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**RAPID REVIEW 2: PRODUCT COMPLIANCE
TOBACCO AND RELATED PRODUCT REGULATIONS: 2016
PHASE 3: NICOTINE INHALING PRODUCTS**

CARRIED OUT BY TRADING STANDARDS SERVICES ACROSS ENGLAND

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THE CHARTERED TRADING STANDARDS INSTITUTE



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SUMMARY & KEY POINTS

- *This report presents the findings from a second review of product compliance with the Tobacco and Related Products Regulations 2016; the first review has been published and is available on the Chartered Trading Standards Institute website.*
- *The review was carried out between April and June 2018 by Trading Standards Services across 5 English regions.*
- *The focus of this review are: nicotine inhaling products i.e. electronic cigarettes and refill containers [E liquids].*
- *A further report is pending on the safety and accuracy of description of a number of refill containers purchased online during the first review of compliance.*

PHASE 3: NICOTINE INHALING PRODUCTS

- *A total of 263 compliance visits were conducted as part of this Department of Health & Social Care supported review designed to assess compliance with the Regulations. The operation was managed by the Chartered Trading Standards Institute.*
- *Specifically, products were assessed against the Regulations as follows:*

E cigarettes & refill containers
Reg 36 product compliant with size requirement
Reg 36 product compliant with nicotine strength requirement
Reg 36 product child resistant & tamper evident
Reg 37 product has information leaflet
Reg 37 product carried health warning

- *Compliance of E cigarette products was found to be 84% and for refill containers, 80% an improvement on the compliance rates found during the first review; however, this means that approximately a fifth of refill containers assessed did not comply with the Regulations.*
- *Where non-compliance was found, appropriate action was taken by the local Trading Standards Service most often by providing advice to the business to bring it into compliance.*

1. INTRODUCTION

This is a Department of Health and Social Care supported project delivered and managed by CTSI; the primary purpose is to **assess product compliance with the Tobacco and Related Products Regulations 2016**¹. Specifically, the compliance of nicotine inhaling products; E-cigarettes and E-liquids.

A primary review² of regulatory compliance was carried out in early 2018 by Trading Standards services across three regions in England: South East, Eastern and North West. At that time, product compliance was found to be around 75% for both devices and liquids. A quarter therefore of all products examined were assessed as being non-compliant with the regulations for a variety of reasons including: Lack of warnings, non-provision of information leaflets and exceeding the size permitted for tanks. More commonly, products were assessed as being non-compliant for multiple reasons.

See Annex 1 for extract of relevant data from the primary review report.

Observations and recommendations arising from that review included:

- *The proportion of non-compliant products was found to be the same for both devices and refill containers, with approximately a quarter of all products failing to comply with the Regulations;*
- *The majority of non-compliance was stated as being for “multiple reasons” suggesting that most failures were not “just a minor labelling issue” but were a combination of several failings;*
- *The business sector with the highest proportion of non-compliant products was the convenience store / small grocer sector. This may be a factor of a lack of product knowledge in this sector and / or a factor of where the products are sourced from. Further enquiries of these businesses are required to establish the source of the non-compliant products so that appropriate action may be taken to bring both producers and this retail sector of the market into compliance;*
- *Although the proportion of non-compliant products found in specialist premises was lower at 23% [E cigarettes] and 17% [refill containers] this remains a concern given that these are specialist premises. The average consumer MIGHT reasonably expect a higher degree of product knowledge and expertise from such businesses. **This points to a need for ongoing monitoring of this sector and engagement with the relevant industry bodies as appropriate.***

¹ the Tobacco and Related Products Regulations 2016 available online at: <http://www.legislation.gov.uk/ukxi/2016/507/contents/made> [accessed 22 March 2018]

² Rapid Review of compliance with the TRPRs 2016 and SPoT 2015 : published by CTSI 2017 available online at: <https://www.tradingstandards.uk/news-policy/tobacco-control/tobacco-compliance-reviews>[accessed 22 March 2018]

2. PURPOSE

The purpose of this review is to assess whether levels of regulatory compliance by retail businesses with the Tobacco and Related Products Regulations 2016 has changed over the last 4-6 months. The focus of the review is on nicotine inhaling products.

It was also requested that observations be made of the availability of 0% nicotine liquids. These products are not subject to the requirements of the Tobacco and Related Products Regulations 2016 however, it has been suggested that this is a growing area of the market and worthy of examination. Further observations and recommendations will be made where appropriate for future activity.

