

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

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

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Special thanks also to Oliver Jewell of Royal Borough of Greenwich for his report of compliance by on-line retailers.

Summary and Key Findings

- 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.
- A total of 634 compliance tests using young people under the age of 18 years were conducted at retail business premises in England between January and March 2016. The tests were carried out by Trading Standards Services. This 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.
- 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%. The range of the non-compliance rate varied between business types.
- A variety of products, from E liquids, disposable e cigarettes to re-chargeable products were purchased with a correspondingly wide range of purchase prices with prices ranging from £1 to £20. The most frequently purchased products were E liquids.
- Where an illegal sale was made, further advice and guidance will be provided by the local Trading Standards Service to assist the business in achieving compliance.

In addition

- Twenty on-line retailers of Nicotine Inhaling Products were reviewed in January 2016. All the websites with the exception of one made at least some reference to an age restriction on the nicotine inhaling products. However, awareness did not in all cases translate to effective measures.

1. Introduction

The Children and Families Act 2014¹ made provision in Section 92 for making Regulations to prohibit the sale of nicotine products to young persons under the age of 18 years. The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015² entered into force on the 1st October 2015. These regulations restrict the age of sale of such products and, in common with the restriction placed on tobacco products, the legal age of sale is 18 years.

It is an offence to sell a nicotine inhaling product to a young person under the age of 18 years; with certain exceptions for medicines and medical devices. The penalty for this offence is a fine of up to £2500.

1.1 Definition of Nicotine Inhaling Products

The Regulations define a nicotine inhaling product as:

'a device which is intended to enable nicotine to be inhaled through a mouthpiece (regardless of whether the device is also intended to enable any other substance to be inhaled through a mouthpiece) '.

The regulations cover nicotine inhaling devices such as e-cigarettes, certain component parts and e-liquids that contain nicotine.

2. Background

In 2014, Public Health England (PHE) commissioned research into the ease with which young people under the age of 18 years could purchase E-cigarettes and associated items. The report³, published by the Chartered Trading Standards Institute found that on average 40% of attempts made by young people to purchase these products resulted in a sale being made. The percentage of sales made by certain business sectors was much higher with market stalls and independent pharmacies making sales on 80% and 74% of all occasions. The report helped to inform the guidance

¹ The Children and Families Act 2014 available online at : <http://www.legislation.gov.uk/ukpga/2014/6/enacted> [accessed 26 October 2015]

² The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 available online at : <http://www.legislation.gov.uk/ukdsi/2015/9780111130568> [accessed 26 October 2015]

³ MacGregor J. (2014) Youth access to E cigarettes and associated products available online at: <http://www.tradingstandards.uk/policy/Improvingthehealthofsociety.cfm> [accessed 26 October 2015]

prepared in advance of the implementation of new Regulations and in particular the need to provide bespoke guidance for certain business sectors.

Concerns regarding the access to nicotine containing products should however be considered in light of data regarding actual usage of such by young people. The Smoking Drinking and Drug Use among young people in England⁴ report (2014) found that whilst 88% of 11- 15 year olds were aware of electronic cigarettes, just over one fifth of 11-15 year old respondents had ever used electronic cigarettes and only 1% were regular users of the products.

3. Purpose

The purpose of this review is to assess levels of compliance by businesses with the Nicotine Inhaling Products (Age of Sale & Proxy Purchasing) Regulations 2015 with specific reference to the age of sale provision.

The findings of this review do not correspond in any way to product use by young people, the review seeks to capture only compliance with the regulations.

4. Scope

This was designed to be a rapid review of business compliance and has been carried out in a twelve week period between January – March 2016. The review has been carried out by Trading Standards Services [TSS] across a number of authorities in England. A mix of business premises have been assessed using young persons under the age of 18 years in test purchase operations. The selection of these businesses has been based primarily on the findings of the PHE report plus local intelligence of businesses in each area. A total of 634 compliance tests have been made. The data arising will be included in the National Tobacco Control survey for 2015-16.

In addition, a review of twenty randomly selected on- line retailers has been carried out. The findings of the online retailer review are the subject of a separate report, a summary is however provided at Annex 1 to this report.

