

The Tobacco and Related Products Regulations 2016 and Standardised Packaging of Tobacco Products Regulations 2015 came into full effect in May 2017; this report provides an overview of compliance with these Regulations across England

Rapid Review of Compliance with Tobacco Product Regulations : 2017

Carried out by Trading
Standards Services in England



Chartered Trading
Standards Institute

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SUMMARY & KEY POINTS

- *The Tobacco & Regulated Products Regulations 2016 (TRPs) and the Standardised Packaging of Tobacco Products Regulations 2015 (SPoT), came into full effect in May 2017 following a 12 month transition period*
- *This report presents the findings from Phase 1 and 2 of the review; phase 3 is on-going and will be reported on in 2018.*

PHASE 1: CIGARETTES & HAND ROLLING TOBACCO

- *A total of 396 Phase 1 compliance visits were conducted across England between May and September 2017 by Trading Standards Services as part of a Department of Health supported operation designed to assess compliance with the new Regulations. The operation was managed by the Chartered Trading Standards Institute.*
- *Specifically, products were assessed against the Regulations as follows:*

Cigarettes: Tobacco and Related Products & SPoT compliance – labelling & packaging

Hand Rolling Tobacco (HRT): Tobacco and Related Products & SPoT compliance – labelling & packaging

Display of tobacco age of sale statutory notice
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- *Compliance with the Regulations was found to be high for both cigarette and HRT products with over 90 % of all products assessed as being compliant; where non-compliance was found, appropriate action was taken by the local Trading Standards Service to bring the business into compliance*
- *In addition, all premises subject to this review were assessed for compliance with the requirement to display an age of sale notice; 92% of businesses complied with this requirement.*

PHASE 2: CIGARS, OTHER TOBACCO PRODUCTS & SMOKELESS

- A total of 305 Phase 2 compliance visits were conducted across England between May and September 2017 by Trading Standards Services as part of a Department of Health supported operation designed to assess compliance with the new Regulations. The operation was managed by the Chartered Trading Standards Institute.
- Specifically, products were assessed against the Regulations as follows:

Cigars: TRPs compliance – Labelling
Other tobacco products (OTP): TRPs compliance – Labelling
Smokeless tobacco products: TRPs compliance – Labelling
Notification (to PHE) of sample of tobacco products

- Compliance with the labelling requirements was found to be mixed with 87% of cigar products compliant but only 48% of smokeless tobacco products.
- There were 94 referrals made by TSS to PHE regarding tobacco products that could not be located on the published tobacco notification list; of these, 75 products remain un-notified and are thus at the time of the rapid review not legal for supply in the UK.

1. INTRODUCTION

This is a Department of Health supported project delivered and managed by CTSI; the primary purpose is to **assess compliance with the Tobacco and Related Products Regulations 2016¹ and the Standardised Packaging of Tobacco Regulations 2015²**. These Regulations came into force on the 20 May 2016 with a transition period that ended on the 20 May 2017. From 21 May 2017: all relevant products sold or supplied to the UK market must be fully compliant with both sets of “new “Regulations.

The Department of Health has requested that a rapid review (RR) of business compliance is undertaken by trading standards services (TSS) in England to establish a base line of compliance and a report of the findings published. The Tobacco and Related Products Regulations 2016 contain several distinct areas of product compliance hence this particular review has been conducted in three phases. This report deals with the findings of phases 1 and 2. Phase 3 will be reported separately.

2. PURPOSE

The purpose of this review is to assess levels of regulatory compliance by retail businesses with the Tobacco and Related Products Regulations 2016 and the Standardised Packaging of Tobacco Regulations 2015.

3. SCOPE

This was designed to be a rapid review of business compliance carried out by Trading Standards Services (TSS) across a number of authorities in England. A total of 701 compliance visits have been made during phase 1 and 2 of the review. The data arising will be included in the National Tobacco Control survey for 2017-18.

¹ the Tobacco and Related Products Regulations 2016 available online at :
<http://www.legislation.gov.uk/ukxi/2016/507/contents/made> [accessed 22 September 2017]

² the Standardised Packaging of Tobacco Regulations 2015 available online at:
<http://www.legislation.gov.uk/ukxi/2015/829/contents/made> [accessed 22 September 2017]

4. METHOD

The review has been carried out by trading standards services in three phases as detailed below:

Phase	Regulatory and legislation areas	Time frame	Participating Regions	Number of premises to be assessed
1	Product compliance Part 2 TRPs SPoT check Display UAS notice	May to October 2017	NETSA CEntSA SWERCOTS	300
2	Product compliance & Notifications (random checks) Part 2 & Part 4 of TRPs	May to October 2017	Y&H TSEM LTS	300
3	E cigarettes & associated products compliance and notifications (random checks) Part 6 TRPs	November 2017 to April 2018	TSNW EETSA TSSE	300

The key below provides greater detail of activity in each phase:

	Compliance area	Specific
Product Compliance Part 2 TRPs	The Tobacco and Related Products Regulations 2016	Labelling of tobacco products.
SPoT	Standardised Packaging of Tobacco Regulations 2015	Packaging of cigarettes and Hand Rolling Tobacco.
Check display	Tobacco Advertising & Promotion (Display) Regulations 2010	Display of tobacco products.
UAS notices	Underage sales	Age of sale tobacco notices.
Product compliance Part 2 TRPs	The Tobacco and Related Products Regulations 2016	Labelling of tobacco products.
Part 4 TRPs Notifications	The Tobacco and Related Products Regulations 2016	Reporting about tobacco products - checking the system for notifications of products other than cigarettes and HRT.
E cigs & associated products compliance and notifications Part 6 TRPs	The Tobacco and Related Products Regulations 2016	Electronic cigarettes product compliance and checking the system for notifications.

