

An updated review of business
compliance with the Nicotine Inhaling
Products (Age of Sale and Proxy
Purchasing) Regulations 2015

NIPS3 Review of business compliance conducted by Trading Standards Services in England

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Summary and Key Findings

This was a Department of Health & Social Care [DHSC] supported operation designed to assess compliance with the Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015. The operation was managed by the Chartered Trading Standards Institute [CTSI] it follows two previous compliance monitoring projects – NIPS1 and 2.

The Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015 came into force for all retailers 1st October 2015. The regulations made it illegal to sell products such as E cigarettes and E liquids that contain nicotine to young people under the age of 18 years. The maximum penalty for selling a nicotine inhaling product to a person under 18 years is a fine of £2500. If convicted and further offences occur in a two-year period, Trading Standards can make an application to a Magistrates' Court for a restricted premises order and/or a restricted sales order. To date no such orders have been sought.

This report details the results of over 400 test purchase attempts carried out across England made by young people under the age of 18 years, with a focus on the supply of disposable vaping products.

- A total of 442 tests were made to businesses during NIPS3
- Illegal sales were made on 145 occasions. This represents an overall non-compliance rate of 33% which is higher than the 25% non-compliance rate arising during similar testing carried out in 2016
- 40% of attempts to purchase made by test purchasers aged 16 resulted in a sale. The importance of requesting proof of age from young people that are near to the age of purchase cannot be stressed highly enough to businesses
- Of the products purchased by the young persons, 25% of these were assessed as being non-compliant with the Tobacco and Related Products Regulations 2016.

1. Introduction

The Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015¹ came into force for all retailers 1st October 2015. The regulations make it illegal to sell products such as E cigarettes and E liquids that contain nicotine to young people under the age of 18 years.

Between February and March 2022, a rapid review of business compliance was carried out by Trading Standards Services across England. This review was a Department of Health & Social Care supported operation designed to assess compliance with the Regulations with a specific focus placed on the supply of disposable vaping products. The operation was managed by the Chartered Trading Standards Institute.

A total of 442 compliance tests using young people under the age of 18 years were conducted at retail business premises.

2. Purpose

The purpose of this review to assess levels of compliance with the Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015 with a focus on those businesses that supply disposable vaping products. No coordinated enforcement activity has been carried out in this area since 2016 when two compliance operations were conducted² ; NIPS1 and NIPS2.

Data from the most recent national survey of Tobacco Control activities shows a sale rate of 32%.

¹ Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015. Available at: <http://www.legislation.gov.uk/ukxi/2015/895/contents/made> [accessed 5 May 2022]

² Rapid Review of compliance NIPS1 and NIPS 2: Published by CTSI, 2016 Available at: https://www.tradingstandards.uk/media/documents/policy/improving-the-health-of-society/nips_report_final_version-min-12.pdf [accessed 15 March 2022]
<https://www.tradingstandards.uk/media/documents/news--policy/tobacco-control/final-nips2-report.pdf> [accessed 15 March 2022]