⁴ Smoking Drinking and Drug Use among young people in England (2014)
<http://www.hscic.gov.uk/catalogue/PUB17879/smok-drin-drug-youn-peop-eng-2014-rep.pdf>
[accessed 26 October 2015]

5. Method

For the purposes of the coordination of trading standards matters there are nine regions in England. Each region was invited to conduct up to 70 supported compliance tests at business premises (of their choice) within their region. Each test involved an under 18 year old volunteer tasked with the attempt to purchase a nicotine inhaling product as instructed by Trading Standards.

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.

6. Findings & Results

The number of tests undertaken varied between 48 in the North East and 112 in the North West region. The allocation was determined by the capacity of the authorities in the region to undertake the work in the time frame available and a desire to ensure a spread of visits across the country. See Annex 2 for participating services.

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

6.1 Regions and illegal sales

The largest number of compliance visits were carried out in the North West region; this region also returned the highest rate of illegal sales at 59%. The lowest illegal sale rate was returned by the London region at 19%.

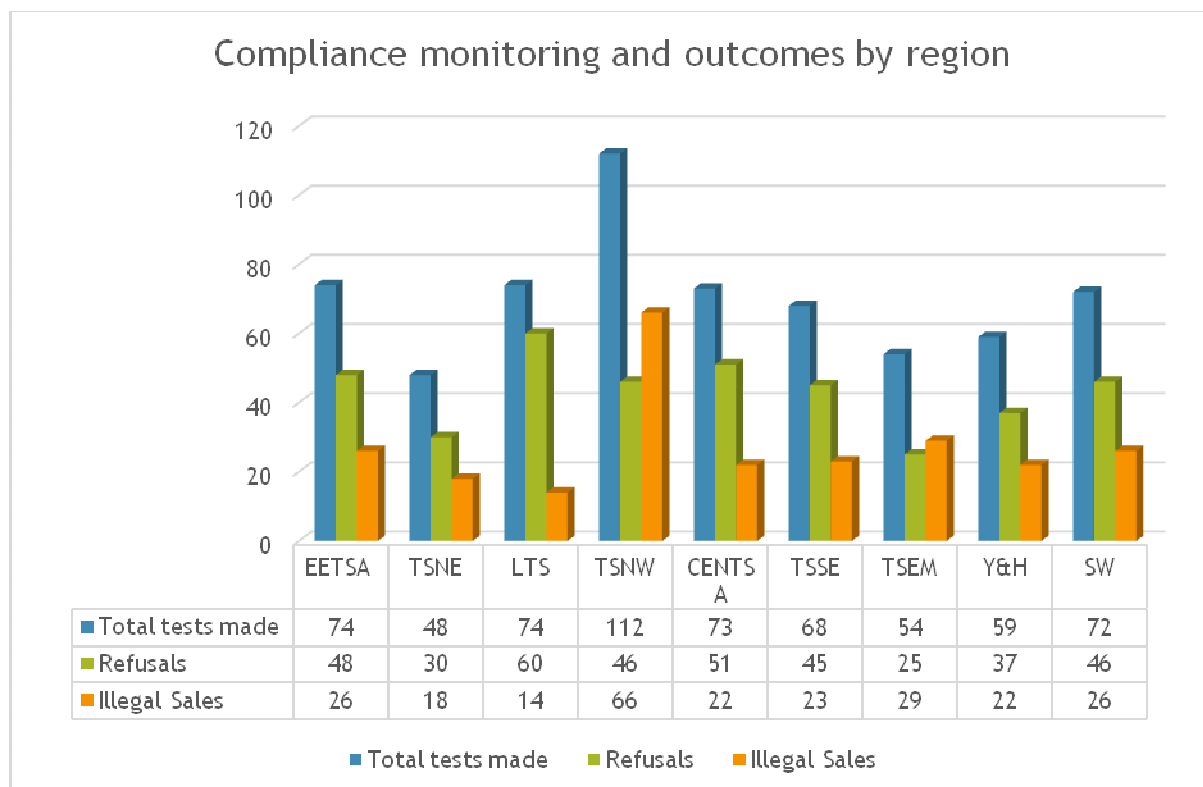


Chart 1: Compliance monitoring and outcomes by region

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 tests resulting in an illegal sale by region

