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Chartered Trading
Standards Institute

**RAPID REVIEW OF COMPLIANCE WITH
TOBACCO & RELATED PRODUCTS REGULATIONS: 2016 AND THE STANDARDISED
PACKAGING OF TOBACCO REGULATIONS 2015
PHASE 2: SHISHA, TOBACCO BLUNTS & SMOKELESS PRODUCTS**

CARRIED OUT BY TRADING STANDARDS SERVICES ACROSS ENGLAND

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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** and the **Standardised Packaging of Tobacco Regulations 2015**; the first review has been published and is available on the Chartered Trading Standards Institute website.*
- *The review was carried out between February and March 2018 by Trading Standards Services across 5 English regions.*
- *The review focuses on the following products: shisha, tobacco blunts and smokeless tobacco; in addition, compliance with the requirement to display a statutory age of sale notice and an assessment of compliance with the tobacco display requirement was also made.*

PRODUCT COMPLIANCE VISITS

- *A total of 227 compliance visits were conducted as part of this Department of Health and Social Care supported review designed to assess compliance with the Regulations. The operation was managed by the Chartered Trading Standards Institute.*
- *The following data was recorded:*

Packaged Shisha: compliant AND non-compliant products
Tobacco Blunts: compliant AND non-compliant products
Smokeless tobacco products: compliant AND non-compliant products
Tobacco Display: Compliant - yes or no
Age of Sale notice: Present - yes or no

- *It proved difficult to locate shisha and / or smokeless tobacco products. Very few of the premises visited had shisha products available, however, of the premises that did hold stock, 93% of these were holding non-compliant product. Similarly, of the businesses that had smokeless tobacco products available for example chewing tobacco, almost all the products were found to be non-compliant.*
- *Tobacco blunts were far more widely available however, compliance was poor with non-compliant products found in over half of all premises visited.*

- *In addition, all premises subject to this review were assessed for compliance with the requirement to display an age of sale notice and the requirements of the tobacco display regulations; 79% of businesses complied with the age of sale notice and 80% with the display restrictions.*

1. INTRODUCTION

This is a Department of Health and Social Care [DHSC] supported project delivered and managed by CTSI; the primary purpose is to **assess product compliance with the Tobacco and Related Products Regulations 2016¹ and the Standardised Packaging of Tobacco Regulations 2015²**. Specifically, the compliance of shisha, tobacco blunts and smokeless products.

A primary review³ of regulatory compliance was carried out in 2017 and, at that time, product compliance [shisha, blunts and smokeless products] was found to be lower than that of cigarettes, HRT or cigars.

This was followed by a focused review of compliance with the requirements of Regulation 15 and 10 of The Standardised Packaging of Tobacco Regulations 2015⁴.

See Annex 1 for extract of relevant data arising from these reports.

Observations and recommendations arising from the primary review included:

- *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 Tobacco and Regulated Products Regulations 2016 [TRPRs] 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 Standardised Packaging of Tobacco Products 2015 [SPoT].*

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 the Standardised Packaging of Tobacco Regulations 2015 available online at: <http://www.legislation.gov.uk/ukxi/2015/829/contents/made> [accessed 22 March 2018]

³ 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]

⁴ Mini Review of compliance with Reg 15 of Standardised Packaging of Tobacco Regulations 2015 available online at : <https://www.tradingstandards.uk/media/documents/news--policy/tobacco-control/mr-reg-15-october-2017-final.pdf> [accessed 9 May 2018]

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; with a specific focus on shisha, blunts and smokeless products as identified in the primary review 2017. Further observations and recommendations will be made where appropriate for future activity.

3. SCOPE

This was designed to be an additional review of business compliance carried out by Trading Standards Services (TSS) across a number of authorities in England. A total of 227 compliance visits have been made during this phase.

4. METHOD

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

North East, North West, South East, London and Eastern Regions.

Each region has undertaken compliance visits. At each visit, officers were requested to assess a range of tobacco products for compliance with the regulations, to ensure that the statutory age of sale notice was displayed and to assess the compliance of the display of tobacco products in the premises in accordance with the Tobacco Advertising and Promotion (Display) (England) Regulations 2010⁵.

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

All data was collated by a nominated coordinator in each region and then passed to the CTSI for reporting to the DHSC.