3. SCOPE

This was designed to be an additional rapid review of business compliance carried out by Trading Standards Services (TSS) across a number of councils in England. A total of 263 compliance visits have been made during this phase.

Laboratory testing of a number of E-liquids has also been undertaken and is subject of a separate report; this separate report was commissioned by the MHRA.

4. METHOD

The review has been carried out by trading standards services in five English regions:

North East, North West, South West, Yorkshire and Humber and Central Regions.

Each region has undertaken between 40 -60 compliance visits. At each visit, officers were requested to assess a range of products for compliance with the regulations. In addition, officers were asked to estimate the percentage of products that were available within the premises that were described as 0% nicotine.

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 and Social Care.

5. PHASE 3: RESULTS

The following sections present the results of compliance monitoring in Phase 3; in summary this phase considered:

E cigarettes & refill containers
Reg 36 product compliant with size requirement
Reg 36 product compliant with nicotine strength requirement
Reg 36 product child resistant & tamper evident
Reg 37 product has information leaflet
Reg 37 product carried health warning

A total of 263 compliance visits were carried out across these five regions

5.1 PHASE 3 – VISITS BY PREMISE TYPE

The greatest percentage of visits were made to specialist E cigarette businesses with 61%.

19% of the total were made to “other” premises that included: Fancy goods / gift shop, specialist tobacconist, head shop, wholesalers, record shop, large retailers, mobile phone shops, market stalls and petrol station kiosks.

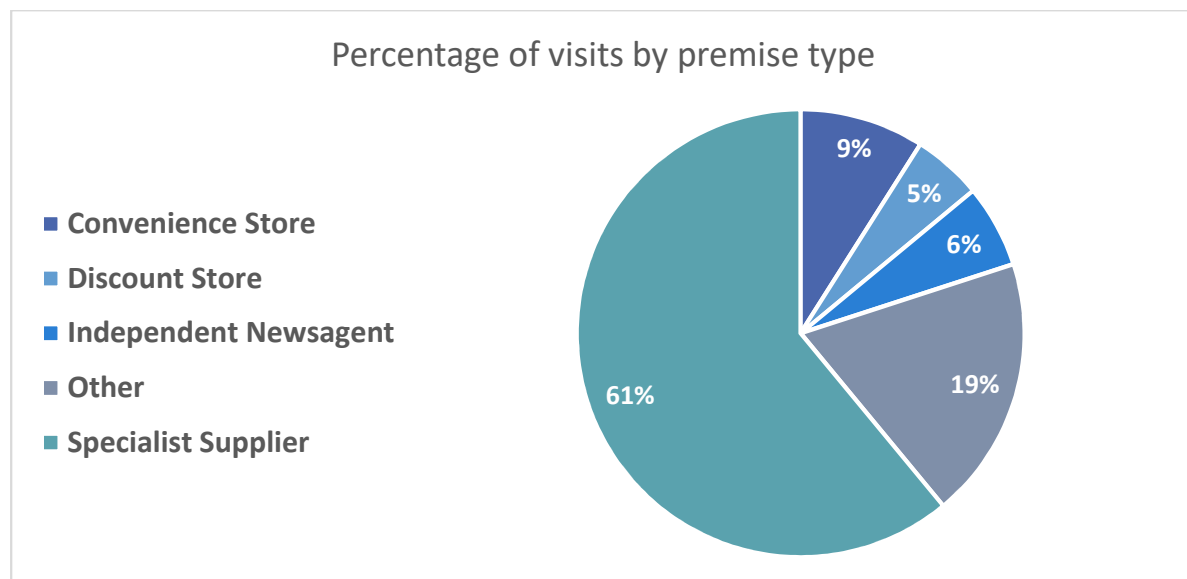


Chart 1: Compliance visits by premise type – RR2 Phase 3

This is a similar distribution of compliance visits to premises undertaken during the first review of compliance earlier in 2018; this suggests that the major supplier of E cigarettes and liquids are the specialist premises.

5.2 PHASE 3– TRPRS PRODUCT COMPLIANCE – E CIGARETTES

A total of 640 E-cigarette products were assessed during this review. Product compliance with the Tobacco and Related Products Regulations 2016 was found to be 84%. This is higher than the percentage found during the earlier review which was 76%.

