

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

**Updated: NIPS2
Review of business
compliance
conducted by
Trading Standards
Services in England**

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Chartered Trading
Standards Institute

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Summary and Key Findings of NIPS2

This was a Department of Health 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.

The Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015 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. 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, TSS can make an application to a Magistrates' Court for a restricted premises order and/or a restricted sales order.

This report details the follow up visits and tests made as a result of the review of business compliance conducted by Trading Standards Services earlier in 2016 when 246 illegal sales (39% of all attempts to purchase) of nicotine inhaling products were made to young people under 18 years of age.

- A total of 260 follow-up visits and tests were made to businesses during NIPS2. The visits comprised of businesses that sold illegally during the first round of compliance testing (61% of the total) as well as a number of new premises. In advance of this second phase of testing, businesses were provided (where possible) with tailored advice and display materials prior to a further testing using young people under the age of 18 years.
- Illegal sales were made on 65 occasions; 40 of which were made by premises that had made illegal sales previously. This represents an overall non-compliance rate of 25% which is lower than the 39% resulting from NIPS1. Where no sale was made, 90% of the businesses had asked the test purchaser for proof of age; these results may be seen as encouraging.
- The non-compliance rate varied between business type and the "status" of the business; defined in this report as: NIPS1, OTHER or NEW, for example, the rate for businesses that had made a sale during NIPS1 was 20% compared to a non-compliance rate of 30% for premises with a status classified as NEW.
- Where a second illegal sale has been made, TSS have been advised to consider further action in accordance with their own local enforcement policies and procedures .

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 January and March 2016, a rapid review of business compliance was carried out by Trading Standards Services across England². This review was a Department of Health supported operation designed to assess compliance with the new Regulations. The operation was managed by the Chartered Trading Standards Institute.

A total of 634 compliance tests using young people under the age of 18 years were conducted at retail business premises. Compliance with the age of sale aspect of these Regulations was found to be disappointingly low, with illegal sales made on 246 occasions from a wide variety of business premises including: Independent pharmacies, specialist E cigarette suppliers, discount stores and markets. This represents an overall non-compliance rate of 39%.

One of the recommendations of the review was for:

- **CTSI & DH** – *To consider commissioning further compliance testing of a sample of businesses that failed to comply during this review PLUS additional testing of businesses from the categories of business with the highest failure rates i.e. markets, independent pharmacies, discount stores and specialist E cigarette suppliers.*

This updated review is designed to meet the recommendation to re-test businesses that failed to comply during initial compliance monitoring.

2. Purpose

The purpose of this review is to assess levels of compliance with the Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015 with priority given to those businesses that made an illegal sale (of a nicotine inhaling product) to a young person under 18 years during the initial rapid review. A number of other businesses (not previously tested OR part of the initial review) have also been tested to provide a comparison.

¹ Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015. Available at: <http://www.legislation.gov.uk/ukxi/2015/895/contents/made> [accessed 20 October 2016]

² Rapid Review of compliance. Published by the CTSI (2016). Available at: <http://www.tradingstandards.uk/policy/Improvingthehealthofsociety.cfm> [accessed 20 October 2016]

The charts below provides a break down by region of the results of the initial review of compliance carried out during January – March 2016, and the percentage of illegal sales made in each region.

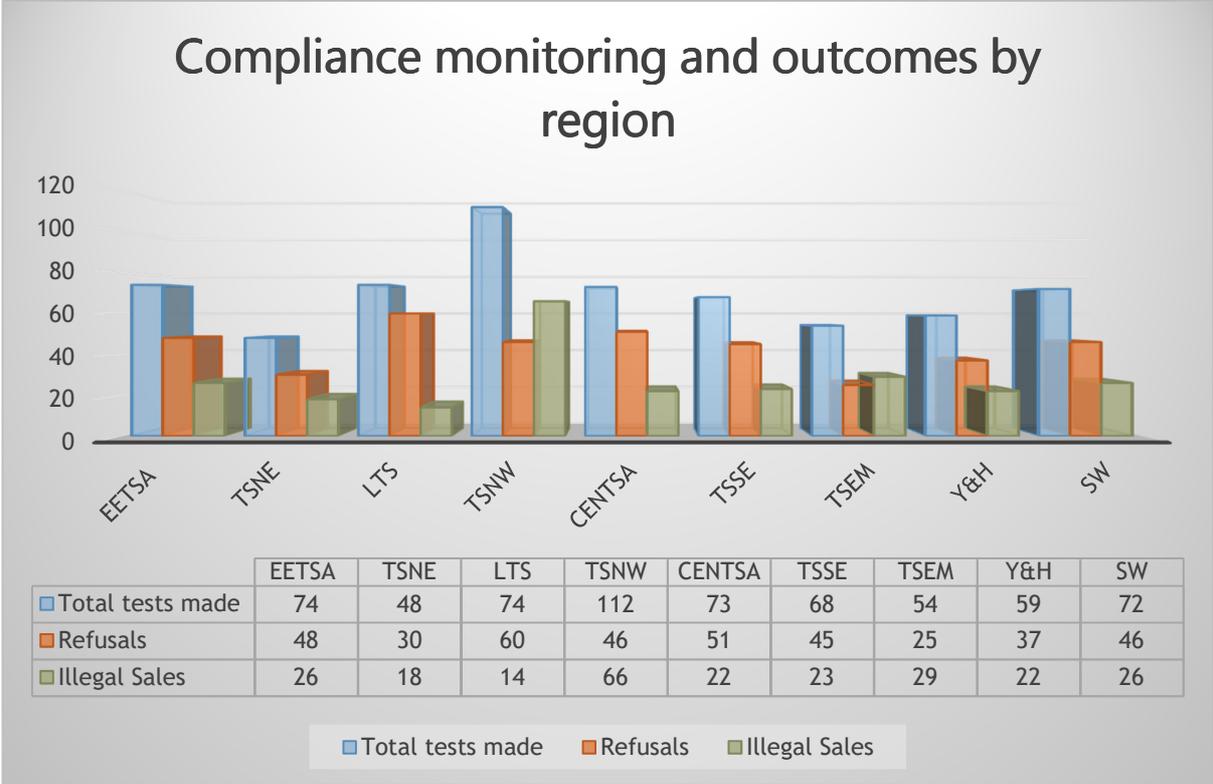


Chart 1: Compliance monitoring and outcomes by region (January – March 2016)

Region	Percentage of test purchase attempts that resulted in an illegal sale to a young person under the age of 18 years
London	19%
North West	59%
Eastern	35%
East Midlands	46%
South East	34%
South West	36%
North East	37.5%
Yorkshire & Humber	34%
Central Midlands	30%
Overall	39%

Table 1: Percentage of test purchase attempts that resulted in an illegal sale to a young person under the age of 18 years by region (January – March 2016)

3. Scope

This was designed to provide an assessment of business improvement by way of a follow up with businesses that made an illegal sale during the initial compliance testing. The visits and tests have been carried out during the months of July – September 2016.

All of the follow up 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 visited and provided with tailored business advice and materials prior to a test purchase attempt using a young person under the age of 18 years. A total of 260 businesses have been advised and 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 follow up work with the businesses that made an illegal sale of a nicotine inhaling products during the initial review of compliance earlier in 2016.

Where ever possible, each business received an advisory visit with the provision of bespoke business guidance and materials (see Appendix 1 and 2 for details) followed by an attempt by a young person under 18 years to purchase a nicotine inhaling product as instructed by Trading Standards. Wherever possible the same young person was to be involved as in the first review or similar.