⁵ Tobacco Advertising and Promotion (Display) (England) Regulations 2010 available on line at: <http://www.legislation.gov.uk/ukxi/2010/445/contents/made> [accessed 22 March 2018]

5. RESULTS

The following sections present the results of compliance monitoring in this phase. In summary this phase considered:

Packaged Shisha: compliant AND non-compliant products
Tobacco Blunts: compliant AND non-compliant products
Smokeless tobacco products: compliant AND non-compliant products
Tobacco Display: Compliant - yes or no
Age of Sale notice: Present - yes or no

A total of 227 compliance visits were carried out across these five regions

5.1 VISTS BY PREMISE TYPE

The greatest proportion of visits were made to convenience / small retailers with 54% of total visits carried out. 18% of visits were made to off-licence premises and 13% of visits to independent newsagents.

Visits to premises described as “other” included: Head Shops, vape shops, petrol station kiosks, a large retailer, shisha lounge and a mobile phone shop.

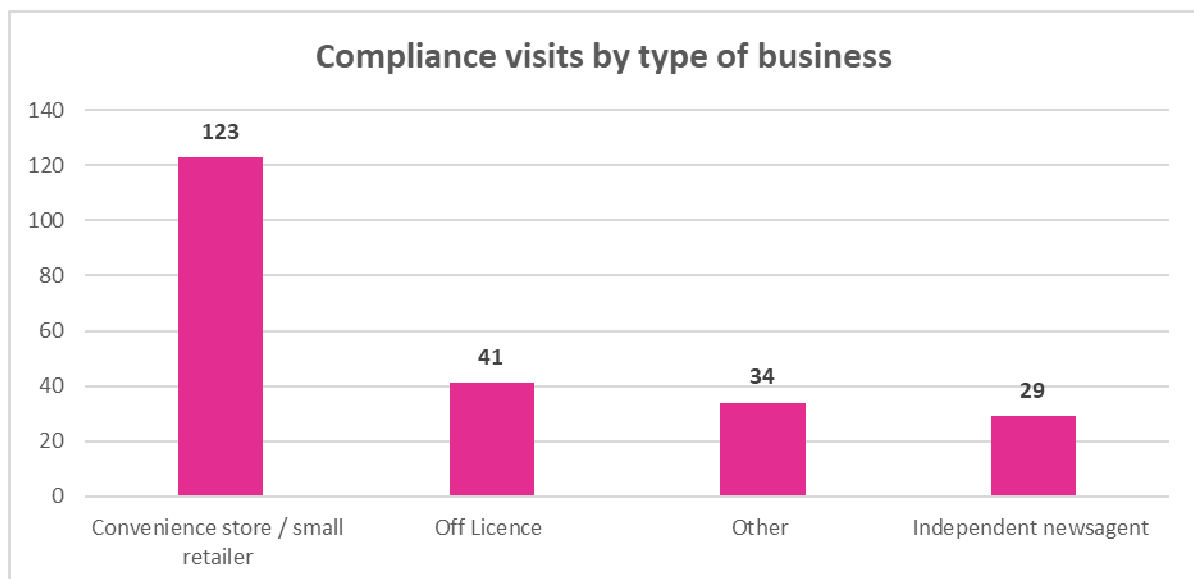


Chart 1: Compliance visits by premise type

5.2 PRODUCT COMPLIANCE – SHISHA

It proved very difficult to locate shisha products at the premises visited during this review. Only 14 of 227 premises had any shisha tobacco available. Almost all (13 of 14) premises had non-compliant product for supply.

Where non-compliant products were found the primary reasons given were either reference to flavours (in contravention of Regulation 10 SPoT 2015) or for other labelling requirements (TRPRs 2016). Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