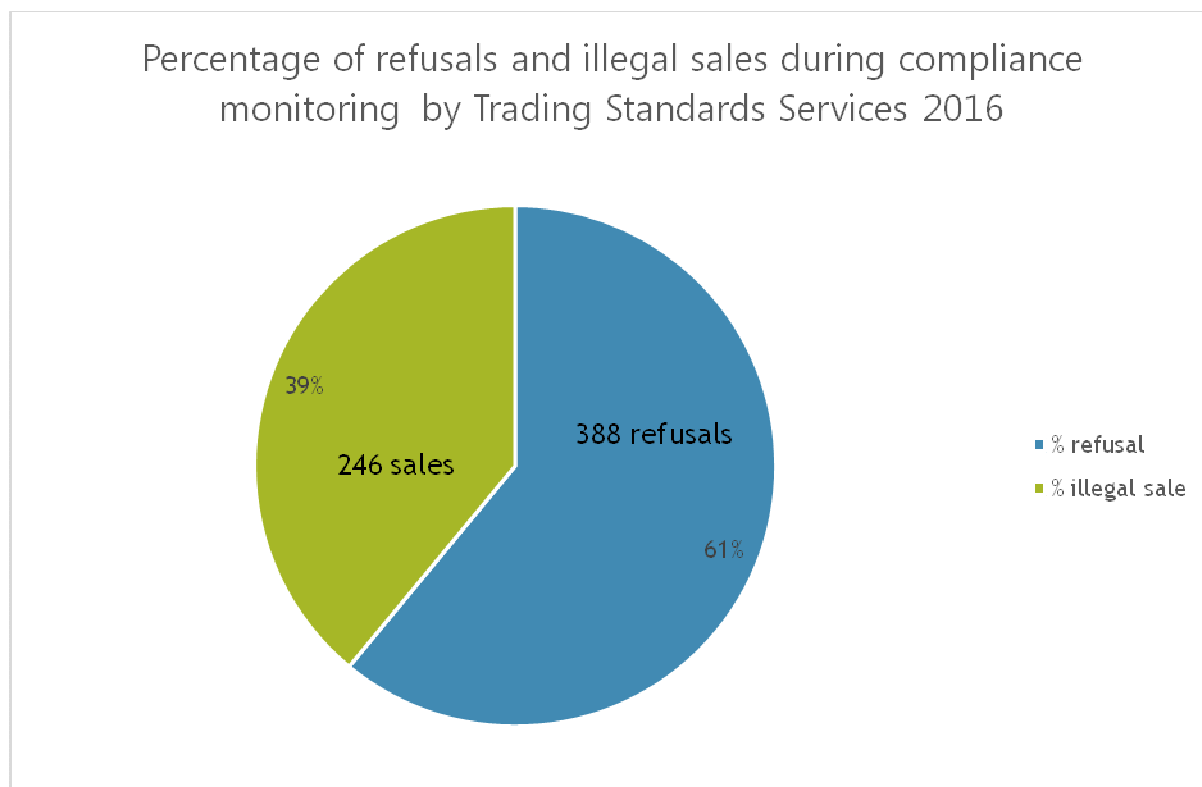


Chart 2: Percentage of refusals and illegal sales made during the review

6.2 Compliance tests by premise type & region

Each region undertook compliance testing across a range of business premise types; the selection of businesses to visit was made by the participating TSS. The greatest number of compliance tests were made at specialist E cigarette premises [137], with the fewest visits made to pharmacies both national and independent [14, 15 visits respectively].

See Annex 3 for details of the premises tested in each region.

6.3 Outcomes of compliance testing by premise type

Chart 3 on the following page details the outcomes of the compliance testing for each business type.