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 Chartered Trading Standards Institute (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 project was to provide guidance and then re-test businesses that were found to be non-compliant during the first phase of testing. The results for this secondary review are presented as a picture of compliance across England.

The following tables and charts provide details of the results of this review of compliance. Each section states whether the data is applicable to all premises tested or to NIPS1 only.

5.1 Compliance by designation of business

There are 3 categories of business defined:

NIPS1 – these premises had all been tested during the NIPS1 review and had made an illegal sale of a nicotine inhaling product to a person under the age of 18 years. This was therefore a second attempt to purchase products from these premises. 161 premises were designated “NIPS1”.

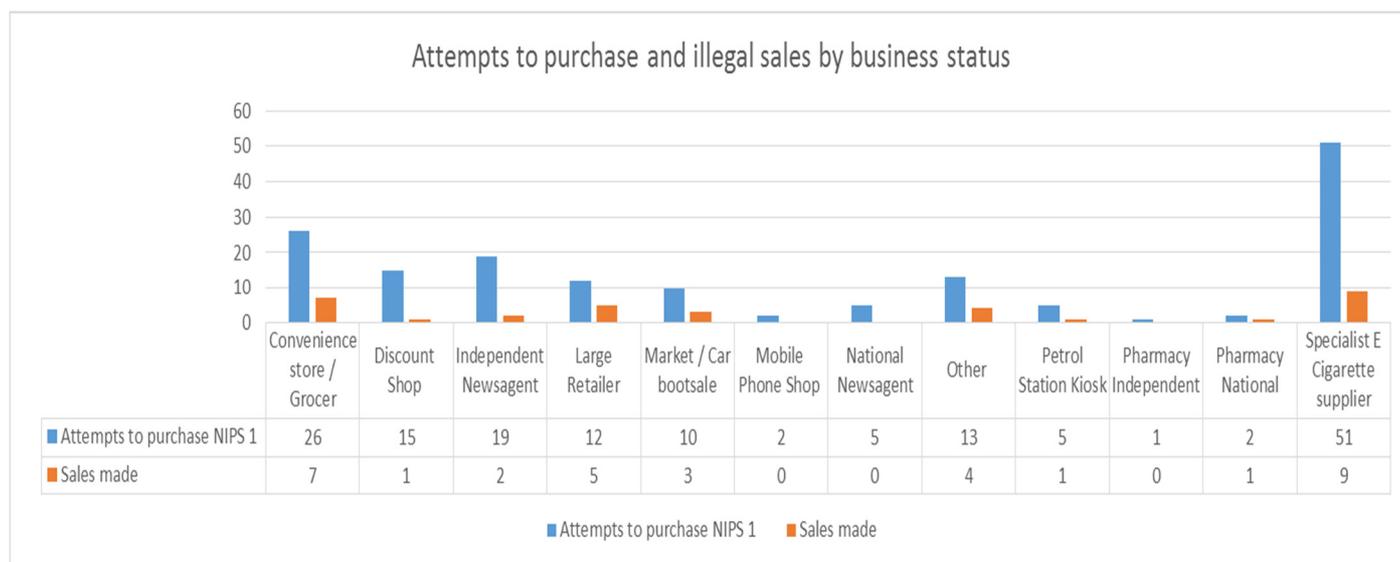


Chart 2: Attempts to purchase and illegal sales by business status NIPS1

Total number of illegal sales made = 33

Overall non-compliance rate of 20%

OTHER – these premises had also previously made an illegal under age sale BUT were not part of the original NIPS1 project. 16 premises were designated “OTHER”.

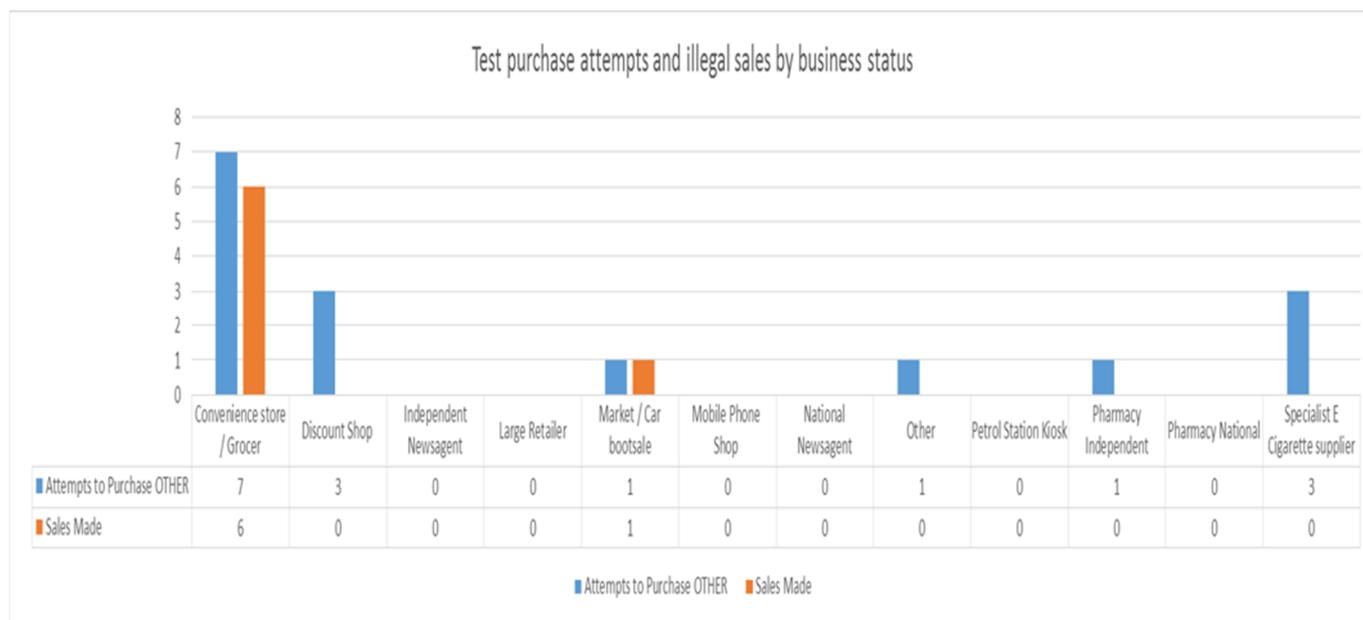


Chart 3: Attempts to purchase and illegal sales by business status OTHER

Total number of illegal sales made = 7

Overall non-compliance rate of 43%

NEW – these premises were all previously untested. Test purchase attempts using young people under the age of 18 years were made at these premises between August and September 2016, almost 10 months post implementation of the Regulations. 83 premises were designated “NEW”.