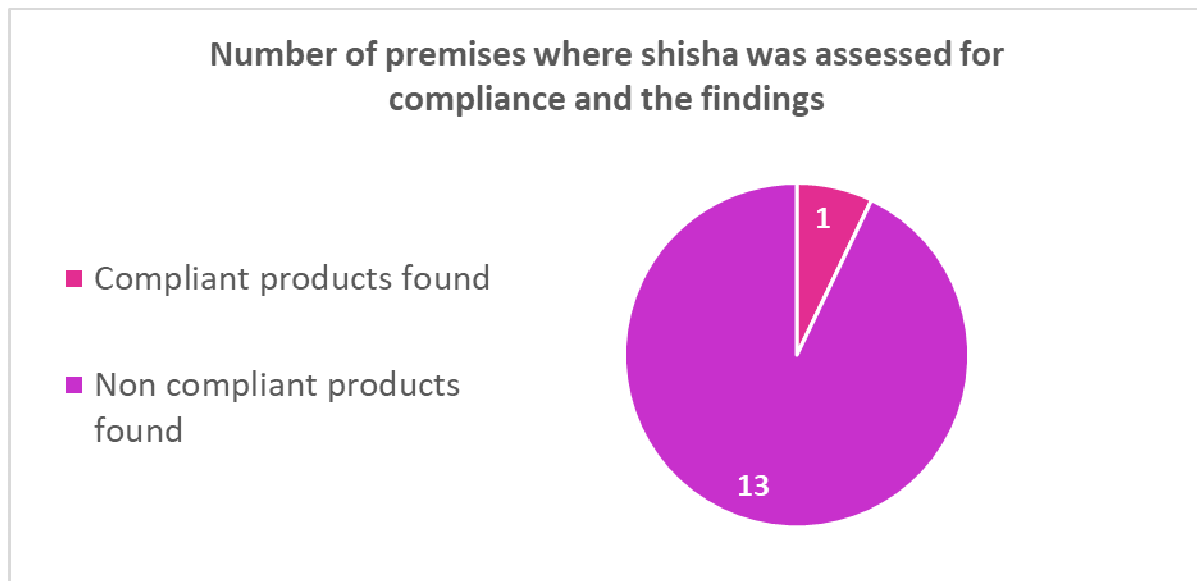


Chart 2: Product Compliance – Shisha

5.3 PRODUCT COMPLIANCE – TOBACCO BLUNTS

Tobacco Blunts were much more widely available at the premises visited during this review with 147 premises or 65% of businesses visited having these products for supply. Compliance was however found to be low with 84% of the premises found to be stocking this product having non-compliant products available.

Where non-compliant products were found (123 visits) the most cited reason was a reference on the packaging to flavours (in contravention of Regulation 10 SPoT 2015), with other reasons cited as labelling issues and product not-notified to Public Health England.

Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

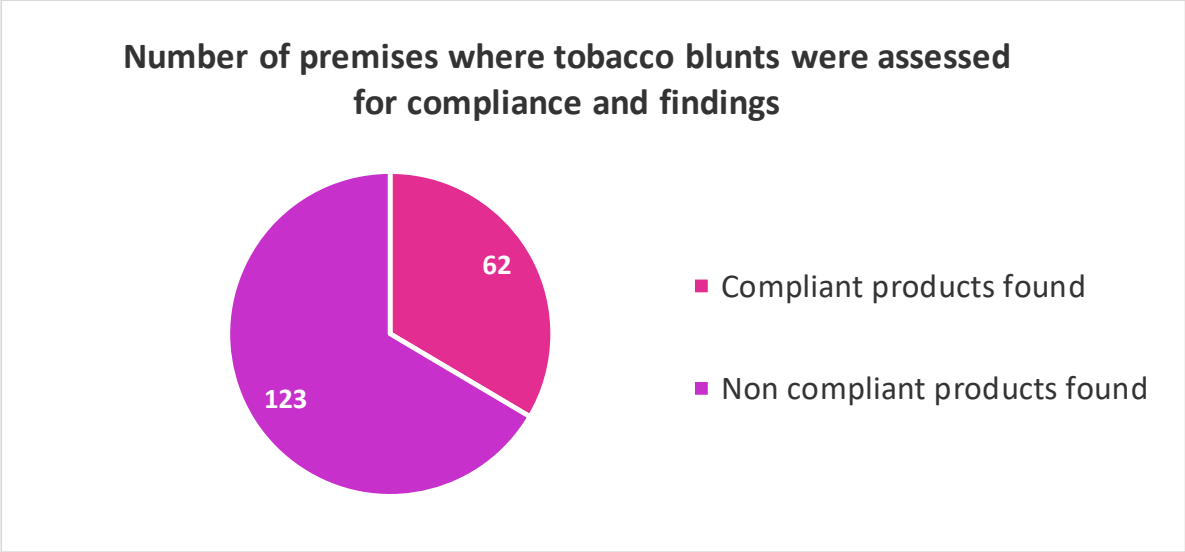


Chart 3: Product Compliance – Tobacco Blunts

Note : there were 38 premises where both compliant and non-compliant blunts were found hence total above exceeds total number of premises where blunts where assessed of 147.