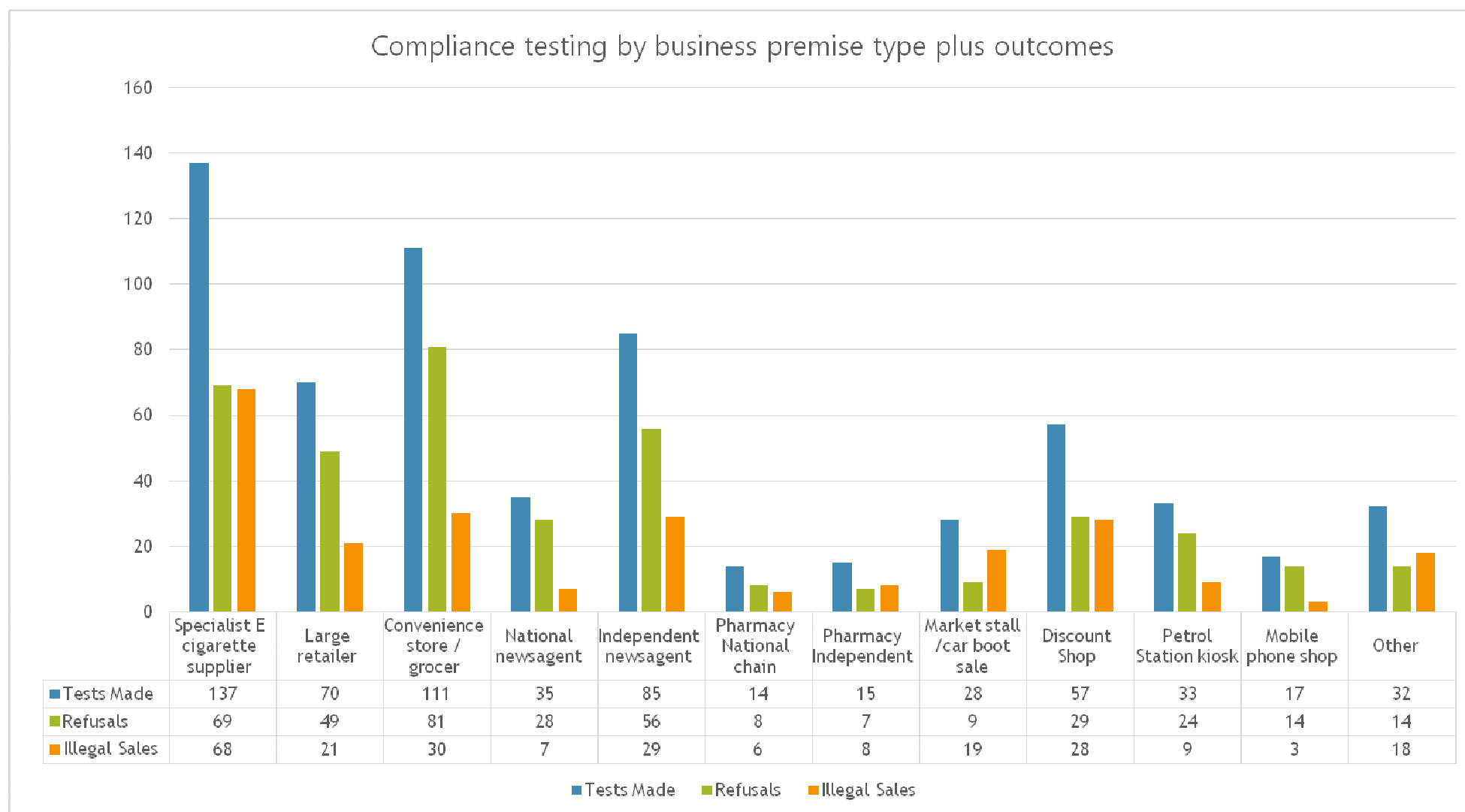


Chart3: Compliance testing by business type plus outcomes

Premise type	Percentage of test purchase attempts that resulted in an illegal sale to a young person under the age of 18 years
Specialist E cigarette supplier	50%
Large retailer	30%
Convenience store / grocer	27%
National newsagent	20%
Independent newsagent	34%
Pharmacy National chain	43%
Pharmacy Independent	53%
Market stall /car boot sale	68%
Petrol station kiosk	27%
Discount store	49%
Mobile Phone shop	18%
Other	56%

Table 2: Percentage of tests that resulted in an illegal sale by business type

The highest proportion of illegal sales [68%] were made at markets and car boot sales with 68% of tests resulting in a sale to the young volunteer, high levels of sales were also found at premises described as " other " , independent pharmacies , specialist e cigarette and discount stores .