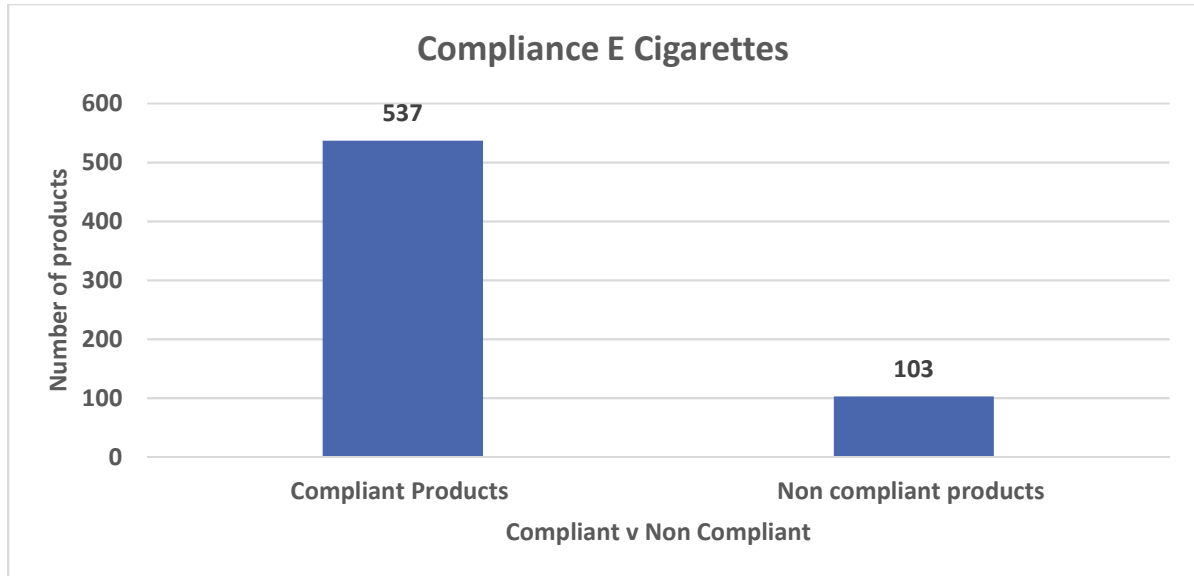


Chart 2: TRPRs Product Compliance – E-Cigarettes

5.2.1 PHASE 3 – E CIGARETTES NON- COMPLIANCE

Where non-compliant products were found (50 visits) a variety of reasons were given however the most often recorded reason was “multiple” indicating that the product assessed had several aspects of non-compliance.