In advance of the compliance monitoring activity, each participating TSS was provided with guidance and a data collection sheet.

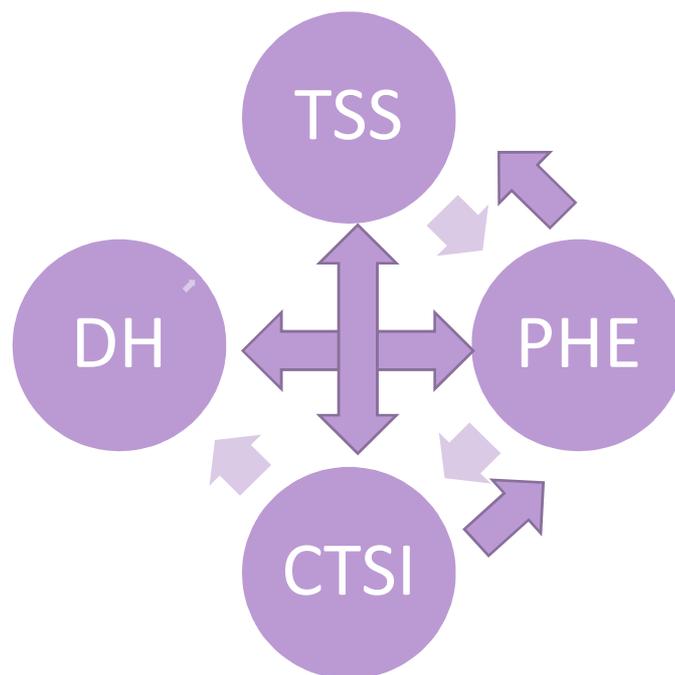
All data were collated by a nominated coordinator in each region and then passed to the CTSI for reporting to the Department of Health.

4.1 METHOD: NOTIFICATIONS

All tobacco products are required to be notified to Public Health England (PHE); phase 2 of the rapid review seeks to review this by checking a sample of products for inclusion in the published list of tobacco and related products³.

In advance of operational activity for phase 2, an agreed process was developed with PHE to allow for referrals between TSS and PHE where products appeared to be absent from the published list. This may be found at Annex 1 to this report.

The diagram below represents the flow of information between the relevant parties for the purpose of this review



³ The list of tobacco and related products published by PHE , available online at : <https://www.gov.uk/government/publications/notification-of-tobacco-or-herbal-products-for-smoking> [accessed 30 October 2017]

5. PHASE 1: RESULTS

The following sections present the results of compliance monitoring in Phase 1; this phase was undertaken by TSS in the North East, South West and Central Midlands. In summary this phase considered:

Cigarettes: Tobacco and Related Products & SPoT compliance – labelling & packaging

Hand Rolling Tobacco (HRT): Tobacco and Related Products & SPoT compliance – labelling & packaging

Display of tobacco age of sale statutory notice

A total of 396 compliance visits were carried out across these three regions

5.1 PHASE 1 – VISTS BY PREMISE TYPE

The greatest proportion of visits were made to convenience / small retailers with 53%. The fewest visit were made to national newsagents with 2.5%. A small number of visits were made to premises described as “other “these included: specialist tobacconist and kiosks.

The majority of visits, 85%, were made to businesses in an urban setting with 13% described as rural. The remaining visits, 2%, were not described by location.