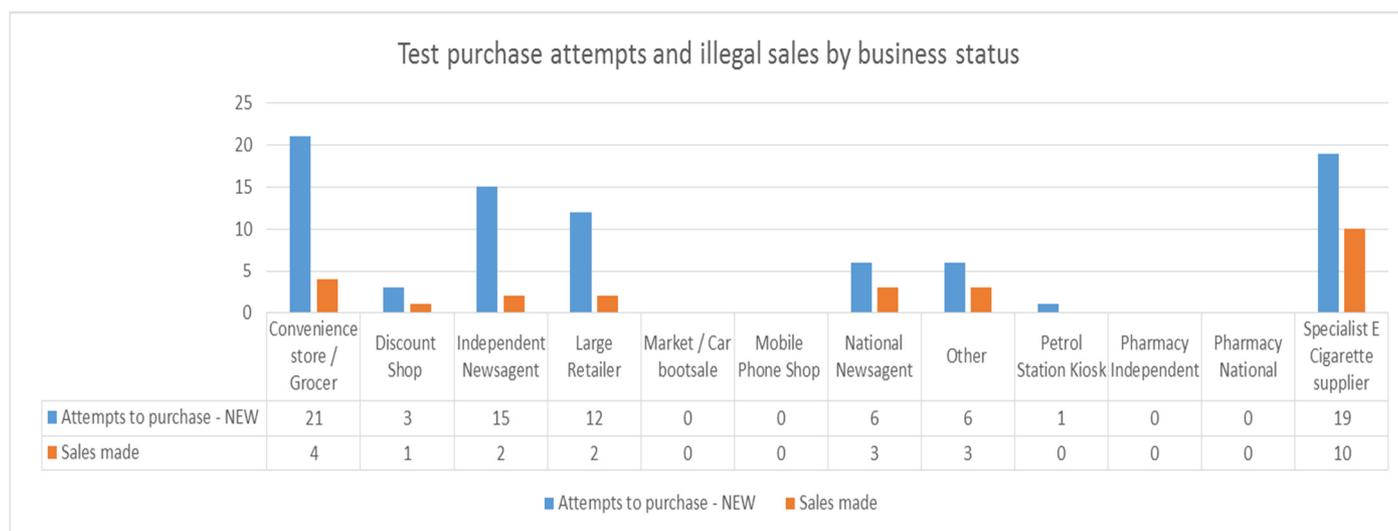


Chart 4: Attempts to purchase and illegal sales by business status NEW

Total number of illegal sales made = 25

Overall non-compliance rate of 30%

Taking account of all tests that were carried out across the three different groups, the overall rate of non-compliance in businesses selling nicotine inhaling products was found to be 25%.

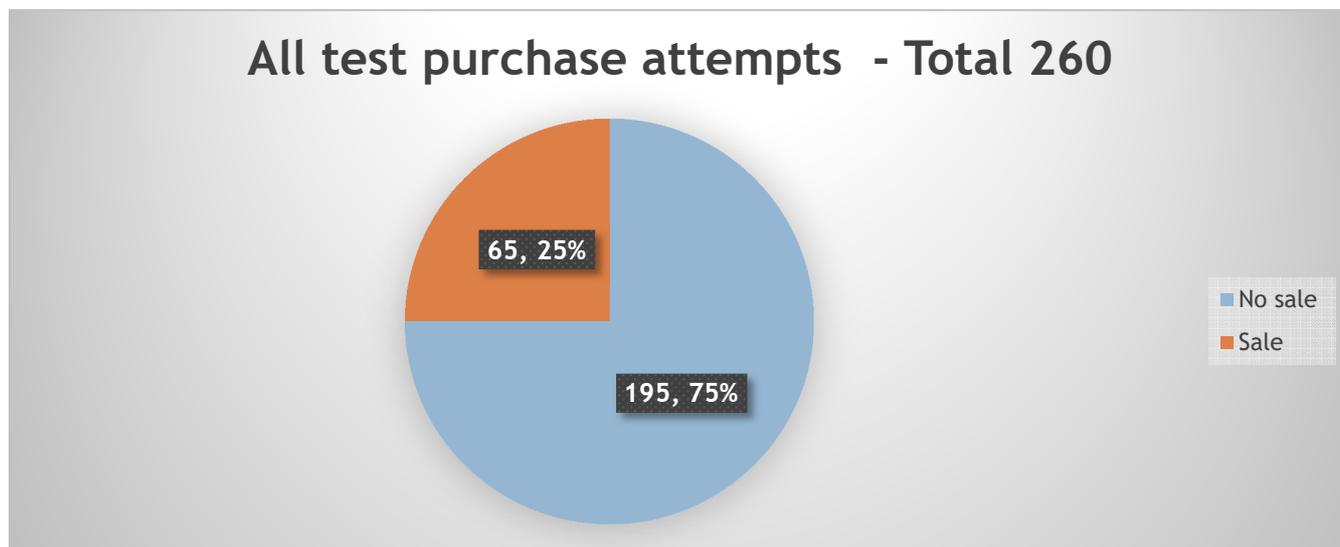


Chart 5: Attempts to purchase and illegal sales by ALL businesses

Total number of illegal sales made = 65 Overall non-compliance rate of 25%

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 2 made at mobile phone shops, national and independent pharmacies to 73 made to specialist E cigarette suppliers. The non-compliance rate should therefore be viewed in context of the number of attempts made.

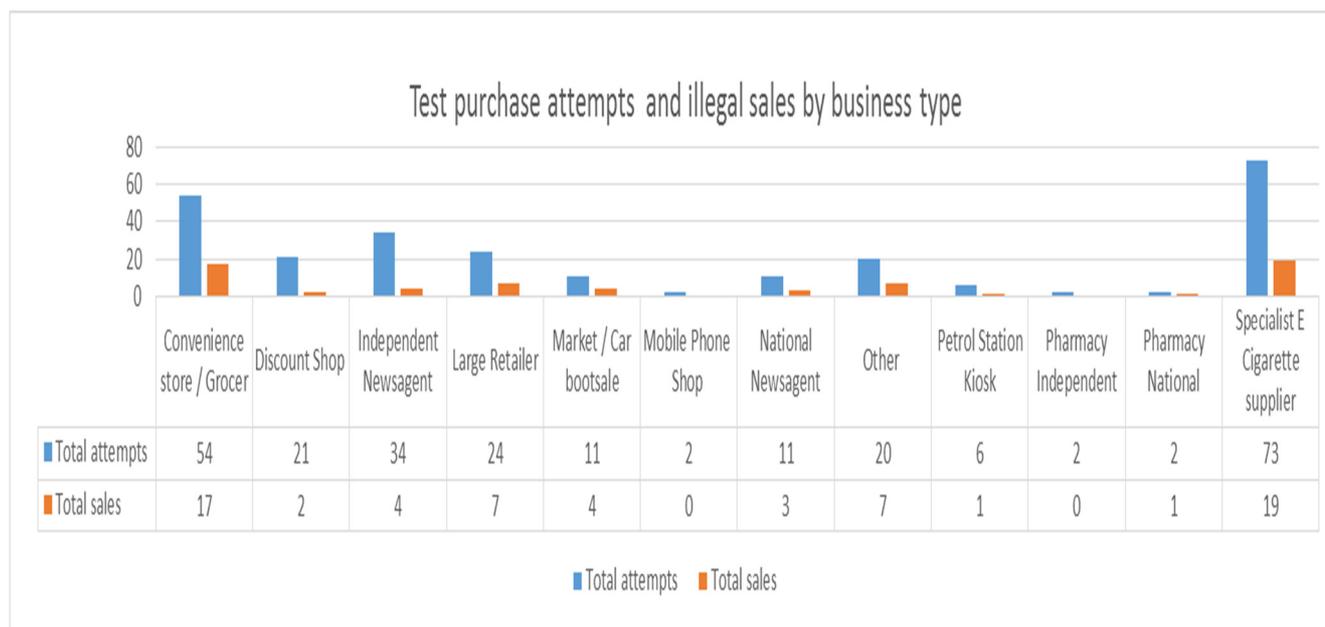


Chart 6: Attempts to purchase and illegal sales by business type (ALL)