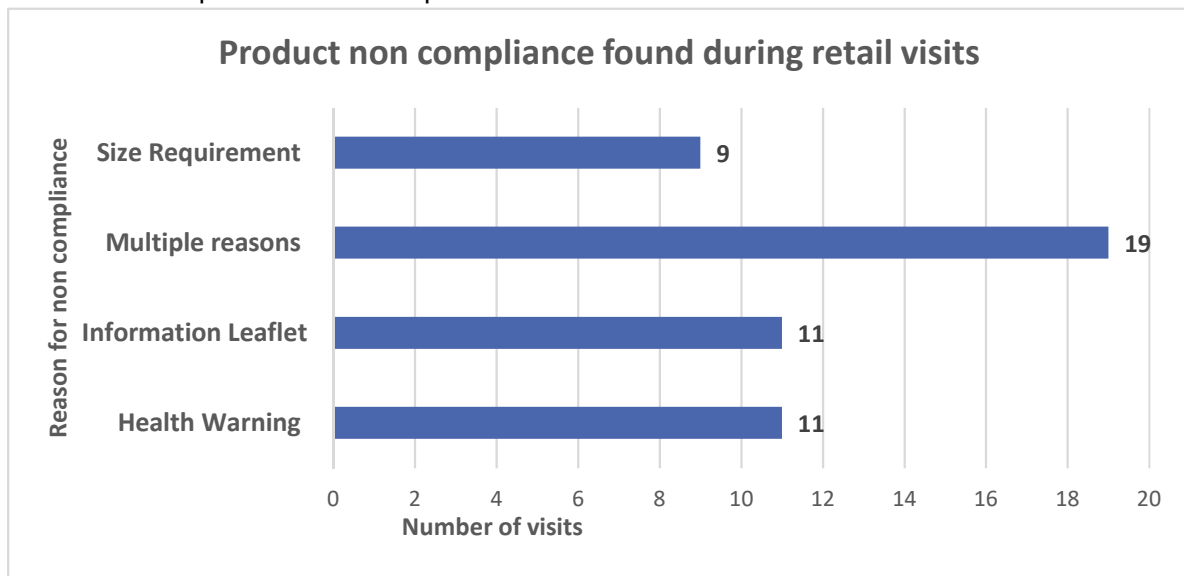


Chart 3: Reasons for E-Cigarette product non-compliance

5.2.2 PREMISES WITH NON-COMPLIANT E CIGARETTES

A total of 103 non-compliant products were found across 50 different premises during this review. The greatest proportion of non-compliant products were found in convenience stores [28%] this sector of the market recorded the highest proportion on non-compliant products in the last review with 32%.

16% of products assessed in specialist shops were found to be non-compliant, this is less than the 23% of products that found to be non-compliant during the first review.

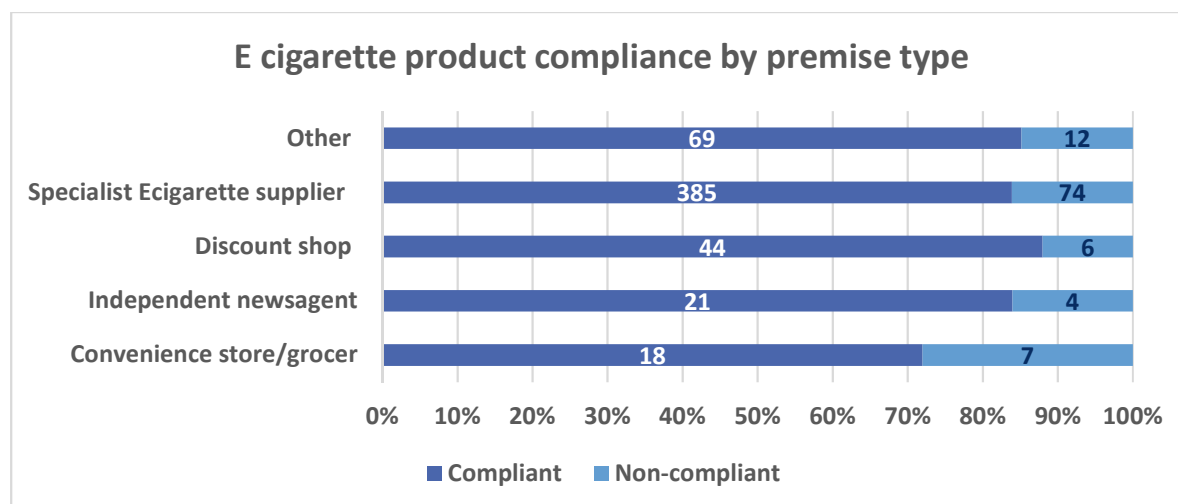


Chart 4: Premise types and non-compliant E cigarettes

5.3 PHASE 3- TRPRS PRODUCT COMPLIANCE – REFILL CONTAINERS

A total of 1742 refill container products (Liquids) were assessed during this review. Product compliance with the Tobacco and Related Products Regulations 2016 was found to be 80%. This is slightly higher than the 76% found during the first review.