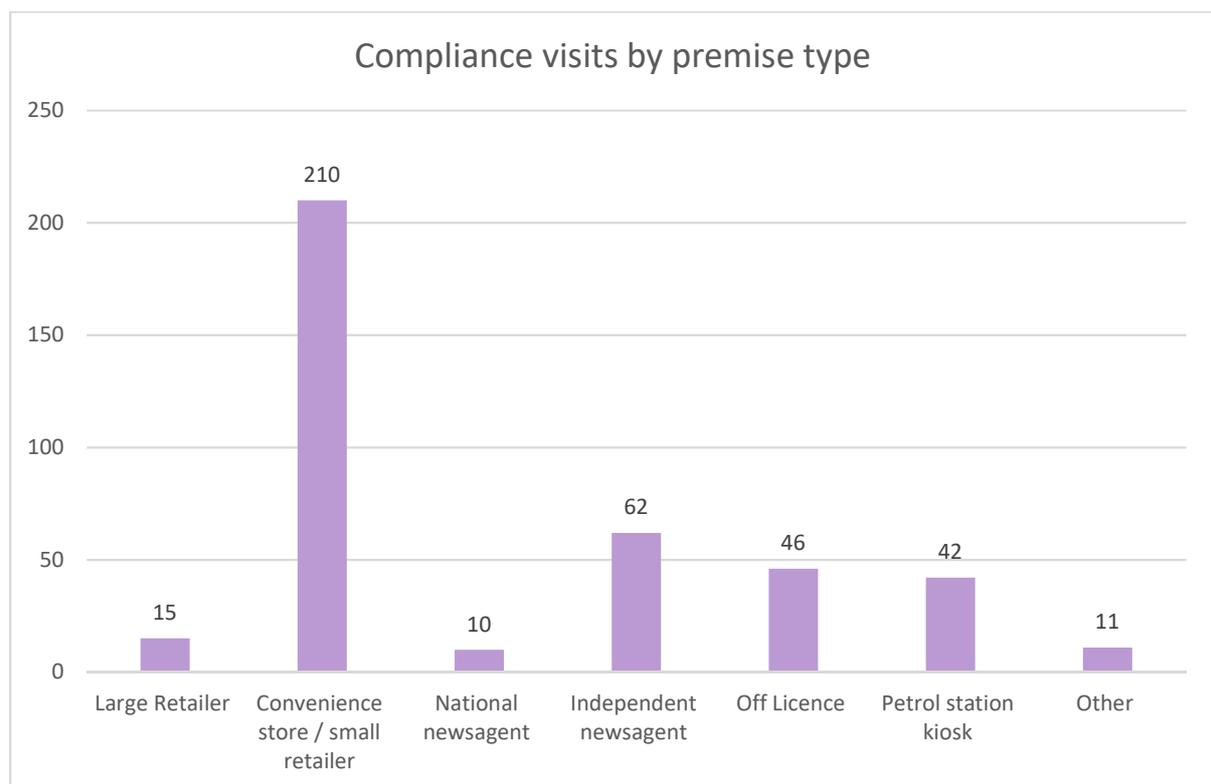


Chart 1: Compliance visits by premise type – Phase 1

5.2 PHASE 1– TRPS PRODUCT COMPLIANCE – CIGARETTES

Cigarette product compliance with the Tobacco and Related Products Regulations 2016 was found to be high. In 92% of visits (363 premises) compliant products were found at the time of the monitoring visit.

Where non-compliant products were found (33 visits) a variety of reasons were given including: Incorrect pack sizes (10, 14, 19 sticks), counterfeit products and brands not for legitimate supply in the UK. Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

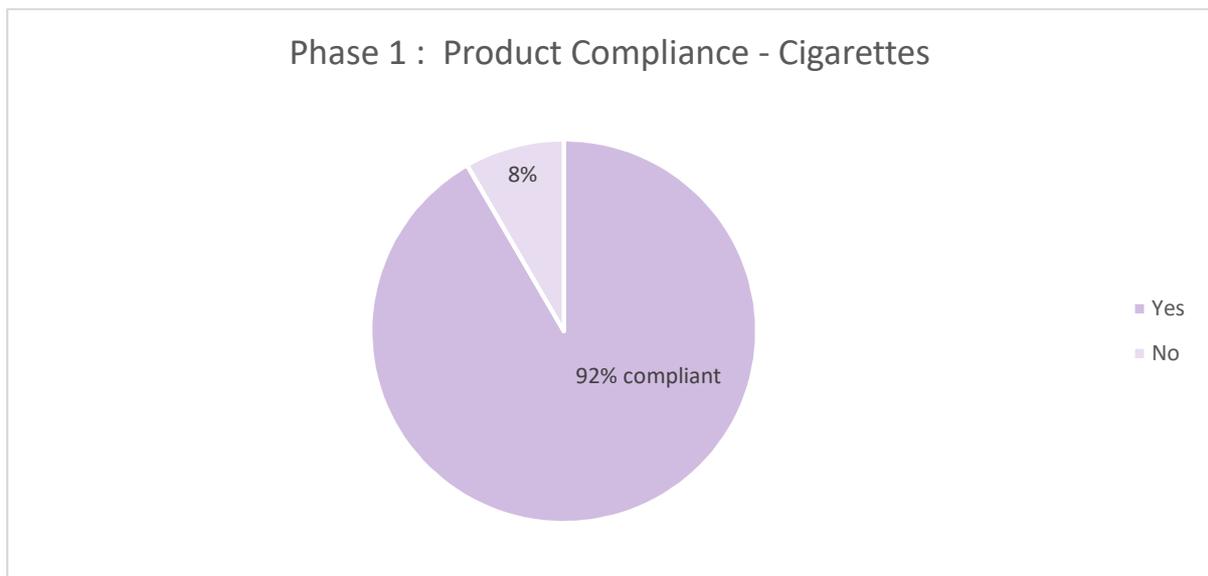


Chart 2: TRPs Product Compliance – Cigarettes

5.3 PHASE 1- TRPS PRODUCT COMPLIANCE – HRT

HRT product compliance with the Tobacco and Related Products Regulations 2016 was found to be high. In 96% of visits (374 premises) compliant products were found at the time of the monitoring visit.