5.2.1 Comparison of testing and results by business type between NIPS 1 and NIPS2

Premise type	NIPS1 (Jan- March 2016)	NIPS2 (July – September 2016)
Specialist E cigarette supplier	50%	26%
Large retailer	30%	30%
Convenience store / grocer	27%	32%
National newsagent	20%	30%
Independent newsagent	34%	13%
Pharmacy National chain	43%	50%
Pharmacy Independent	53%	0
Market stall /car boot sale	68%	40%
Petrol station kiosk	27%	20%
Discount store	49%	10%
Mobile Phone shop	18%	0
Other	56%	35%

Table 2: Comparison of percentage of tests that resulted in an illegal sale by business type during NIPS1 and NIPS2

5.3 Sources of business advice and guidance for businesses that had previously made an illegal sale (NIPS1 only)

Prior to the test purchase attempt being made, a visit to the NIPS1 premises was made by Trading Standards and further advice and information provided to the business. Representatives of the business were asked to identify their primary source of information and advice for legislative matters.

The following chart identifies these sources.

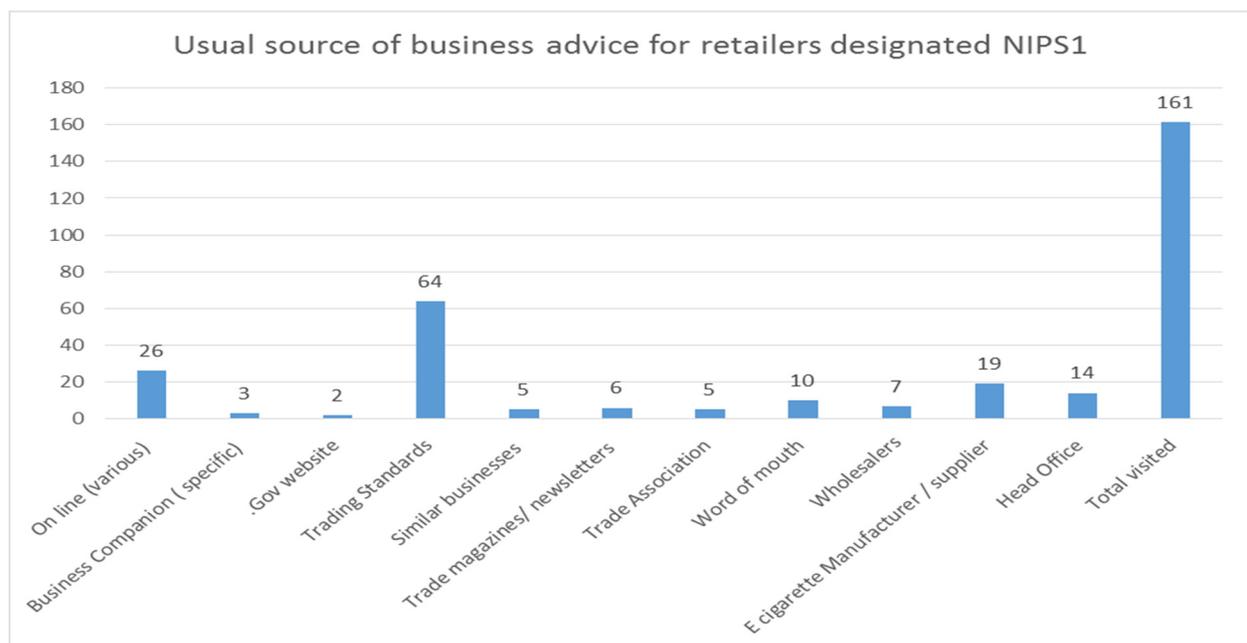


Chart 7: Usual source of business advice as stated by NIPS1 premises

5.3.1 Illegal sales by business type and source of guidance / advice

The top 3 cited sources of advice and guidance by NIPS1 business premises were:

1. Trading Standards
2. On-line sources
3. Manufacturer / supplier of the nicotine inhaling products

64 businesses (39% of those visited) stated that their primary source of guidance / advice was Trading Standards. This is perhaps not surprising given that advisory visits had been made to each premises as part of this review. Of those businesses that stated this, 13 made a further illegal sale during testing.



Chart 8: Primary source of guidance – Trading standards & illegal sales made

26 businesses (16% of those visited) stated that their primary source of guidance / advice were on-line sources (various). Of those businesses that stated this, 3 made a further illegal sale during testing.

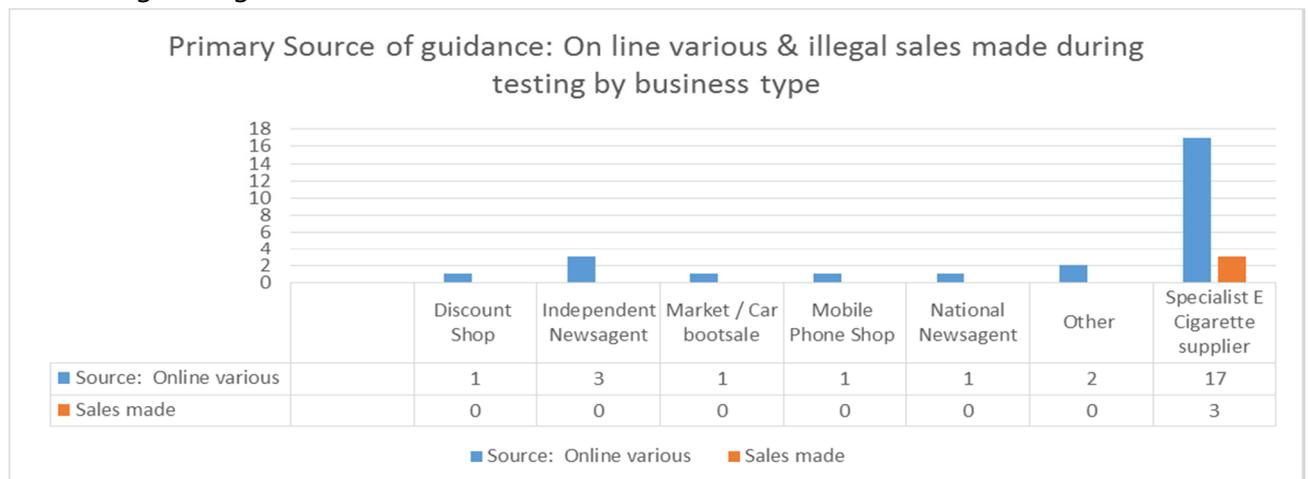


Chart 9: Primary source of guidance – On line & illegal sales made

19 businesses (12% of those visited) stated that their primary source of guidance / advice was manufacturer or supplier of E cigarettes. Of those businesses that stated this, 5 made a further illegal sale during testing. 3 out of 4 convenience stores that cited they had received advice from this source were non-compliant.