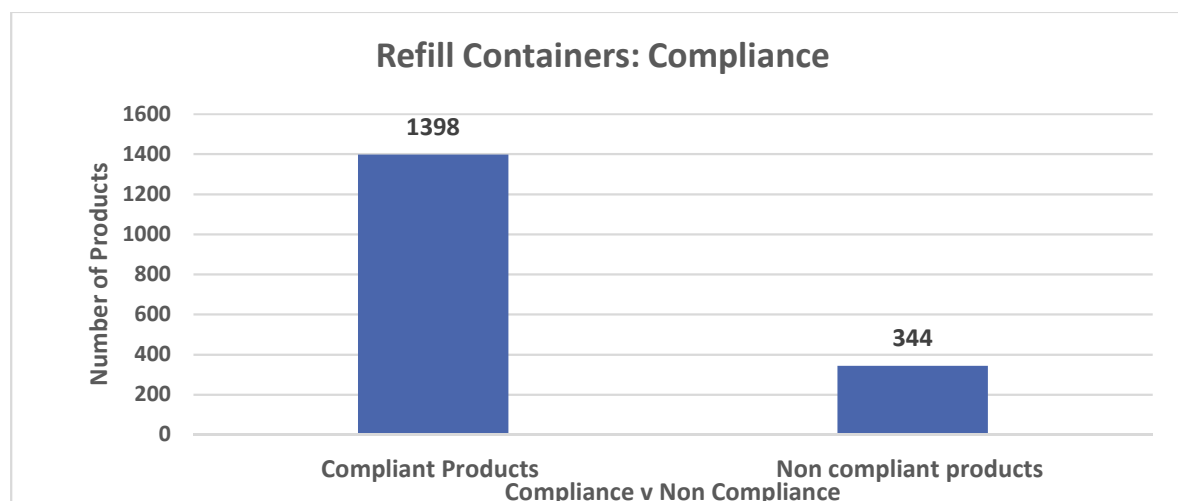


Chart 5: TRPs Product Compliance – Refill container products

5.3.1 PHASE 3 – REFILL CONTAINERS NON-COMPLIANCE

Where non-compliant products were found (109 visits) a variety of reasons were given however the most often recorded reason was “multiple” indicating that the product assessed had several aspects of non-compliance.



Chart 6: Reasons for Refill container product non-compliance

5.3.2 PREMISES WITH NON-COMPLIANT REFILL CONTAINERS

A total of 344 non-compliant products were found at 109 different premises during this review. The greatest proportion of non-compliant products were found in independent newsagents [31%] this sector of the market recorded the highest proportion on non-compliant products in the last review with 40% along with convenience stores.

Product compliance in convenience stores is higher on this occasion. Whereas during the first review 40% of products were found to be non-compliant, during this review, 20% of products were assessed as non-compliant.

Of products assessed at specialist businesses, 20% were found to be non-compliant, this is higher than the 17% of products found during the last review.

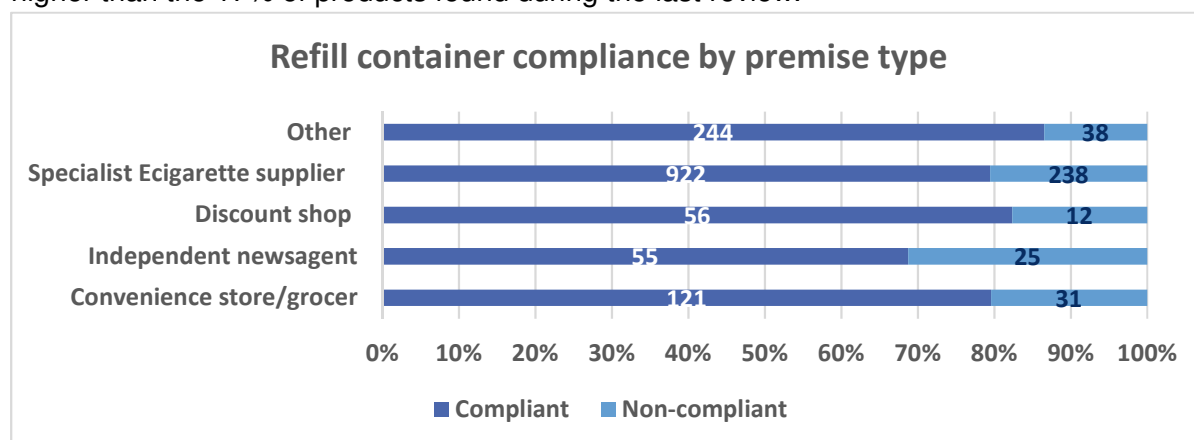


Chart 7: Refill container compliance by premise type

5.4 ACTIONS TAKEN BY TRADING STANDARDS DURING COMPLIANCE MONITORING

A range of actions were taken by Trading Standards during this review; however, the most often cited course of action was “advice given to retailer”.