5.4 PRODUCT COMPLIANCE – SMOKELESS TOBACCO

Smokeless tobacco product compliance with the Regulations was found to be poor although only a small number of the premises that were visited [22 premises] had any product available for assessment. Non-compliant product was found in 91% of these premises.

Where non-compliant products were found (22 visits) almost exclusively the reason cited was for “other labelling failure”. Where appropriate, products were voluntarily surrendered or alternatively seized as necessary.

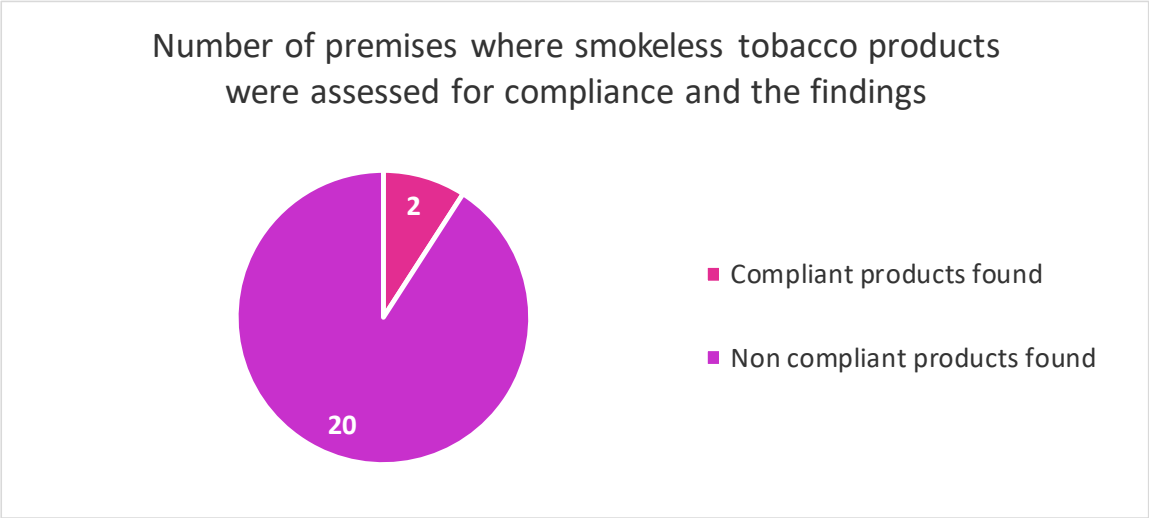


Chart 4: Product Compliance – Smokeless Tobacco products

5.5 SUMMARY OF PRODUCT COMPLIANCE

The chart below summarises the percentage of products assessed that were found to be either compliant or non-compliant during this review. Number of products are also provided. Smokeless tobacco includes chewing tobacco products.

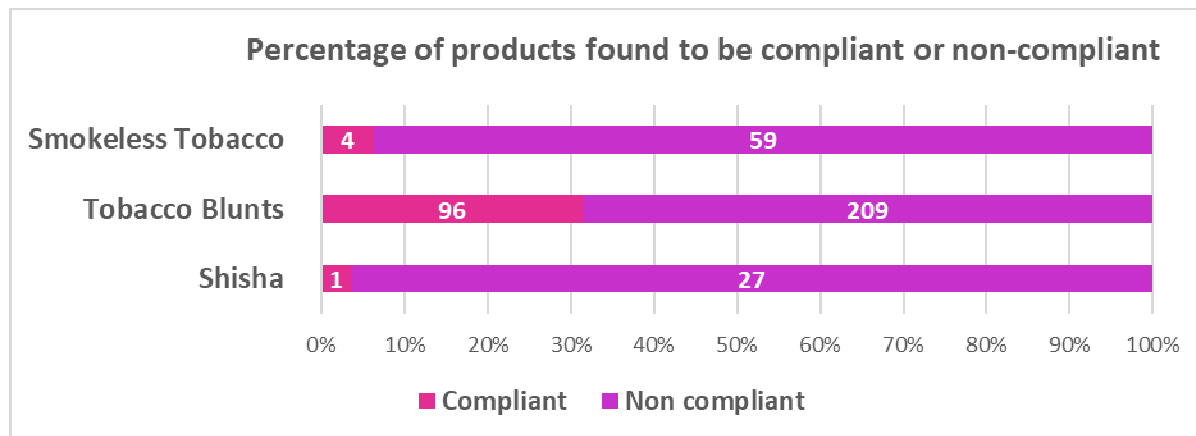


Chart 5: Percentage of products found to be compliant or non-compliant

5.5 STATUTORY NOTICE FOR AGE OF SALE

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 1991⁶.