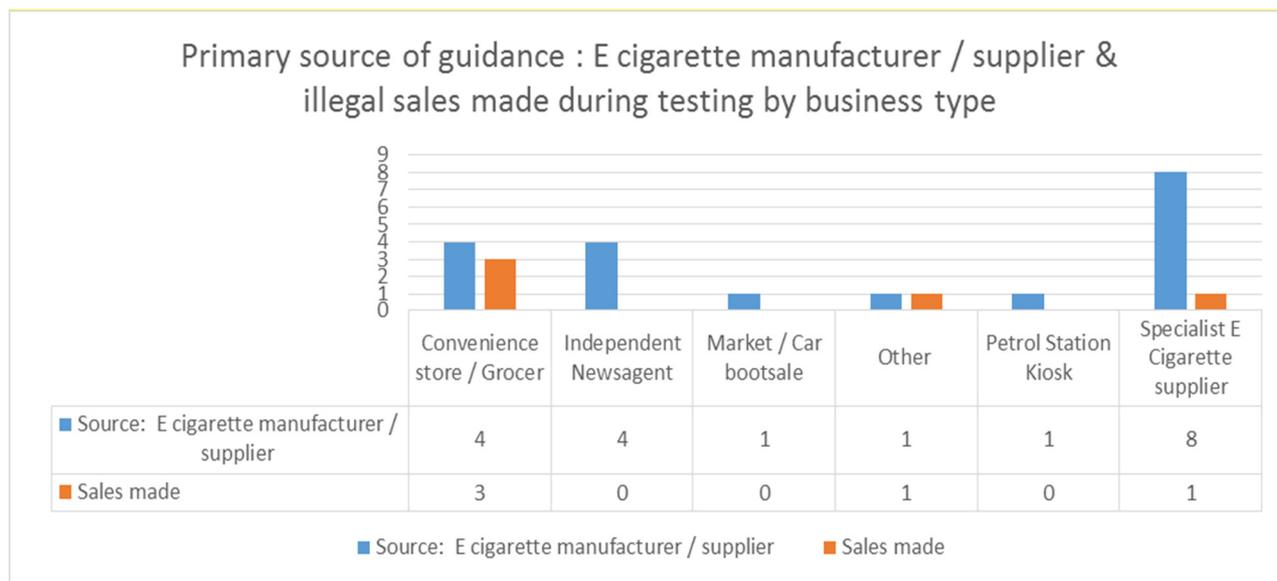


Chart 10: Primary source of guidance – E cigarette manufacturer / supplier & illegal sales made

5.4 Display of advisory materials (NIPS1 only)

Businesses were visited in advance of testing and provided with materials to support compliance this included a guidance note and a poster. Of the 161 premises designated “NIPS1” and the primary focus of this report, almost half of the premises were found to have the advisory poster on display at the time of the test purchase attempt.

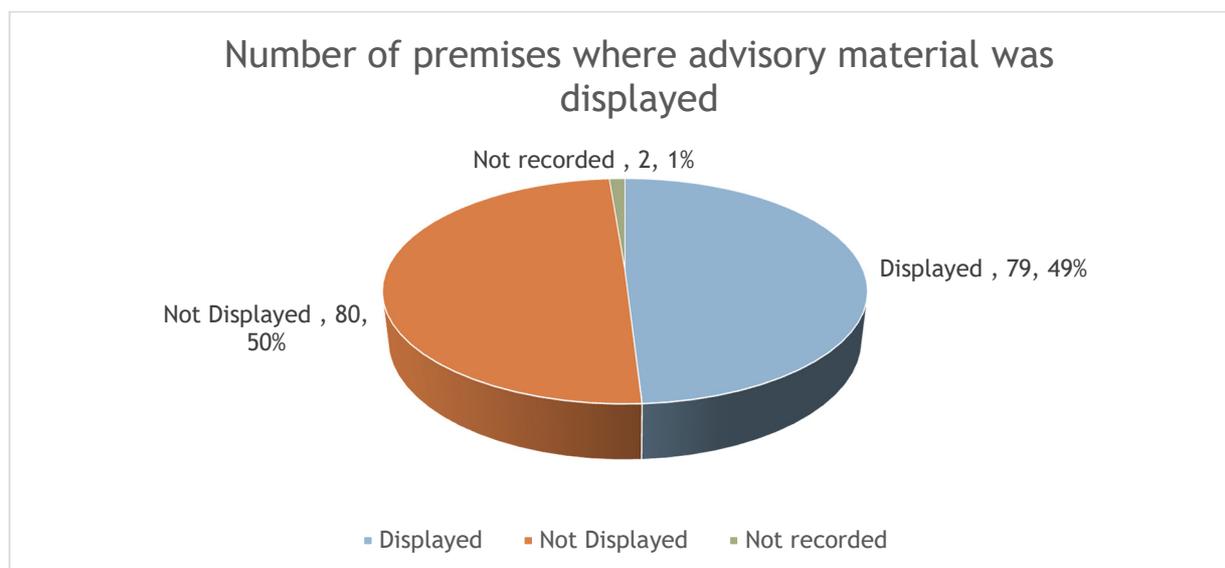


Chart 11: Number of premises displaying advisory materials (NIPS1)

5.4.1 Display of advisory materials by compliant businesses

121 businesses were found to be compliant during testing of these half were found to be displaying the advisory material.

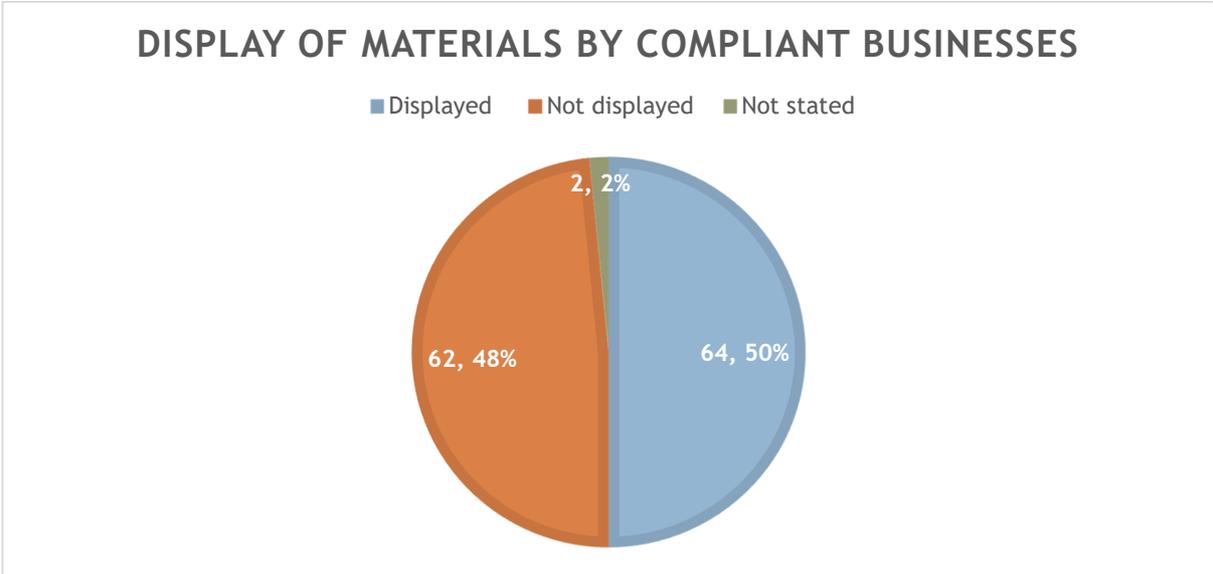


Chart 12: Display of advisory materials by compliant businesses (NIPS1)