Fewest sales were made by mobile phone stores, national newsagents, petrol station kiosks and convenience stores. This is perhaps not surprising given that these businesses with the exception of mobile phone shops , are generally experienced in the sale of age restricted products typically tobacco, lottery and alcohol and specifically in the principle of challenging a young person about their age and asking for proof (Challenge 25 for example).

The "other" category included: gift shop, off license, tobacconist, festival/ head shop, pawn shop, electrical store, hard ware store.

6.4 Profile of test purchase volunteers & outcomes

A range of young people were recruited to work with Trading Standards Services in this review of compliance in terms of their age and gender. The age range extended between fourteen and seventeen years (the research protocol requested that young people preferably aged 16-17 participate) with 314 visits undertaken by male volunteers and 320 by females.

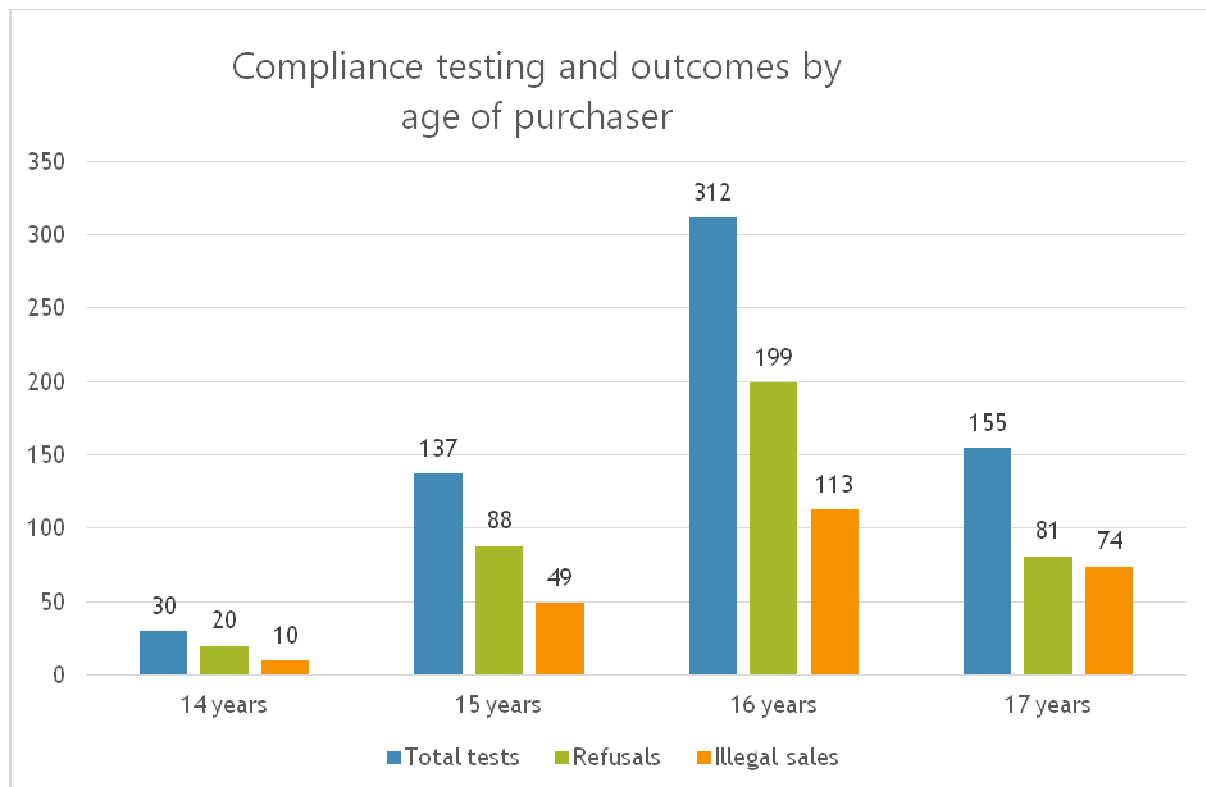


Chart 4: Compliance testing and outcomes by age of purchaser

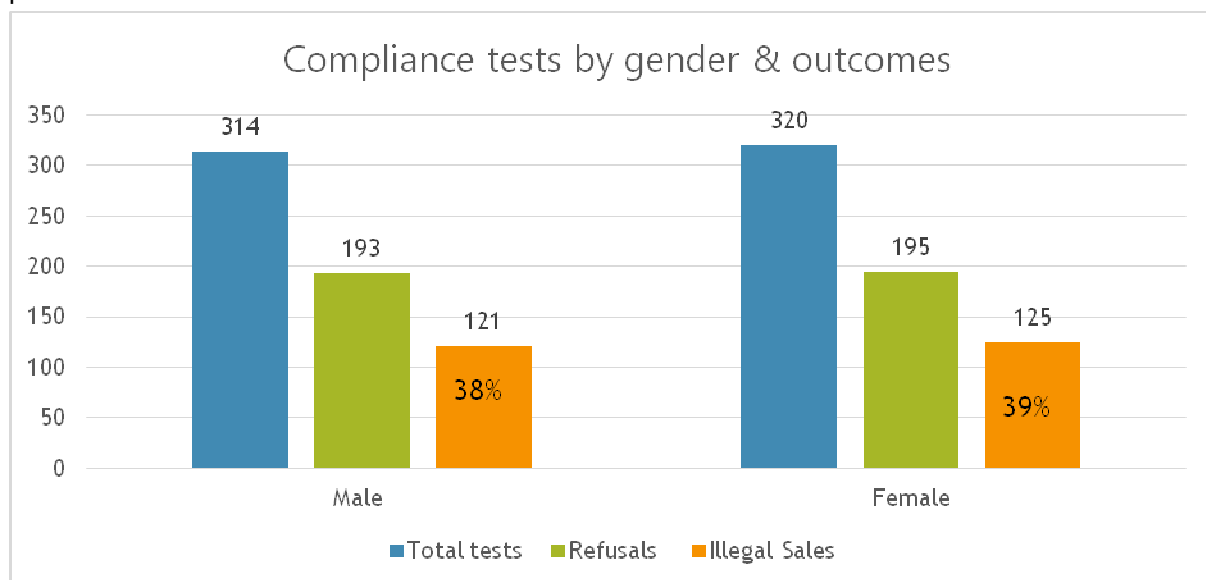


Chart 5: Compliance testing and outcomes by gender of test purchaser

There was no significant difference between testing outcomes of tests made between male and female test purchasers with 38% of male and 39% of female test purchasers being supplied with nicotine inhaling products whilst under the age of 18 years.

The age of the purchaser revealed some differences, with 33% of tests carried out by 14 years olds resulting in a non-compliance, and 48% of tests carried out by 17 year olds resulting in

similar non-compliance.