FIGURE 10: UNDERAGE SALES: NICOTINE INHALING PRODUCTS - PERCENTAGE VISITS RESULTING IN ILLEGAL SALE

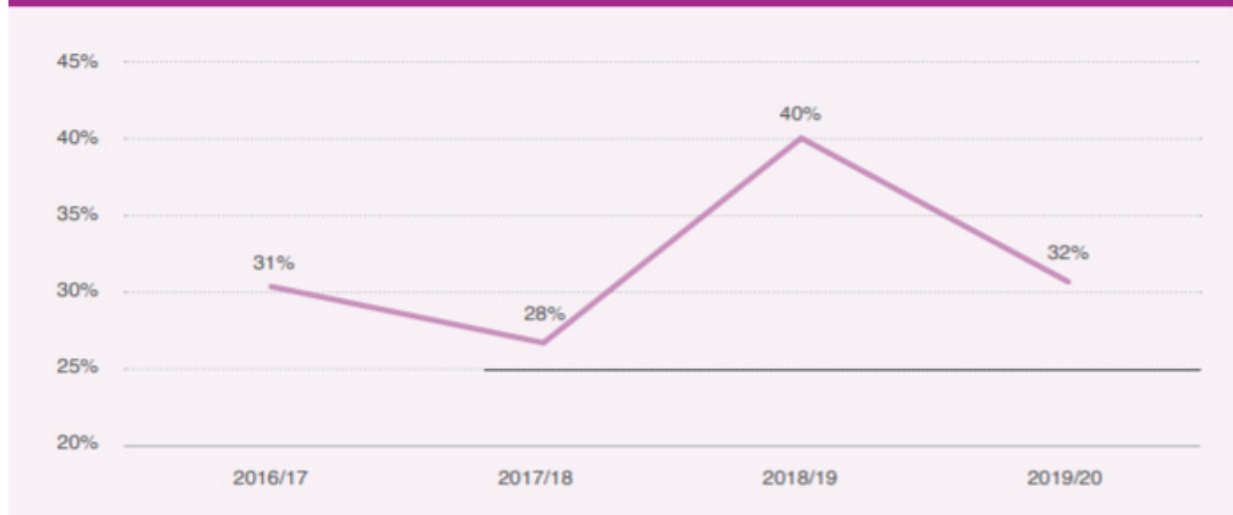


Chart 1: Under Age sales of products from the Tobacco Control Survey 2019-20: Chartered Trading Standards Institute³

3. Scope

This was designed to provide an assessment of business compliance. Much has changed since the last coordinated activity not least the availability of a wider range of products and flavours including disposable vaping products.

*"Disposable vapes are a cheap and simple way to try vaping for the first time. Incredibly popular with new vapers, these inhale activated vapes **require zero experience to use and don't need to be refilled or recharged**. In fact, for a lot of people, they are the only type of vape they'll ever need. A disposable is very compact and each device on average will outlast 20 cigarettes - at a fraction of the price.*

Each disposable will arrive prefilled with e-liquid and can be used straight out of the box, when empty it'll stop producing vapour and you can then replace it with another one. Pro Tip: these devices are so small it's easy to carry around a spare so you're never caught short "⁴ .

³ Tobacco Control Survey 2019-20 published by CTSI. Available at : <https://www.tradingstandards.uk/media/documents/news--policy/tobacco-control/ctsi-tobacco-report-2019-20.pdf> [accessed 5 May 2022]

⁴ Disposable vaping products : <https://www.vapeclub.co.uk/disposable-vape/> [accessed 15 March 2022]

All of the visits and tests have been carried out by Trading Standards Services [TSS] across a number of authorities in England. A variety of business premises including independent and large retailers, specialist E cigarette retailers and markets have been tested by way of a managed test purchase attempt using a young person under the age of 18 years. A total of 442 businesses have been tested.

4. Method

For the purposes of the coordination of trading standards matters there are nine regions in England. Each region was invited to carry out test purchasing.

Standard data was collected for each test as required by the review. Participants were also asked to photograph purchased items and to provide a set of the images to the CTSI.

Each region sent the collated results to the CTSI for analysis and reporting. Guidance for the completion of the visit was provided in advance to the TSS taking part in the study.

5. Findings & Results

The main purpose of this enforcement project was to test compliance with the age of sale requirement of the Regulations and where possible to request the test purchaser to attempt to buy a disposable product.

The following tables and charts provide details of the results of this review of compliance.

5.1 Overall compliance

A total of 442 tests were made to businesses during NIPS3; Illegal sales were made on 145 occasions. This represents an overall non-compliance rate of 33%.