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

79% 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.

⁶ Children and Young Persons (Protection from Tobacco) Act 1991 available at : <http://www.legislation.gov.uk/ukpga/1991/23/introduction> [accessed on line 04 May 2018]

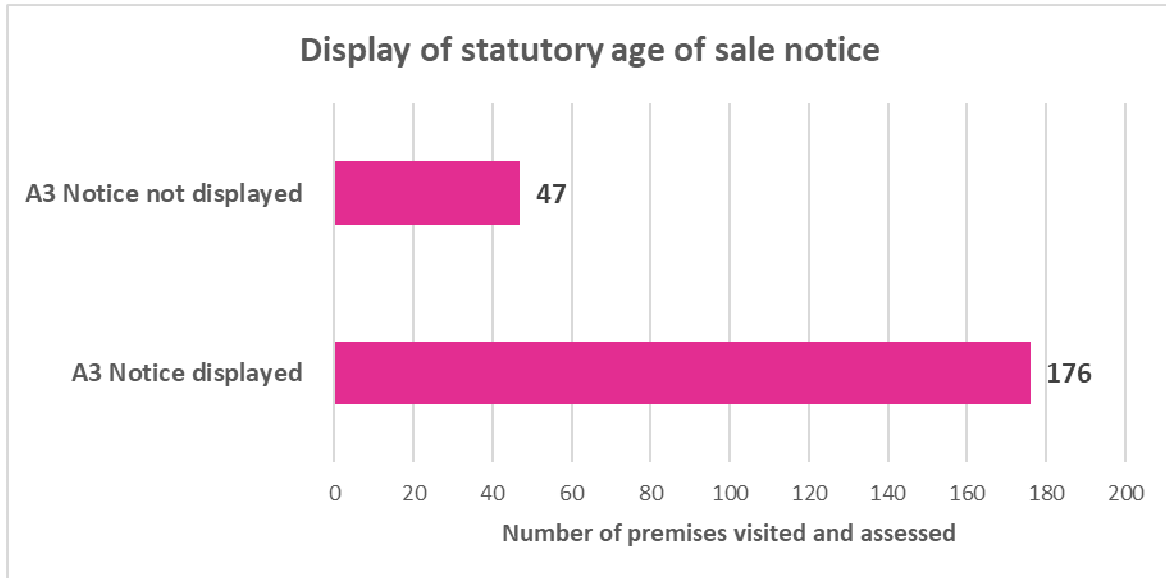


Chart 6: Display of statutory tobacco age of sale notice

Note: 4 premises did not require a notice as there was no tobacco for supply

5.6 TOBACCO DISPLAY COMPLIANCE

An assessment was made of business compliance with the requirements of the Tobacco Advertising and Promotion (Display) (England) Regulations 2010. Compliance in the 223 premises that were assessed was found to be high with 80% of businesses complying with the Regulations.

Where reasons were cited for non-compliance; these included the display being “propped open” and tobacco blunts being openly on display.