6.5 Products purchased during compliance testing

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

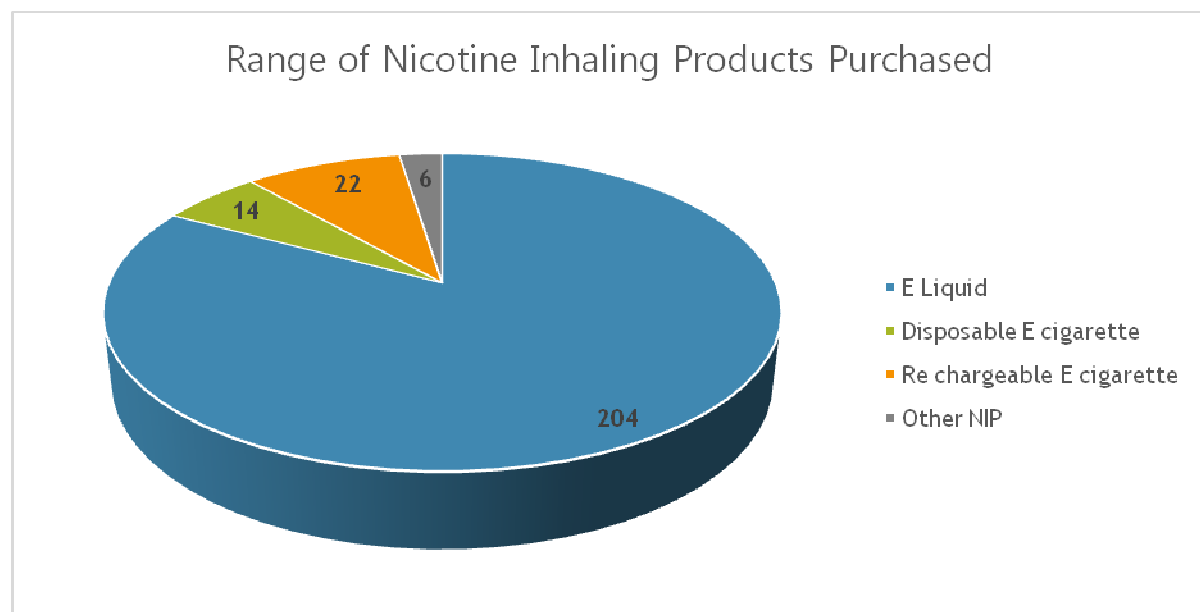


Chart 6: Range of nicotine inhaling products purchased by under 18's

The majority of the products purchased in this review were E-liquids , this is primarily a feature of price. Each product is purchased at a cost to the Trading Standards Service and thus in most cases the least expensive product was selected. See Annex 4 for further examples of products purchased during compliance testing.



6.6 Other matters arising from this review

A number of other matters were considered during this review, including the provision of advice to businesses prior to the compliance testing and the proportion of businesses that have previously sold an age restricted product to a young person under the legal age of sale.

6.6.1 Business advice

Of the businesses that made an illegal sale to an under 18 year old, one third had already received business advice directly from the Trading Standards Service

