of school children. A survey in 2010 showed that overall some 27% of children reported they had smoked at some time. This is a decrease of nine percentage points from 2006. In addition, the survey showed that 12% of children reported they were currently smoking, that is monthly or more frequently. This represents a 3% decline from the 2006 figure.

Chairman: Could I ask one question on that? I put this question as a former educator and as a non-smoker. We get bombarded with statistics and documentation. I have here in front of me

documentation on behalf of a vested interest in the tobacco industry, which makes the point that smoking prevalence is quite high in Ireland, despite Ireland being one of the strictest tobacco regulatory environments. The document cites the example of Germany which has seen youth smoking prevalence decline to 11.7% from 27.5%. In the context of education awareness programmes and what the National Tobacco Control Office is trying to achieve, is an educational awareness policy going to succeed in itself?

Mr. Gavin Maguire: Not in itself, but it is an important part of the overall strategy. I was going to give an overview on that in response to another question. Various strands have been identified in this document and also within the HSE's internal policy in regard to the implementation of actions in regard to tobacco, and perhaps I will come back to those.

Chairman: Yes.

Mr. Gavin Maguire: In terms of the points made about the general prevalence of smoking, internationally our figures compare quite favourably. I do not have the European figures to hand but have noted that we are at the lower end of the prevalence scale. According to the figures that I quoted there has been a steady decline and we think that we are moving in the right direction. We contend that a strong legislative base in this country - which will be further strengthened by the Bill - is a significant element in the decline.

I shall move on to some other questions. A question was asked about the prevalence of smoking but I have touched on the matter.

I have already answered the question on the penalties contained in the Bill. Deputy Neville asked what we are doing to help people addicted to smoking so I shall go into detail about our broad range of strategies. As I said in my opening statement, we have introduced various strategies to deal with the problem. Everybody is reasonably aware of our quit campaign. It has proven to be effective because there is a direct correlation between the scheme and the number of people seeking smoking cessation services. We provide a significant level of smoking cessation services. We also provide a quit line as a gateway service to the smoking cessation services. We use multiple opportunities to engage with patients and there is patient contact both in hospitals and primary care with regard to getting smokers to avail of smoking cessation services. We rigorously enforce the tobacco legislation through our environment health services. We had 38 prosecutions in 2013 and we will achieve a similar if not a greater amount in 2014.

We have a broad strategy in terms of tobacco reduction and two questions were asked. The first question was what we were doing for people who are already addicted. In terms of our overall strategy, we have the quit line, nicotine replacement products that are available free of charge on a medical card and we have a significant amount of smoking cessation services.

The other question in terms of tobacco reduction was what are we doing to stop children taking up the habit of smoking in the first place. The broad range of our activities are focused on the area. Our health promotion staff engage as far as they can, and within the resources available, by going into schools to alert and explain the dangers of tobacco smoke to children.

A significant element of enforcement is spent ensuring that retailers comply with the restrictions on sales to minors which forms a significant element of our prosecutions. In fact 17 of our prosecutions in 2013 were in this area alone. A range of measures have been designed to reduce the number of people experiencing their first cigarette. I do not think there is anything else to discuss.

Ms Laura Garvey: The only other topic for discussion is the nicotine replacement products that are now available on the medical card. Brief intervention training is a huge part of the work carried out by frontline staff in the HSE. We are the first contact that smokers have with the service so we try to encourage them to give up their smoking habit.

Chairman: Deputy Conway indicated that she wished to comment again.

Deputy Ciara Conway: My question was answered by Revenue when a member of its staff said that there are no blackspots and no place as bad as another. Does the Garda Síochána share that experience? Retailers have approached me and said that on examination of their books for any given week their takings for cigarette sales can be down by as much as €4,000. They can also see that there is a cycle of events. I have encouraged retailers to contact the organisations present in order that their information can be shared with joint policing committees and Revenue. Retailers have examined their books and compared one week's profits against another only to discover that their sales are down. They have also described how the illicit trade takes place. For example, calls are made from telephone boxes and a passing car drops a package at a location. Retailers through their retail experience are under the impression that the illicit trade in tobacco has had a more negative impact on their business than on other sectors.

Deputy Sandra McLellan: I have two questions that I wish to return to and one of them was not answered. Has the tobacco industry been implicated in any illegal tobacco trade? I wish to refer again to the KPMG report and the latest evidence from Australia. Earlier I asked for the organisations to comment on the report but I also asked if they knew who paid for the report. Since I asked my question I have received a note stating that it was paid for by a tobacco company called Phillip Morris. That is important information and I wanted to put it on the record. I ask the witnesses to address my two questions.

Chairman: I call the assistant commissioner.

Mr. Derek Byrne: I thank Deputy Conway for raising her concerns about illicit trade. I am not sure that there is a particular location geographically. It is our experience that it happens throughout the country and is quite widespread.

I shall refer to the issue surrounding telephone boxes. We have issues around small shops operating the trade under the counter. We have issues around door to door deliveries. We also know about telephone calls being made but I cannot say that it is confined to any particular area and to any particular time. We think that the problem is spread nationally and demand driven. We operate on the basis that community gardaí are tasked to stay in touch with their local communities in order to find out what is going on. The Deputy quite rightly mentioned that we have asked for the matter to be included on the agenda for the joint policing committees in order that we can examine the matter and build intelligence. That means that if ten packs are sold at a particular location then we can see if it correlates with another place and decide whether to mount an operation to find the big supplier that will hit at street level. That is the way we would tackle the problem.

In respect of the issue raised by Deputy McLellan, we have engaged with the tobacco industry, as we are required to do, in terms of our approach to tackling the whole problem. The Garda Síochána has no evidence to suggest that the industry is involved in any illegal activity. In so far as it goes in dealing with the tobacco products themselves, there is nothing to suggest that the industry is doing anything other than legal activity.

Mr. Gerard Moran: I wish to add to that statement and perhaps return to the question on blackspots. Revenue's experience is probably similar to that of the Garda. Earlier I attempted to say the following but perhaps I did not make my comments clear enough. We regard the matter as a geographically dispersed problem which fluctuates in different places from time to time depending on the availability of illicit cigarettes and the success, or otherwise, of our efforts to interrupt and disrupt the supply of tobacco products. As I said earlier, it is plausible to presume that there is a socio-economic dimension. It means that the activity is more intensive in some locations rather than others even within a very tight geographically defined area.

With regard to whether the tobacco industry has been implicated in illegal trade, we are not particularly aware that the major tobacco companies have been involved due to certain measures being put in place. I do not know but investigations may be taking place somewhere that may not have reached such a conclusion. The regime that was put in place some time ago, and to which I referred earlier, had a significant impact on the problem. The real growth area is in illicit and cheap white products where large volumes of meaningless brands are produced in far-off places that dwarf local demand. That is an entirely illegal operation in so far as destination countries are concerned.

We would need to have a track and trace regime and supply chain controls to have an impact in these source and transit countries.

Chairman: Does anybody else wish to contribute? Is everybody happy enough?

Deputy Ciara Conway: Yes.

Chairman: I thank most sincerely all of the delegates for their co-operation and strong testimony. This is the first of a series of meetings and hearings on the issue of plain tobacco packaging. I also thank members of the committee for their participation. I remind them that the Select Committee on Health and Children will meet on Tuesday next at 5.15 p.m. to discuss the health Estimate.

The joint committee adjourned at noon until 9.30 a.m. on Thursday, 30 January 2014.