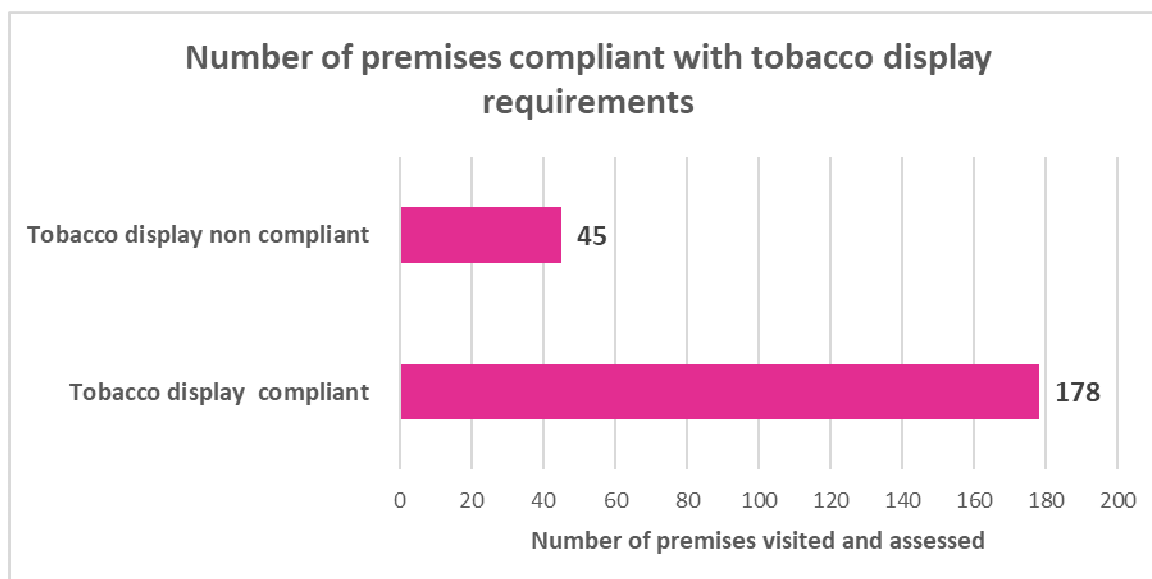


Chart 7: Premises compliant with tobacco display requirements

5.7 OTHER ISSUES

During this review of compliance, a number of other issues were recorded by participating TSS; these included:

- Seizure of illicit tobacco from ten premises
- Removal of cigarettes that were not SPoT compliant
- Removal of non-compliant E liquids

6 OBSERVATIONS & RECOMMENDATIONS FOR ACTION

1. This review was commissioned as a result of findings made by TSS during the first review of regulatory compliance with the TRPRs 2016 and a subsequent review of product compliance with Regulation 10 of SPoT 2015.
2. Where shisha and smokeless products were available, compliance was found to be very poor. Blunts were more widely available, but again, product compliance was poor largely due to reference to flavours on the packaging which is prohibited by Regulation 10 of SPoT.
3. There appears to have been little improvement in product compliance since the initial reviews were undertaken in the summer of 2017.

4. Action was taken against retailers to remove non-compliant product from the supply chain however, it is accepted that it is generally more effective to work with the producers and / or wholesalers of such products where possible to prevent non-compliant product from entering retail level .
5. Attempts were made to ascertain the origins of the non-compliant products but the outcomes were variable with retailers either unable or unwilling to reveal their source of supply. The phrase “old stock “was used frequently.
6. In such circumstances, it is suggested that further work could be undertaken higher up the supply chain starting at the wholesale level. To continue to remove product on a regular basis at retail level is not sustainable.
7. It is recommended therefore that further activity is focussed at this higher level and where possible the identification of producers is sought.
8. Liaison with PHE is recommended to ensure that only compliant products are accepted for notification purposes.
9. It is pleasing to note that compliance with the age of sale notice and tobacco display requirements is good; it is suggested that these requirements are well understood by the majority of retailers.
10. This review has demonstrated that compliance monitoring at retail level is also useful in terms of other actions; in this case seizure of illicit tobacco and the removal of non-compliant cigarettes.

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 31 different council areas in England however the sample size is restricted to 227 premises.

It proved difficult to locate shisha and smokeless products and thus to assess any meaningful change in product compliance rates since the last review. The percentage of non-compliant products is therefore suggestive rather than indicative of the whole market sector.