Where non-compliant products were found (16 visits) a variety of reason were given including: Incorrect pack sizes (25g) and counterfeit products. Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

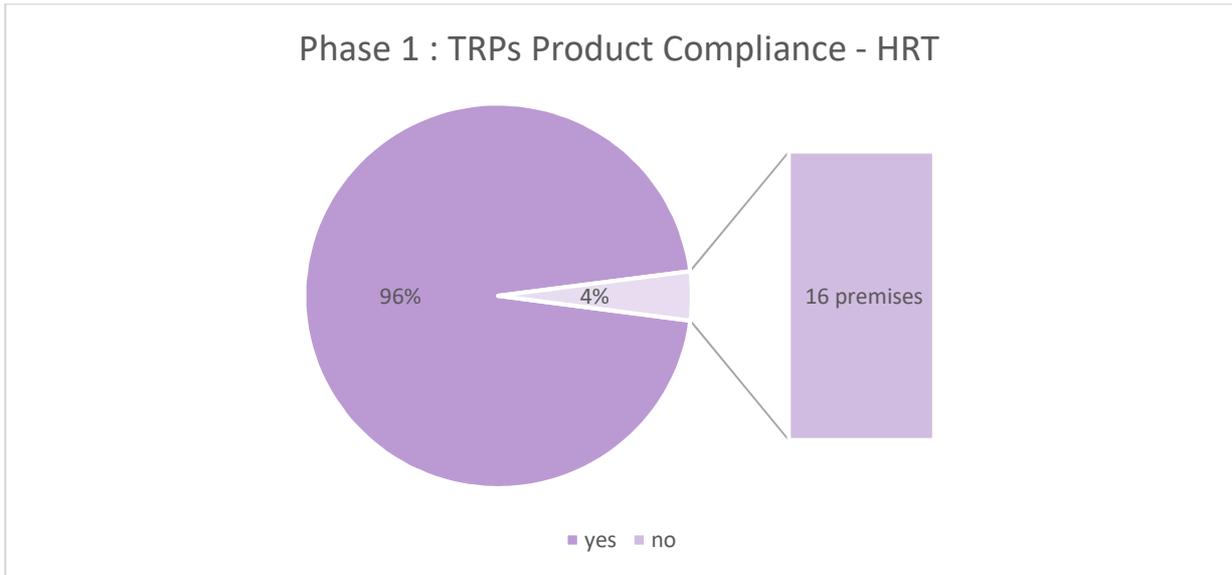


Chart 3: TRPs Product Compliance - HRT

5.4 PHASE 1 – SPOT COMPLIANCE

Product compliance with the requirements of the Standardised Packaging of Tobacco Products Regulation 2015 was found to be generally good during this review although it was found to be higher for HRT (98%) than Cigarettes (88%). Where non-compliance was noted, it was usually as a result of old stock being available. Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

5.5 PHASE 1 STATUTORY NOTICE FOR AGE OF SALE

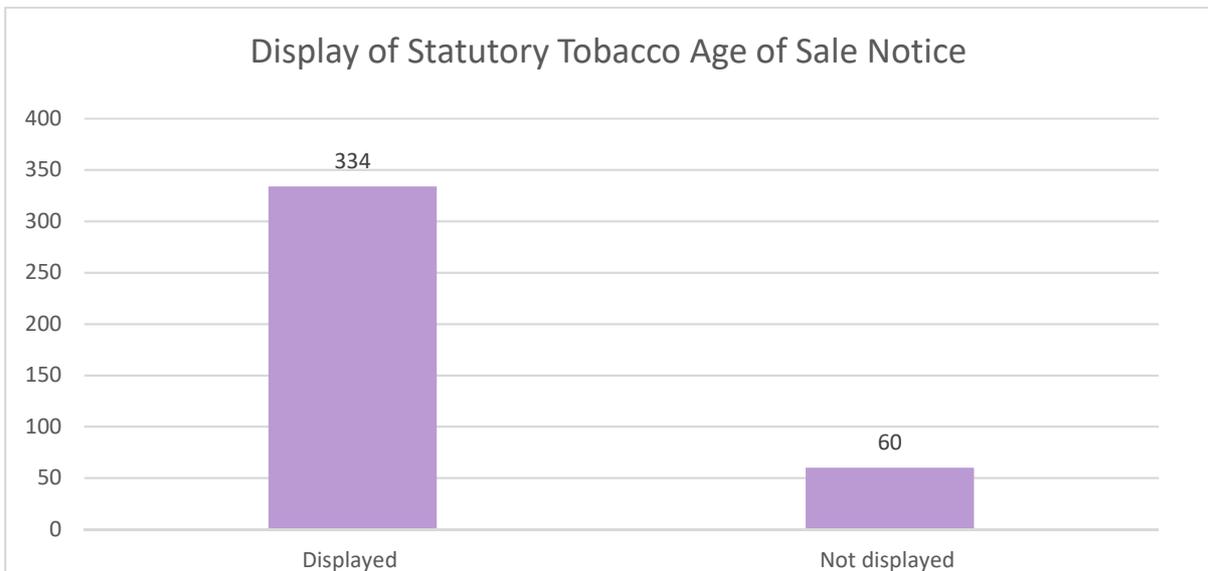


Chart 4: Display of statutory tobacco age of sale notice

An A3 size version of the notice is required to be displayed wherever tobacco products are supplied as required by the Children and Young Persons (Protection from Tobacco) Act 1991⁴.