5.4.2 Break down of compliant businesses displaying advisory materials

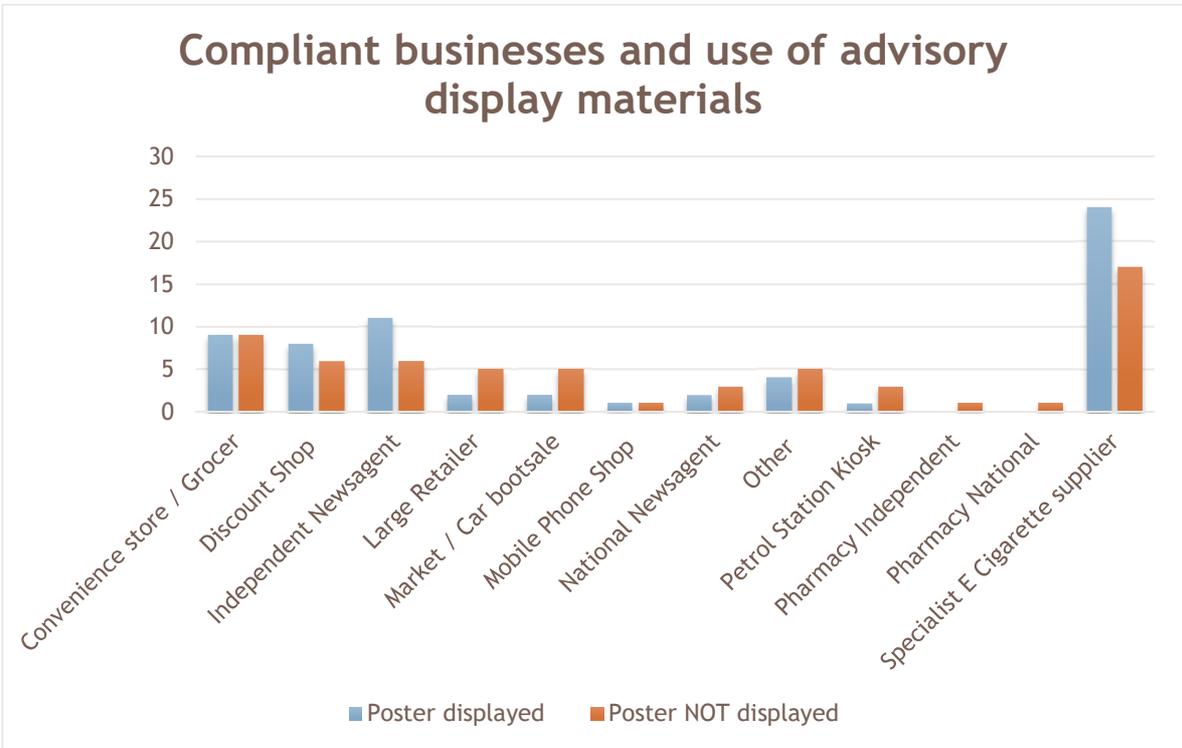


Chart 13: Display of advisory materials by business type (NIPS1)

5.4.3 Display of materials by non-compliant businesses

Of the 33 NIPS1 premises that made an illegal sale during this review, 18 were not using the advisory materials. Although the advisory materials were displayed, 15 businesses sold to the test purchasers.

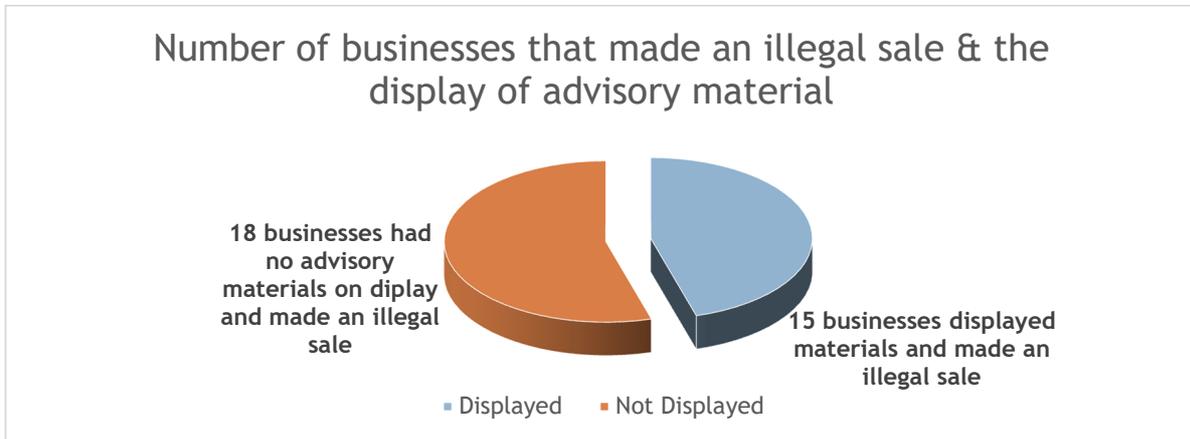


Chart 14: Non-compliant businesses and the display of advisory materials (NIPS1)

5.5 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 second review of compliance. Where possible, volunteers that had participated in the first review, were recruited again thus minimizing the variable introduced by a different test purchaser.

Where this was not possible, a volunteer of similar age and gender was requested. The age range extended between 15 – 17 years with 143 tests undertaken by male volunteers and 115 by females (2 test had no gender stated).

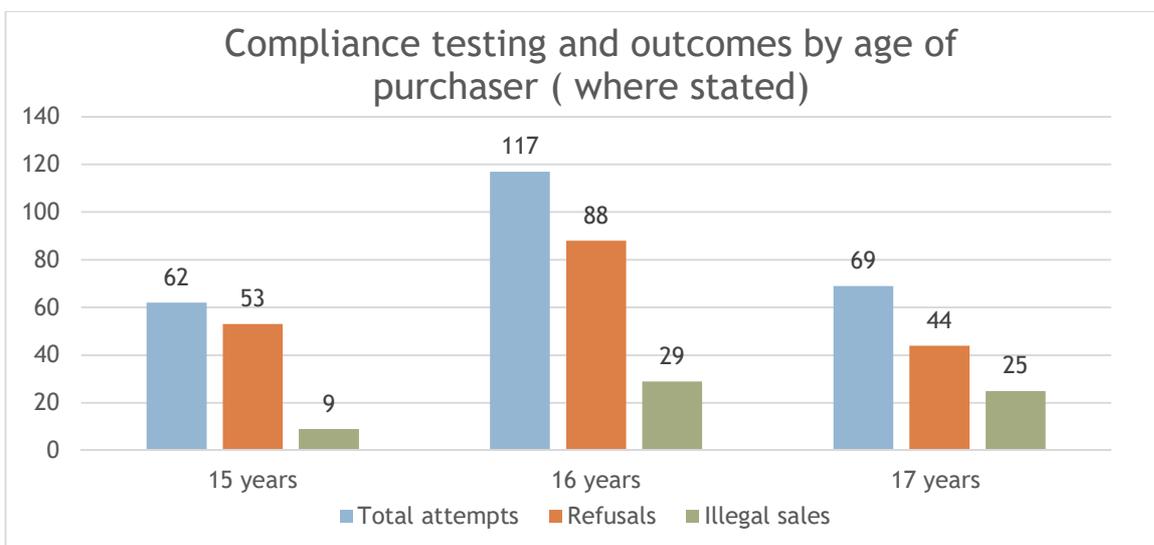


Chart 15: Compliance testing and outcomes by age of purchaser (ALL)