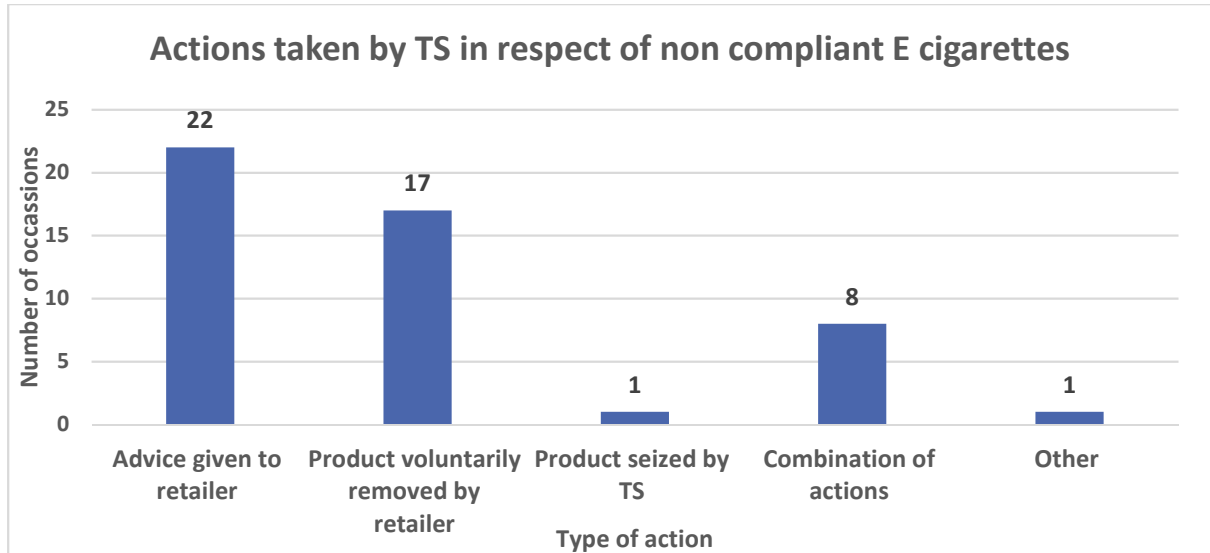


Chart 8: Actions taken by Trading Standards during phase 3 of the review: E cigarettes

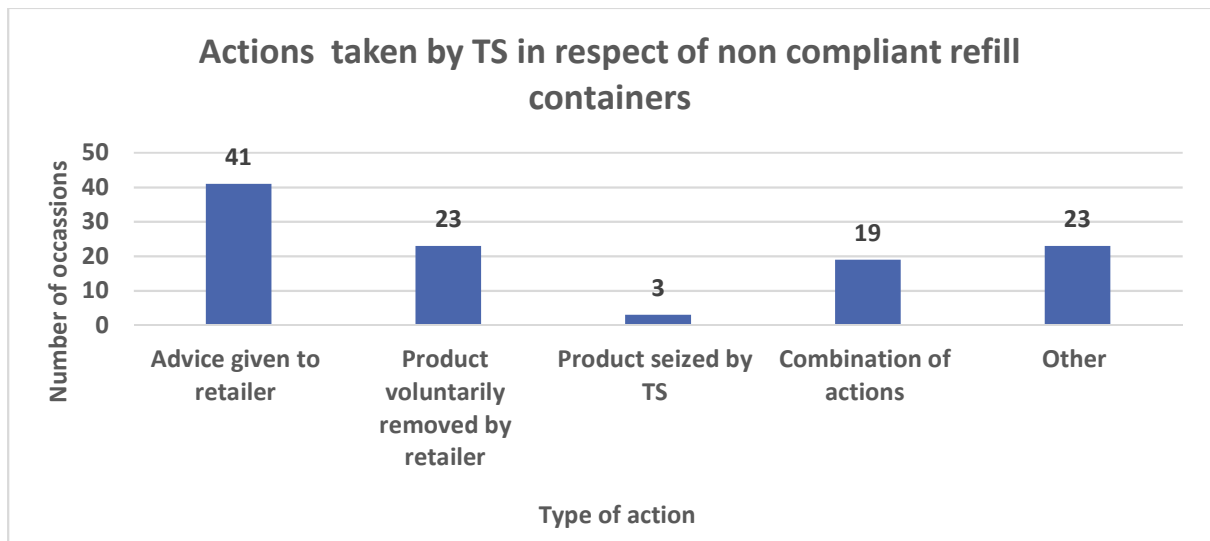


Chart 9: Actions taken by Trading Standards during phase 3 of the review: Refill Containers

Note: reference to “other “as a course of action includes: referral of the matter to the Home Authority trading standards service and voluntary surrender of product to TS

5.5 PERCENTAGE OF LIQUID PRODUCTS DESCRIBED AS 0% NICOTINE

Of the 263 premises visited by trading standards, an assessment was made of the percentage of products described as 0% nicotine in 250 of those premises. The following chart provides details of the percentage of products found during the compliance visits.