**IT IS ILLEGAL TO SELL
TOBACCO PRODUCTS
TO ANYONE UNDER
THE AGE OF 18**

92% of businesses visited as part of this review had an appropriate sign displayed in the premises. Where non-compliance was found, the reasons stated included:

- size of the notice was too small ,
- the notice obscured by other items ,
- no notice present .

Wherever possible, replacement notices were provided at the time of the visit.

⁴ Children and Young Persons (Protection from Tobacco) Act 1991 available at :
<http://www.legislation.gov.uk/ukpga/1991/23/introduction> [accessed on line 20 September 2017]

6. PHASE 2: RESULTS

The following sections present the results of compliance monitoring in Phase 2; this phase was undertaken by TSS in the East Midlands, London and Yorkshire & Humber regions. In summary this phase considered the following aspects of the Regulations:

Cigars: TRP compliance – Labelling
Other tobacco products (OTP): TRP compliance – Labelling
Smokeless tobacco products: TRP compliance – Labelling
Notification (to PHE) of sample of tobacco products

A total of 305 compliance visits were carried out across these three regions.

6.1 VISITS BY PREMISE TYPE

The greatest proportion of visits were made to convenience / small retailers with 49%. The fewest visit were made to national newsagents with 3%. A number of visits were made to premises described as “other “(11%) these included: Specialist tobacconists, Shisha bars and market stalls.

The majority of visits, 84%, were made to businesses in an urban setting with 16% described as rural.

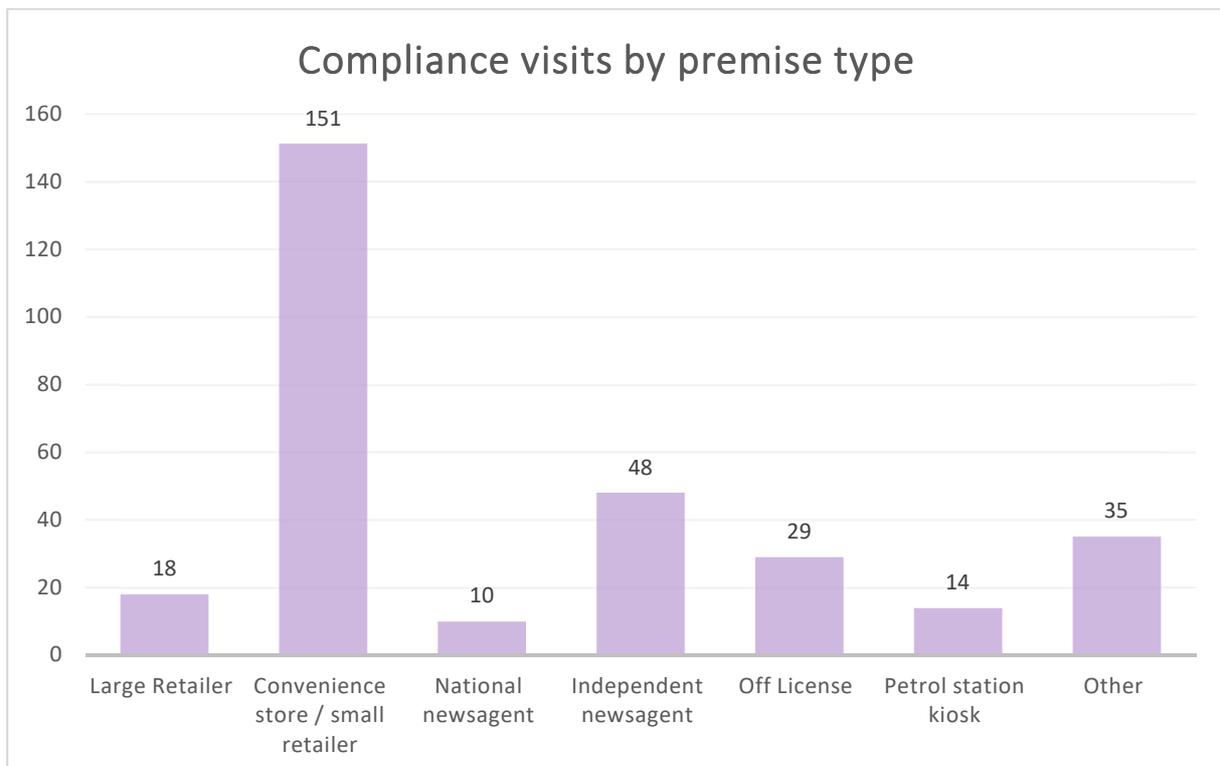


Chart 5: Compliance visits by premise type: Phase 2

6.2 PHASE 2 – PRODUCT COMPLIANCE – CIGARS

Where cigars were examined for compliance with the Tobacco and Related Products Regulations 2016 (213 visits) this was found to be high. In 87% of visits compliant products were found at the time of the monitoring visit.