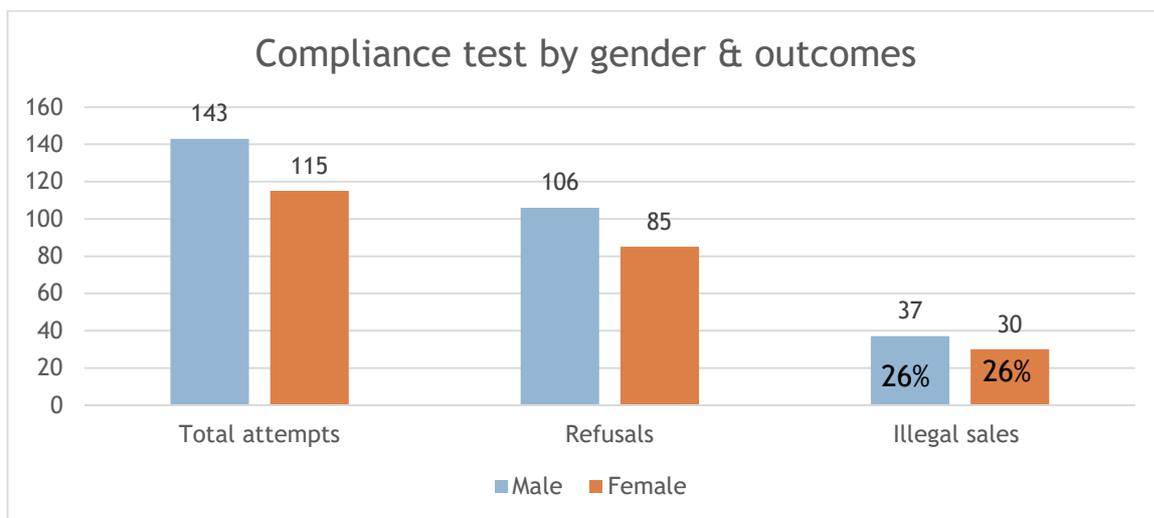


Chart 16: Compliance testing and outcomes by gender of purchaser (ALL)

5.5.1 Requests for Proof of Age made by businesses (NIPS1 only)

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. Almost 90% of businesses that did not sell requested proof from the purchaser.

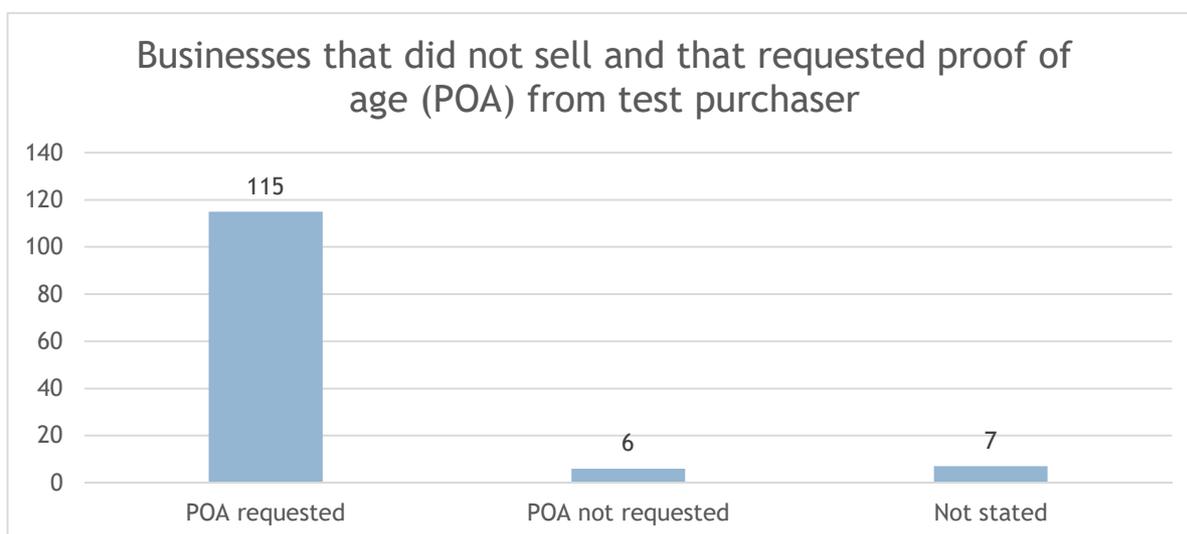


Chart 17: Refusals and requests for proof of age (NIPS1)

5.6 Products purchased during compliance testing (ALL premises tested)

A range of products were purchased by the volunteer test purchasers during compliance testing this is outlined in the chart below.

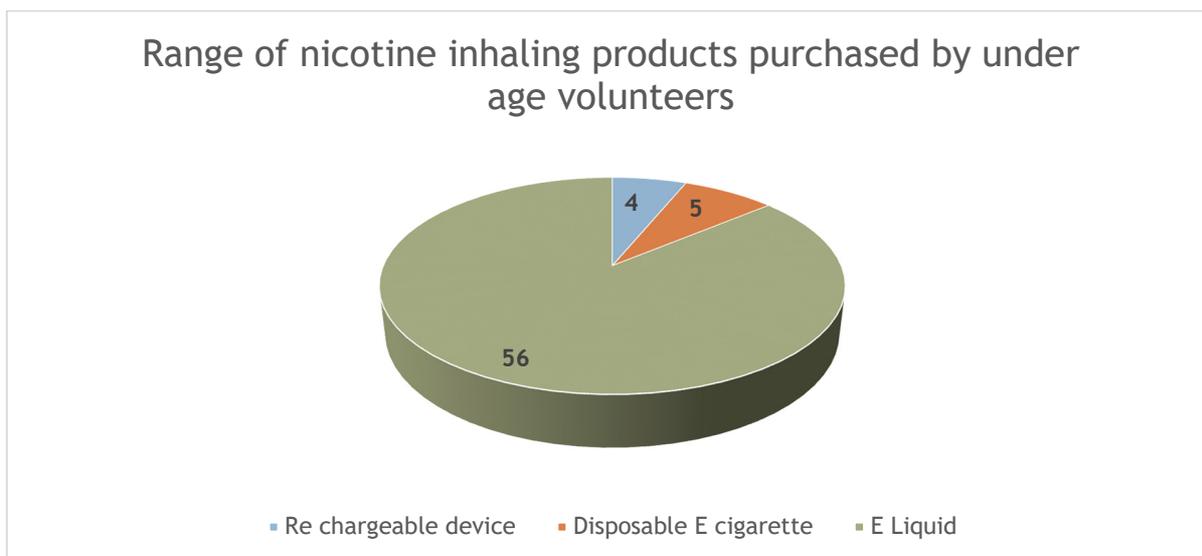


Chart 18: Products purchased by under 18s during testing (ALL)

The majority of the products purchased in this second review were again e-liquids, this is primarily a feature of price with such products being considerably less expensive to purchase.

6. Observations

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

1. This review was conducted as a result of the disappointing level of compliance found in the first phase of compliance monitoring.

2. Where possible, each business that made an illegal sale during NIPS1 has been revisited and re-tested. Each of these businesses was found to be non-compliant in the first round of testing during NIPS1. During NIPS2 80% of these previously non-compliant businesses complied during testing and thus although there were further illegal sales made (by 20% of those businesses tested) this may be seen as significant progress. The non-compliance rate in the businesses designated NEW is higher at 30% with an even higher rate of 40% in those businesses designated OTHER. The reason for the high rate of the latter category has not been further explored however, it is noted that the majority of the OTHER category visits were undertaken in the London region to convenience stores / grocers.