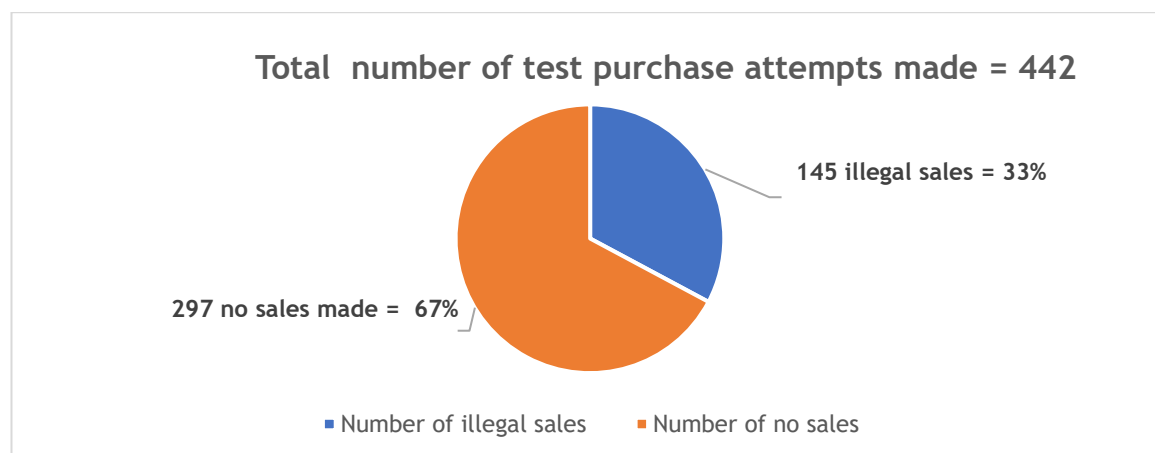


Chart 2: Overall business compliance

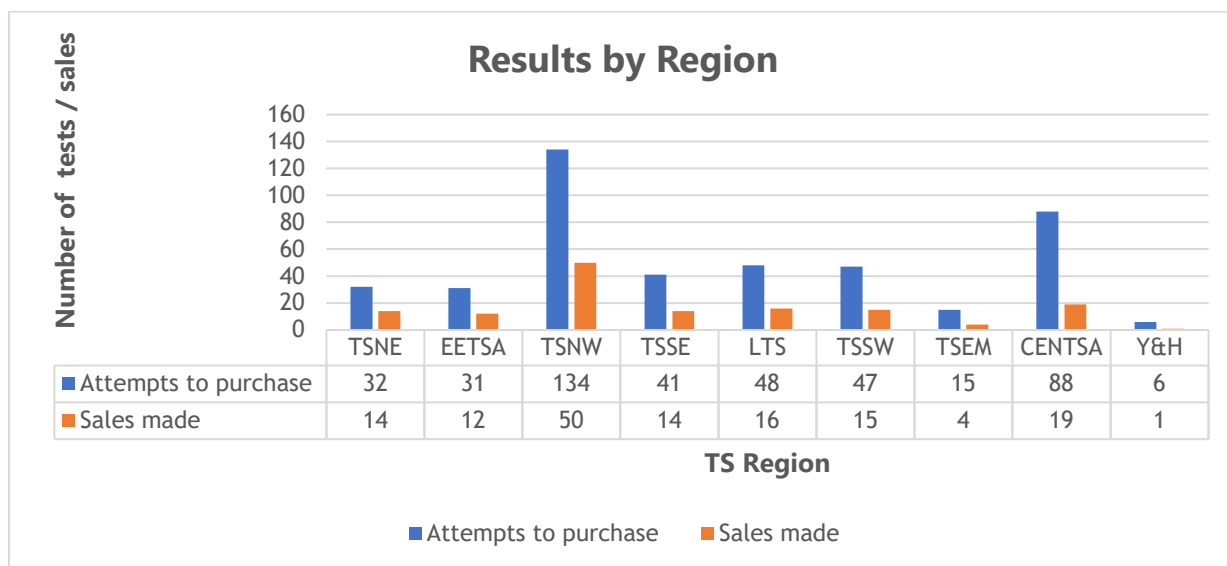


Chart 3: Results by Trading Standards Region

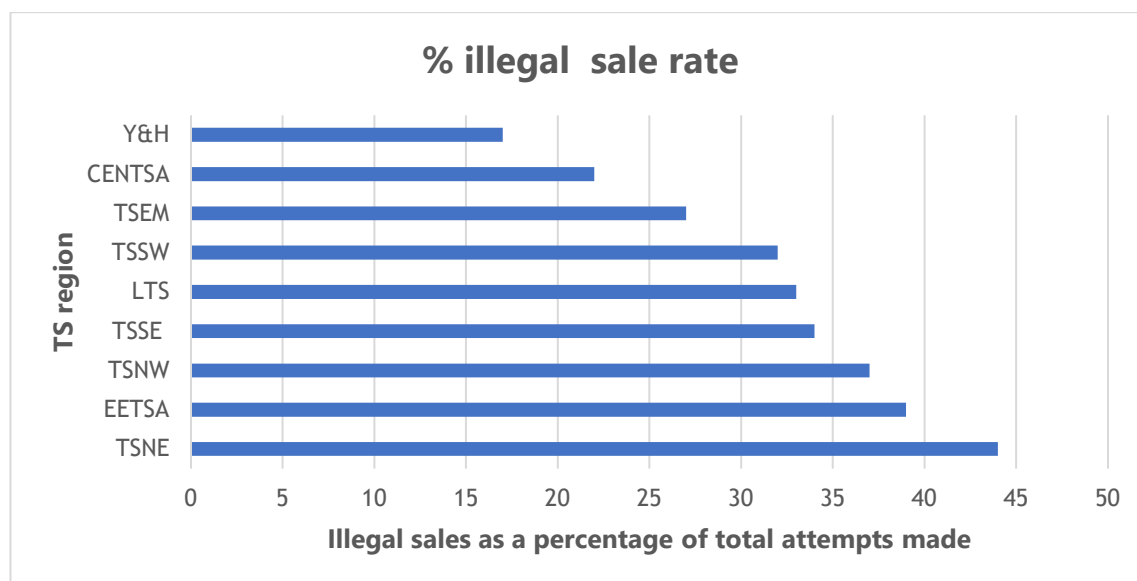


Chart 4: Percentage illegal sale rate by region

The illegal sale rate varied between regions. The North East region had the highest percentage illegal sale rate of 44%; with the Yorkshire & Humber Region having the lowest with 17%. However, it should be noted that the number of tests made in their region were limited.

Total number of illegal sales made = 145

Overall non-compliance rate of 33%

5.2 Compliance by business premises type (ALL Premises)

The total number of visits and tests made at different types of business premises varied between 1 made at an independent pharmacy and 202 made to convenience store / grocers. The percentage of illegals sales [non-compliance rate] should therefore be viewed in context of the number of attempts made.

Business Type	Total Attempts	Total Sales	% illegal sales
Convenience store/grocer	202	63	31%
Independent newsagent	81	22	27%
National newsagent	4	1	25%
Large retailer	11	4	36%
Discount shop	21	11	52%
Petrol station kiosk	7	3	43%
Market/car boot sale	3	3	100%
Pharmacy Independent	1	0	
Mobile Phone shop	20	10	50%
Specialist Ecigarette supplier	69	22	32%
Other	23	6	26%

Table 1: Attempts to purchase and illegal sales by business type (ALL)

5.3 Profile of test purchase volunteers and outcomes (ALL premises tested)

A range of young people (in terms of their age and gender) were recruited to work with Trading Standards Services in this review of compliance. The age range extended between 15 – 17 years with 166 tests undertaken by male volunteers and 271 by females (5 tests had no gender stated).