Where non-compliant products were found (28 premises) the primary reason given was: old style labelling. Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

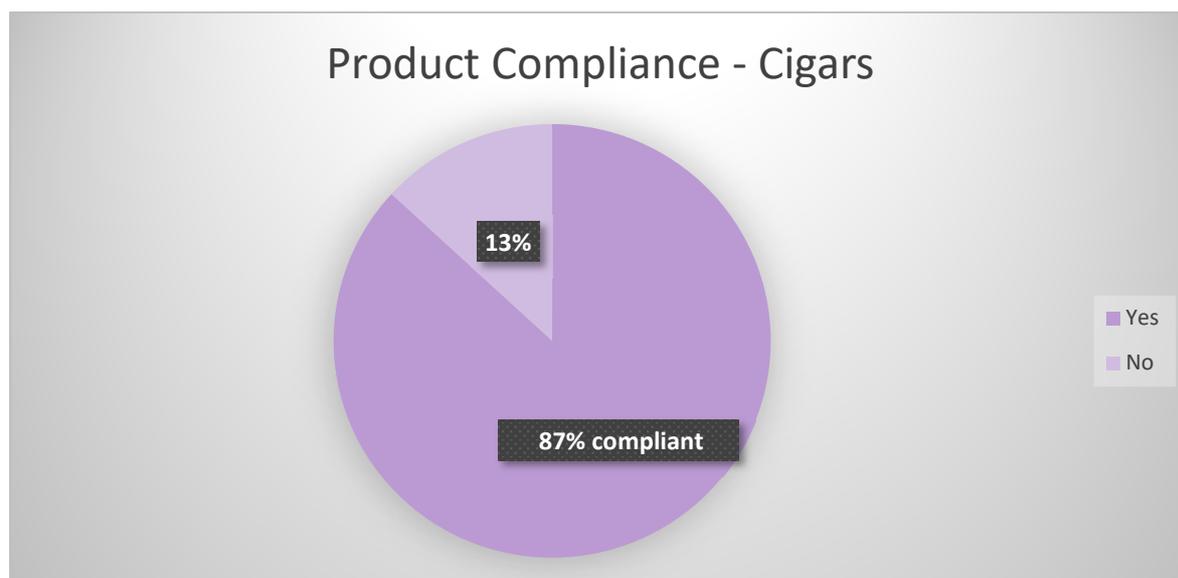


Chart 6: Product Compliance - Cigars

6.3 PHASE 2 – PRODUCT COMPLIANCE – OTHER TOBACCO PRODUCTS

Where other tobacco products (OTPS) including shisha tobacco, blunts and pipe tobacco were examined for compliance with the Tobacco and Related Products Regulations 2016 (186 visits) this was found to be moderate. In 75% of visits compliant products were found at the time of the monitoring visit.

Where non-compliant products were found (46 premises) a variety of reasons were given including: size of labelling, no combined health warning present, reference to flavourings, foreign labelled products. Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

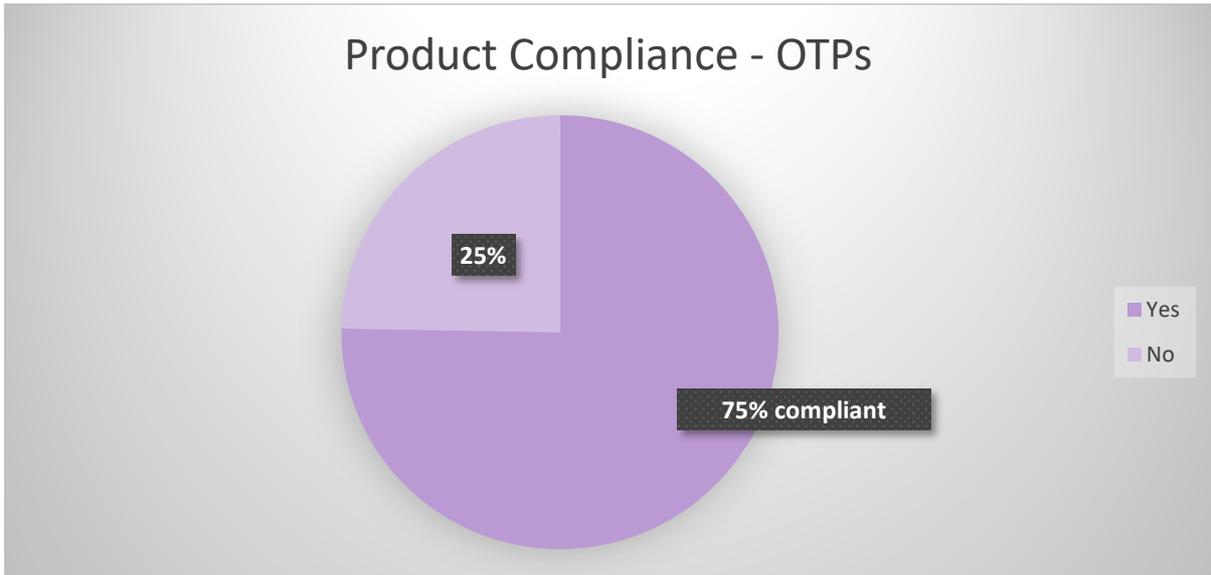


Chart 7: Product Compliance -OTPs

6.4 PHASE 2 – PRODUCT COMPLIANCE – SMOKELESS PRODUCTS

Where smokeless tobacco products which included chewing tobacco were examined for compliance with the Tobacco and Related Products Regulations 2016 (79 visits) this was found to be poor. In just over half of the visits made, non-compliant smokeless products were found at the time of the monitoring visit.