3. An overall non-compliance rate of 25% still 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 approximately 10 months. For comparison purposes the illegal sale rate of tobacco to young people under 18 years of age is 10%.³

³ Tobacco Control Survey 2015-16 published by CTSI. Available at : <http://www.tradingstandards.uk/policy/Improvingthehealthofsociety.cfm> [18 November 2016]

4. Businesses were asked to cite their primary source of guidance for legislative matters and in particular for the sale of nicotine inhaling products. Further examination may be required to determine the effect of different sources of advice on business behaviour. The data for NIPS1 premises suggests that in the case of convenience stores / grocers, those that cited trading standards as their primary source of advice went on to make fewer illegal sales than those that cited E cigarette manufacture / supplier as their main source of guidance. This could be a function of both message and method of delivery as the converse is true for specialist E cigarette businesses where more illegal sales were made when Trading standards was cited as the primary source than when the E cigarettes supplier / manufacturer was cited . Different businesses it would seem have different needs when it comes to advice and guidance.
5. Most businesses that were visited in advance were provided with materials to display in their premises, these were designed to dissuade under age purchasers from attempting to buy products and to assist the retailer by acting as a reminder of the legal requirements. Unlike tobacco sales, there is no statutory requirement to display a notice in the premises. Half of the businesses found to be compliant displayed this poster ; it appears from the data derived from NIPS1 businesses that the materials may be more relevant and useful for smaller independent businesses as opposed to larger businesses that may be constrained by company policy with regards to what materials can be displayed in the business. Use of advisory posters in small business premises is not new (Challenge 25 for example) and maybe seen as a useful aid in deterring illegal sales.
6. There was no difference in the percentage of illegal sales made to male and female volunteers. 36% of attempts to purchase made by test purchasers aged 17 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.
7. The proportion of business that refused to sell the products to the test purchaser and that requested proof of age is encouraging, 90% of businesses in the NIPS1 category. This is the approach that is advocated by the CTSI guidance and demonstrates good practice for all retailer of age restricted products.
8. The majority of visits and tests were again carried out at specialist E cigarette businesses, convenience stores and independent newsagents. It is encouraging to note that in two of these business categories there has been an improvement in compliance with fewer illegal sales being made by specialist E-cigarettes suppliers and Independent newsagents.
9. The range of products purchased was limited by the cost of purchase. Most TSS instructed their test purchasers to attempt to purchase E liquids as these were less expensive to buy than for example re-chargeable E cigarettes.

7. Recommendations

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

- **CTSI & DH** -To publicise the findings of this report; noting in particular the increase in businesses requesting proof of age before refusing to sell the age restricted product to underage test purchaser and the improvement in compliance in those businesses that were tested during NIPS1 and 2.
- **CTSI & DH** - To collaborate with appropriate industry bodies and trade associations to determine how to improve business compliance with their members.
- **CTSI** - To make guidance materials available for businesses to download via business companion.
- **TSS** - To determine appropriate action in accordance with local policy and procedures for businesses that have made a repeat sale.
- **TSS** - To promote the use of guidance materials with businesses and to highlight the benefits of displaying the warning poster in store.

Annex 1 Guidance for businesses



Nicotine Inhaling Products Prevention of sales to the under 18's

Guidance note issued by the CTSI

The Law

Children and Families Act 2014

The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015

What does the law say and do?

It prohibits the sale and supply of nicotine inhaling products including E-cigarettes, nicotine cartridges and nicotine refill substances to young people under the age of 18 years.

The law also prohibits the purchase of nicotine inhaling products by an adult for supply to a young person under 18 years. This is known as proxy purchasing.

The regulations exempt **licensed** nicotine replacement therapy (NRT) including electronic cigarette devices that are **licensed as medicines** or **medical devices**. These may be identified by a product licence (PL) number marked on the product or packaging.

You must be clear whether the products you intend to sell are exempt or not.

Who can commit an offence?

Any person who sells an E-cigarette, refill or cartridge containing nicotine to a person under the age of eighteen years - it does not matter if the sale is said to be for someone else or for their own use.

Any adult who (proxy) purchases a nicotine inhaling product for supply to a young person under 18 years commits an offence.

Penalties

If found guilty of selling nicotine inhaling products to a young person under 18 years an individual may be fined up to £2,500 in the Magistrates' Court.

In addition, a person or a business found to be **repeatedly** selling nicotine inhaling products to young people under the age of 18 could receive a Restricted Sales Order or a Restricted Premises Order from the court.

These orders prohibit a named individual, or a named retail outlet, from selling nicotine inhaling products to anyone for a period of up to one year. Failure to comply with an order can result in an unlimited financial penalty being imposed by the court.

For the offence of proxy purchasing; an individual may be issued with a Fixed Penalty Notice of £90 (reduced to £60 if paid within 15 days). Failure to pay the fine may result in the matter being pursued in court. The court may then issue a fine of up to £2,500.

What you can do to prevent illegal sales to young people

It is a criminal offence to sell nicotine inhaling products to young people under the age of 18. You may have a defence to this offence if it can be shown that you have done all that is reasonable to avoid committing the offence.

A responsible retailer should consider the following practices*:

Provide staff training: Ensure that ALL relevant employees are aware of the legal requirements relating to the sale of nicotine inhaling products. Train your staff on a regular basis and keep a record of the training received and the date. Ensure your employees sign a declaration to say that they have received training and understand the legal requirements imposed upon them and your business.

Implement a policy for the sale of ALL age restricted products including nicotine inhaling products: This could include the circumstances in which a customer will or will not be served. For example, only on production of acceptable photo ID that is a Passport, Photocard Driving Licence or a PASS accredited proof of age card. It might also include a requirement for staff to refer to other senior staff before making a sale. "Challenge 25" is an example of an age verification policy that requires customers to be challenged if they appear to be under 25 years and asked to produce suitable ID for checking to ensure that they are over the age of 18. This should be undertaken before a sale can be considered.

Notices: Although there is NO legal requirement to display a notice as there is for tobacco, these can act as a useful deterrent to potential under age purchasers and act as a reminder to employees. Challenge 25 posters may also be useful. Referring to a poster, may help deflect and diffuse any negative reaction from a refused customer.

Refusals log: Keeping a written record of occasions when a sale has been refused will demonstrate to any enforcement body that refusals to sell nicotine inhaling products do occur. It also helps you to monitor the refusals made by individual employees. If an employee rarely refuses a sale this MAY indicate that they require additional training. A history of refusals acts as evidence that your business is attempting to comply with the law.

Till stickers/prompts: These help to remind employees that these products are age-restricted and encourages them to consider what they need to do when a young person attempts to purchase such.

Sample Declaration

As employees of _____, we have received training relating to the sale of Nicotine Inhaling Products to persons under the age of 18 years.

Name of employee	Date of training	Signature of employee

Further advice available from the Business Companion website: www.businesscompanion.info
Search for nicotine inhaling products.

*This list is not exhaustive. Each business must consider what best suits their particular business needs.



Annex 2 Display material



It is illegal to sell
E-cigarettes and
nicotine liquids
to anyone under
the age of 18

Acceptable forms of ID:

- Cards bearing the PASS hologram
- Photocard Driving Licence
- Passport



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