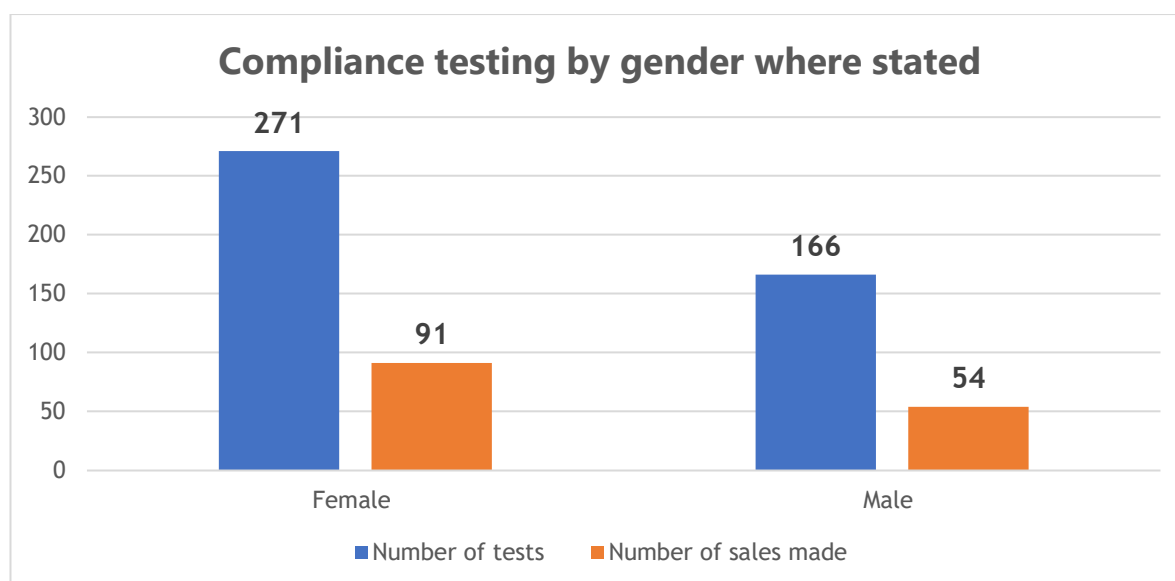


Chart 5: Compliance testing and outcomes by gender of purchaser (ALL)

The percentage illegal sale rate between female and male volunteers is similar at 34% and 33% respectively.

Age of Purchaser	Tests made	Sales made	% Sale Rate
15	217	58	27%
16	140	56	40%
17	79	26	33%

Table 2: Compliance testing and outcomes by age of purchaser (ALL)

5.4 Requests for Proof of Age made by businesses

Of the businesses that refused to sell a nicotine inhaling product to the test purchasers, a large number requested proof of age from the young person. 85% of businesses that did not sell requested proof from the purchaser.