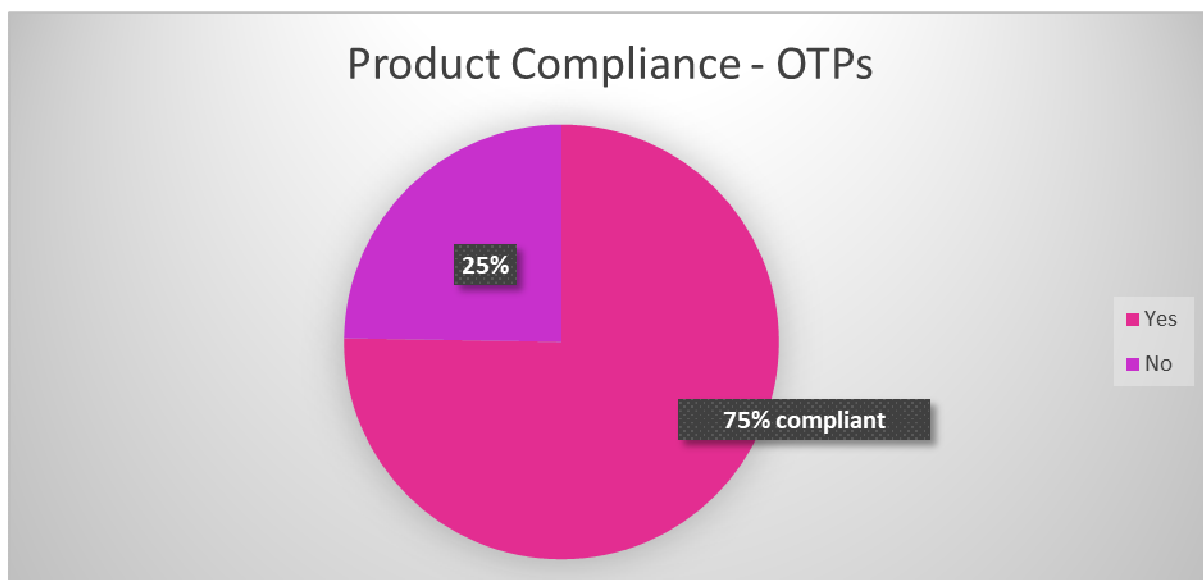
ACKNOWLEDGEMENTS

The author is grateful to colleagues at the DHSC, 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 this second review of regulatory compliance across the country.

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.



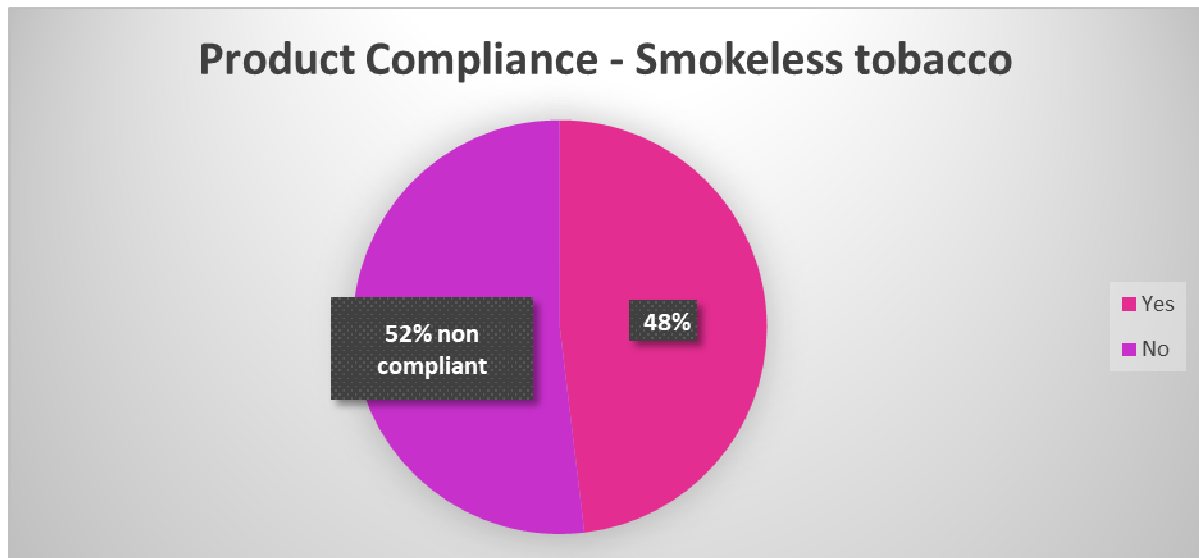
Product Compliance -OTPs

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.

Product Compliance - Smokeless tobacco



Product compliance – Smokeless tobacco

Extract from Mini Review of compliance with Regulation 15 of SPoT 2015

“Almost 25% of all premises visited (32 of 134) had non-compliant shisha and blunts available. In these cases, the packaging was found to be non-compliant by virtue to reference to flavourings.

This included: Blueberry Burst, Apple Martini, Strawberry Fields, Cherry Vanilla flavoured blunts and lemon, mint, cola, coconut and banana flavoured shisha products.”