Note: This is an estimate provided by the officer at the time of the visit

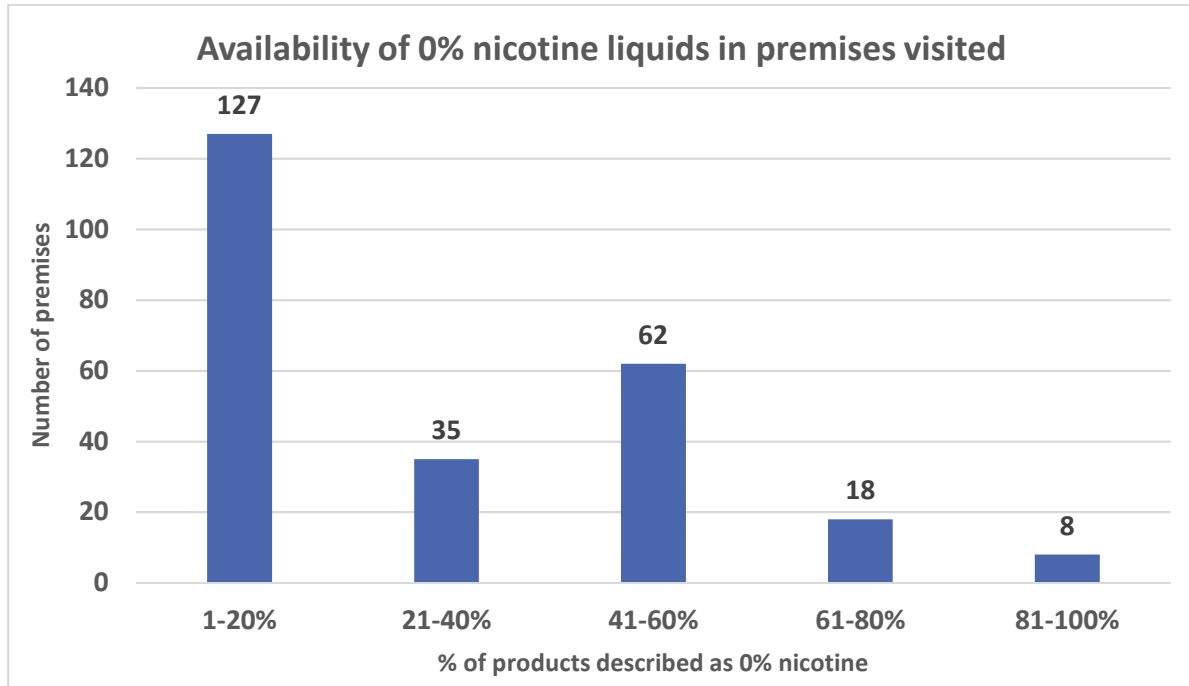


Chart 10: Availability of 0% nicotine liquids in premises visited

Of the 88 premises where the percentage of 0% liquids available was estimated as 41% and above; 78 of these premises were described as specialist E cigarette suppliers.

6. OBSERVATIONS

- The Regulations provide for both consumer safety and for a level playing field for businesses. Failure to comply with the Regulations is a criminal offence;
- Guidance has been produced by MHRA, DHSC and via business companion to assist businesses in compliance; in addition, the IBVTA and the UKVIA are key trade associations offering advice and support for their members in terms of compliance;
- There were less non-compliant products found during this second review of nicotine inhaling products with 84% of E cigarettes and 80% of refill containers found to be compliant with the regulations. Whilst this can be seen as progress, there are still 16-20% of products assessed that did not comply. As in the previous review, the majority of non-compliance was stated as being for “multiple reasons”;
- Smaller, non-specialist businesses [independent newsagents] are still more likely to have non-compliant products available although, during this review, 20% of refill container products assessed at specialist E cigarette businesses did not comply;
- Where non-compliant products were found, the most usual course of action taken by trading standards was advice to the retailer followed by the retailer voluntarily removing the non-compliant products from supply;
- A third of businesses that were assessed were found to have over 40% of their stock described as 0% nicotine; it appears that this is an area of growth for the industry. The Tobacco and Related Products Regulations 2016 do not apply to these products however, The General Product Safety Regulations 2005 will apply, guidance has been issued to trading standards on this point;
- During this review, other matters have been assessed by some trading standards services including compliance with the Classification, Labelling and Packaging Requirements [CLP] and sales to under 18s. Although not the main focus of this review, it is relevant to note that compliance with CLP was found to be poor and in one local authority, illegal sales were made to the young test purchaser at 9 out of 10 premises tested.