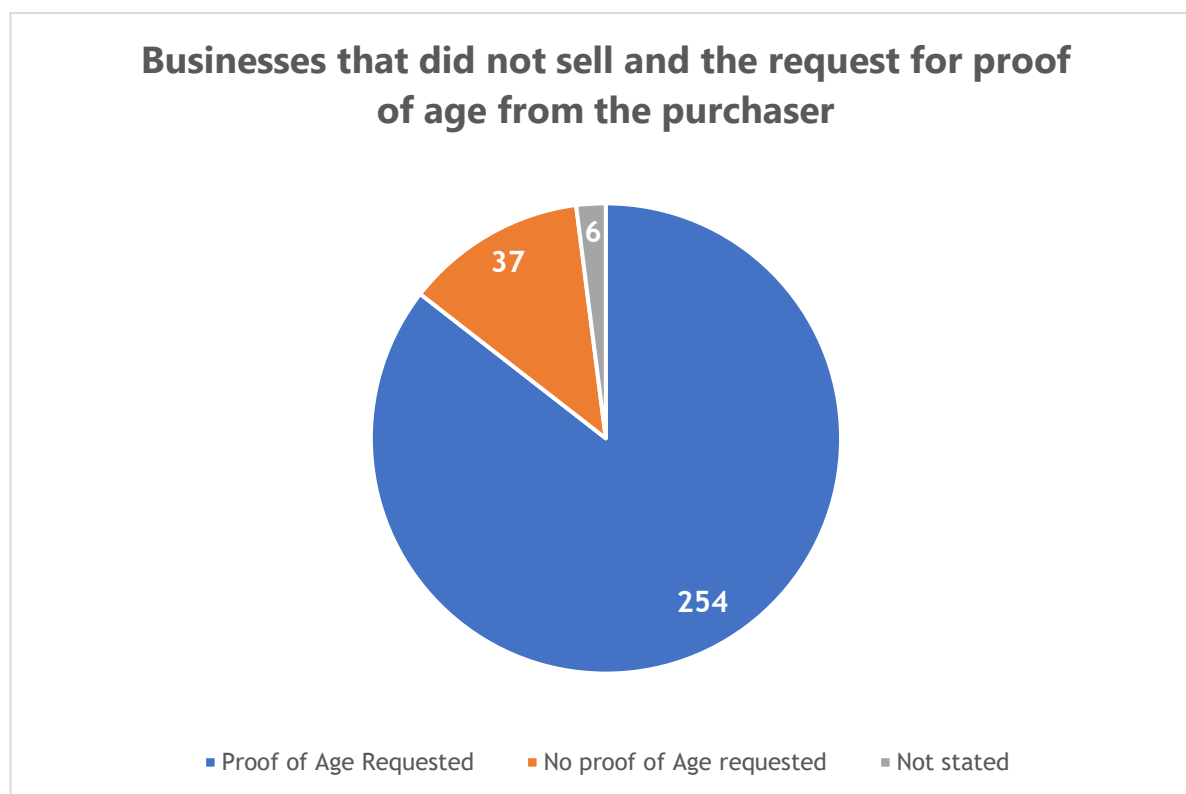


Chart 6: Refusals and requests for proof of age

5.6 Products purchased during compliance testing

The majority [90%] of products purchased by the volunteer test purchasers during compliance testing were disposable vaping products; as instructed at the commencement of this project. The remainder were E cigarettes and E liquids. See Annex 1 for examples.

5.7 Product compliance

A product compliance assessment was made of each product that was purchased; assessment was made against the requirement of the Tobacco and Related products Regulations 2016⁵. Of products assessed; 25% were found to be non-compliant with 75% being compliant.

6. Observations

The following observations are made in respect of this review of compliance:

1. This review was conducted several years post original reviews and again a disappointing level of non-compliance has been found.
2. An overall non-compliance rate of 33% represents an unacceptably high level of illegal sales to young people under 18 years. At the time of testing the regulations had been in force for over 6 years. For comparison purposes the illegal sale rate of tobacco to young people under 18 years of age was found to be 15%.⁶
3. There was no difference in the percentage of illegal sales made to male and female volunteers. 40% of attempts to purchase made by test purchasers aged 16 resulted in a sale. The importance of requesting proof of age from young people that are near to the age of purchase cannot be stressed highly enough with businesses. It remains a very difficult task for retailers to correctly identify the age of a purchaser without genuine proof.
4. The proportion of businesses that refused to sell the products to the test purchaser and that requested proof of age is encouraging, 85% of businesses. This is the approach that is advocated by the CTSI guidance and demonstrates good practice for all retailers of age restricted products. Where businesses do not adopt an age challenge policy, they are open to making illegal sales.
5. The majority of visits and tests were again carried out at convenience stores / grocers highlighting the fact that these products are widely available; given the nature of these businesses one might expect them to be experienced in requesting proof of age since they are likely to sell other age restricted products such as tobacco, alcohol and fireworks. The number of illegal sales made by such businesses is therefore surprising.
6. Mobile phone shops and discount shops had high levels of sales; 50% and 52% respectively. This

⁵ Tobacco and Related Products Regulations 2016 Available at : <https://www.legislation.gov.uk/uksi/2016/507/contents/made> [accessed 5 May 2022]

⁶ Tobacco Control Survey 2019-20 published by CTSI. Available at : <https://www.tradingstandards.uk/media/documents/news--policy/tobacco-control/ctsi-tobacco-report-2019-20.pdf> [accessed 5 May 2022]

may be linked to an unfamiliarity with requesting proof of age from purchasers. Although the attempts to purchase from markets / car boot sales was very small, each attempt resulted in a sale; there would appear to be little or no control over supply from this sector.

7. The range of products purchased was limited where possible to disposable vapes; these are the “product of the moment” and clearly the volunteer purchasers found it relatively easy to obtain supplies.

7. Recommendations

The following recommendations are made in light of the findings of this review of business compliance by Trading Standards Services:

- **CTSI & DHSC** -To publicise the findings of this report; noting in particular the importance of requesting proof of age before agreeing to supply a nicotine inhaling product to a young person.
- **DHSC** - To collaborate with appropriate industry bodies and trade associations to determine how to improve business compliance with their members.
- **DHSC** – To share the findings of this review of compliance with the independent review team
- **TSS** - To determine appropriate action in accordance with local policy and procedures for businesses that have made a sale.

Acknowledgements

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Key to Trading Standards Regions

EETSA : East

CENTSA : Central [Midlands]

TSEM : East Midlands

TSNW : North West

TSNE/ NETSA : North East

TSSW: South West

TSSE: South East

LTS : London

Y&H : Yorkshire & Humber

Annex 1

Examples of products purchased by young people under 18 during this review :