Where non-compliant products were found (41 premises) a variety of reasons were given including: No warnings at all, incorrect warnings, foreign labels. Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

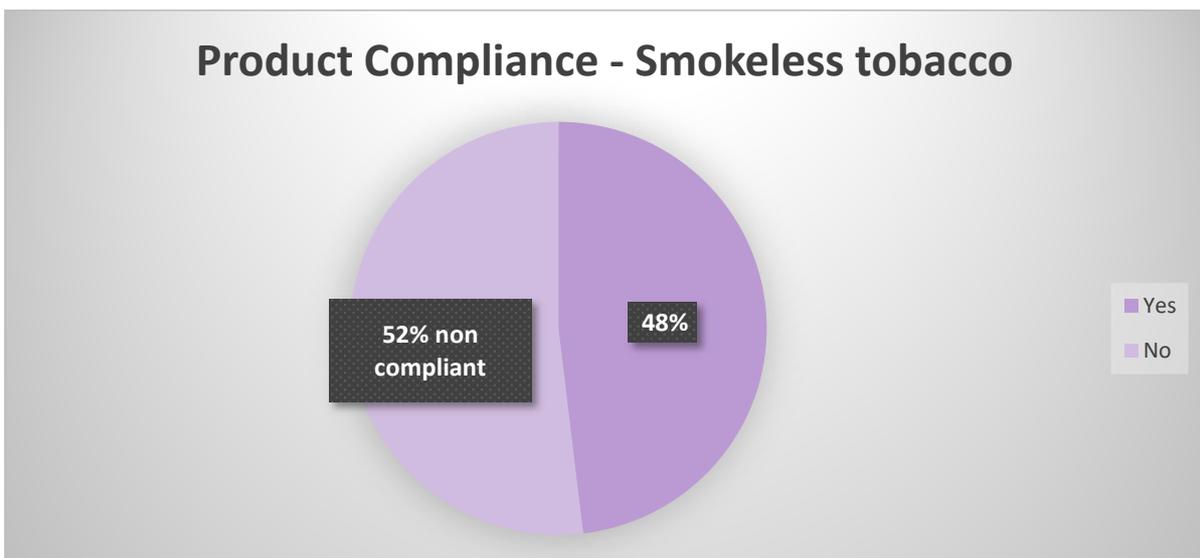


Chart 8: Product Compliance – Smokeless tobacco

6.5 PHASE 2 – PART 4 COMPLIANCE (NOTIFICATIONS)

A total of 1084 tobacco products were checked for inclusion on the PHE notification list. It is not known how many different products (brands) were checked during the review.

The highest proportion of products that could not be found on notification list were smokeless tobacco products with 42% (47 products not found) in contrast only 5% of cigar products were not located. 26% of OTPs were not found at the time of accessing the notification list; the majority of these products were shisha tobacco and blunt wraps.