7. RECOMMENDATIONS

- CTSI and Primary Authority Officers to engage with the main trade associations – the Association of Convenience Stores [ACS] and the Federation of Independent Retailers [NFRN] to encourage the trade bodies to raise compliance with their members;
- Local Trading Standards to prioritise future advice and guidance to the small non-specialist businesses that retail nicotine inhaling products;
- Local Trading Standards to undertake follow up visits where advice and guidance has been provided to a business during this review. If this has failed to bring about compliance, it is recommended that TS follow their own enforcement policies and escalate their enforcement actions accordingly;
- CTSI to share the findings regarding the CLP requirements with the Health and Safety Executive [HSE] and to facilitate further actions as required;

- CTSI to share the report with the DHSC and MHRA and facilitate a meeting between the organisations to discuss the findings, with particular focus on the rise of 0% liquids;
- DHSC to consider the matter of illegal sales of nicotine inhaling products to young people in conjunction with the findings from the Tobacco Control Survey 2017-18 [not yet published] and to determine whether this is an area of enforcement activity that could be commissioned by the DHSC for 2018 -19.

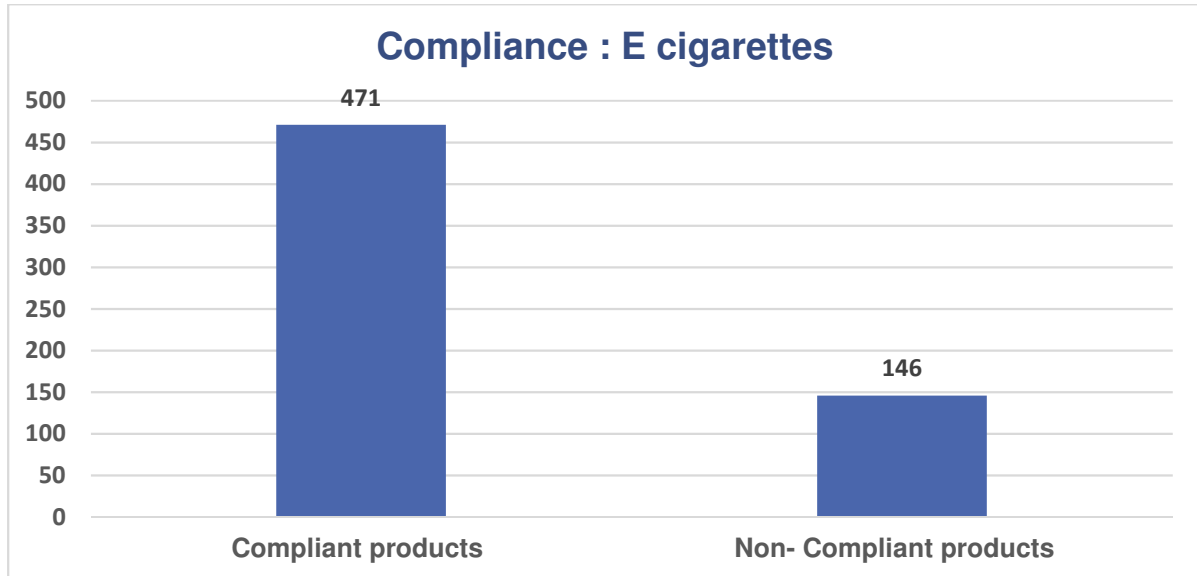
LIMITATIONS OF THIS REVIEW OF COMPLIANCE

- It is acknowledged that this is a limited review of compliance. The premises that have been visited have been chosen by local TSS across a total of 46 different council areas in England however the sample size is restricted to 263 premises.
- In some cases, the total number of visits made to a particular premise type is correspondingly small and thus the findings of this review are suggestive rather than indicative. See Chart 1 for the total number of visits made by TSS by premise type.

ACKNOWLEDGEMENTS

The author is grateful to colleagues at the DHSC , 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.

TRPRs Product Compliance – E-Cigarettes and reasons for non-compliance where found



TRPs Product Compliance – Refill containers and reasons for non-compliance where found