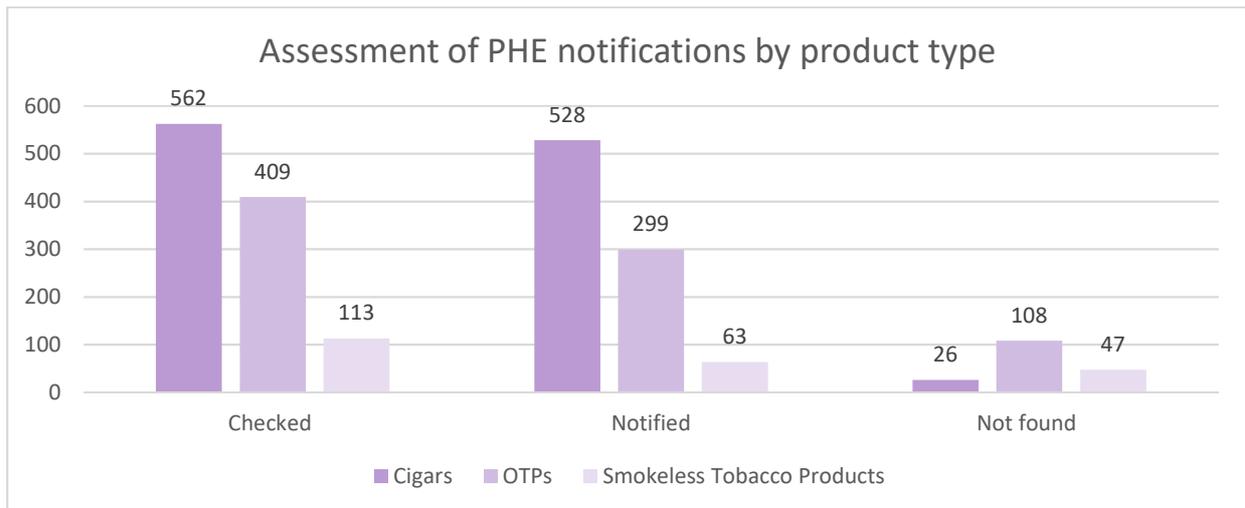


Chart 9: Product assessment against notification list by type

Note there were 13 occasions where a product has been recorded as being checked BUT not recorded as being notified OR alternatively not found

6.5.1 PHASE 2 NOTIFICATIONS & FEEDBACK FROM PUBLIC HEALTH ENGLAND

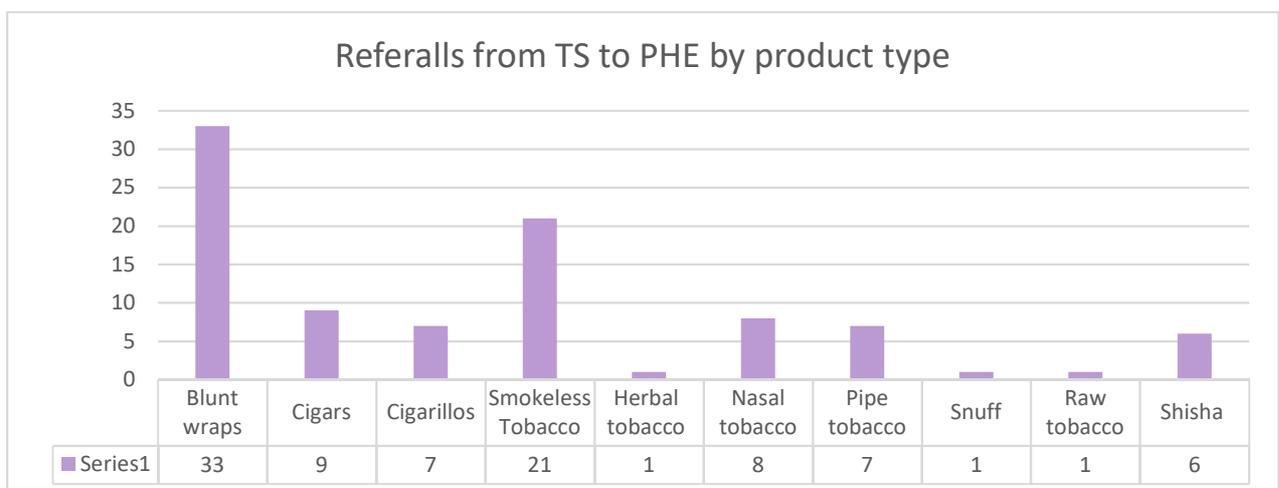


Chart 10: Referrals from TS to PHE by product type

As a result of the assessment checks made by TSS, a total of 94 product referrals were made to PHE. Of the products referred, PHE has reported that 19 (20%) of the referred products were or are now correctly notified and that these products were produced by 9 known manufacturers.

However, 75 (80%) of the referred products have not been notified and although further enquiries have been made, they remain so.

7. OBSERVATIONS & RECOMMENDATIONS FOR ACTION

- Products that are not correctly notified to PHE are not legal products. This review has located 75 such products available for supply in the three participating regions in England; in order to progress matters, PHE are requested to provide CTSI and TSS with a definitive list of those products that were referred during this review and that are not correctly notified in order that appropriate enforcement action may be taken. Locating the importer/s of the particular brands will be prioritised along with discussion with HMRC and Border Force to determine what if any action may be appropriate from their agencies. Ongoing liaison between PHE and CTSI is essential;
- Reduced compliance levels for OTPs (but specifically shisha tobacco and tobacco blunts) along with smokeless tobacco products for labelling requirements suggest that further activity is required in respect of both labelling compliance and notification to bring these products into compliance; additional guidance for retailers via Business Companion and the Niche Tobacco Products Directory (NTPD) will be provided with reference to the requirement to supply ONLY products that have been notified;
- Cigarettes, Cigars and HRT products demonstrate a high level of compliance at this time and thus it is suggested that any further activity is focussed on shisha, tobacco blunts and smokeless products bearing in mind not only the findings of this review but those also of the Mini Review of Regulation 15 TRPs published October 2017 that highlights the problem of incorrectly labelled shisha and blunt wraps by virtue of reference to flavourings which is not permitted under SPoT.

ACKNOWLEDGEMENTS

The author is grateful to colleagues at the DH, PHE, CTSI, and to TS regional coordinators, members of the Tobacco Focus Group and the numerous trading standards professionals who undertook compliance visits as part of the rapid review of regulatory compliance across the country.

ANNEX 1: PROCESS FLOW FOR PRODUCT REFERRALS BETWEEN TSS AND PHE