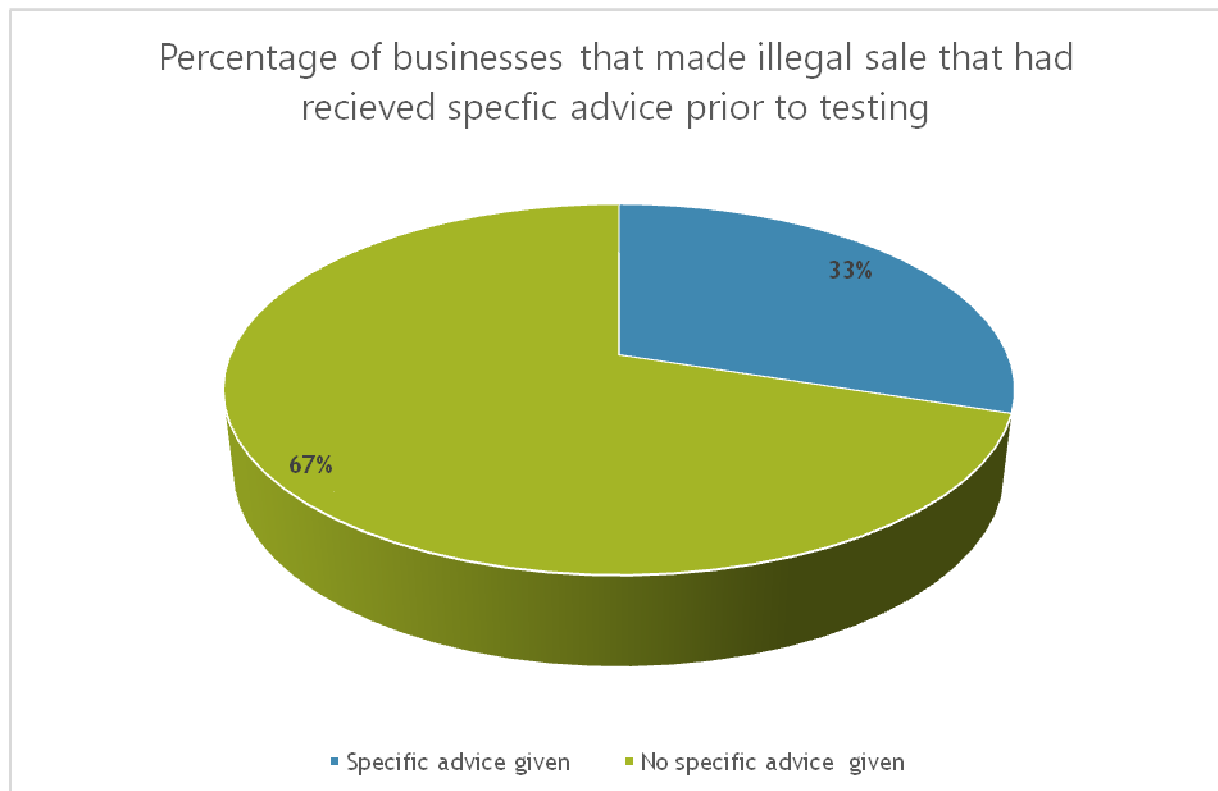


Chart 7: Non-compliance and business advice

6.6.2 Previous illegal sales

Of the businesses that made an illegal sale and, where stated by the TSS, it was found that approximately 20% [47 individual businesses] had made an illegal sale of another age restricted product previously.

Comments provided by officers in charge of the testing recorded the following:

"Till prompt was overridden by the member of staff" Convenience store

"The seller stated that he was unaware of the age restriction on these products"
Independent newsagents

"Premises has also sold illicit tobacco previously" Independent newsagents

"The seller asked the age of the test purchaser and assumed the age limit to be 16 years" Large retailer

"Premises had previously sold DVDs to and under age test purchaser" Discount shop

6.7 Observations

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

1. The time frame for delivery of this review was short [12 weeks] and although there was a wide geographical spread of participants this may have restricted the participation of some Trading Standards Services in the review.
2. The review was carried out between 3-6 months post implementation of the regulations.
3. The majority of visits were carried out at specialist E cigarette businesses, convenience stores and independent newsagents. There was only a small sample of pharmacies (both national and independent) and market stalls tested although these premise types when tested demonstrated high levels of non-compliance.
4. 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. Conclusions

This review has demonstrated that nicotine inhaling products are being supplied by businesses to young people under the aged 18 years despite new regulations to restrict access to such products by young people. In this review of compliance, illegal sales occurred in 39% of test purchase attempts with 10 sales being made to 14 year olds. These results are comparable to those of the PHE study of 2014 when the rate of non-compliance was found to be 40%. This tends to suggest that the requirements of the regulations implemented in October 2015, have yet to be fully absorbed by a large number of businesses.

The majority of the products purchased were E-liquids for the reasons explained at Section 5.5. Most of the products were flavoured but some could be considered to be particularly "child appealing" notably bubble gum, cherry coal and chocolate. There are no plans at present to restrict the use of such flavours in these products although the Tobacco and Regulated Products Regulations 2016 bring in a range of other controls for these products for example the need for child resistant / tamper evident packaging.

The review also highlights the fact that there is a wide cross section of businesses supplying nicotine inhaling products. If a comparison is made between business types that supply nicotine inhaling products and those that supply tobacco products for example, it is easy to conclude that nicotine inhaling products are supplied by a far wider variety of businesses than tobacco.

This presents a challenge to TSS in terms of providing advice and guidance to such businesses, firstly in locating every business in the council area that supplies these products and secondly in providing advice about due diligence. Where a business already sells age restricted products it is likely that there will be some understanding of the basic principles of due diligence for example having an age verification policy in place such as "Challenge 25". In this case however, there is a demonstrable need to provide information to an audience that are not selling other age restricted products and thus the information needs to include at the very least the basic requirement of the age restriction that applies to nicotine inhaling products and training for the businesses in terms of due diligence.

There is an identifiable role for industry and trade organisations to assist in this process.

8. Recommendations

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

- **CTSI & DH** – To collaborate with appropriate industry bodies and trade associations to determine optimum and most appropriate means to disseminate advice / guidance to their members.
- **TSS** – To provide advice and guidance to retailers that have sold nicotine inhaling products during this compliance testing operation ; where appropriate, businesses are to be directed to the Business Companion website⁵ which provides concise guidance to the requirements of the Regulations and also guidance in support of due diligence.
- **CTSI** - To share findings of the on-line retailer review with relevant local TSS and for those **TSS** - to consider testing all on-line retailers assessed as part of this review.
- **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.
- **PHE** - To consider opportunities for raising awareness of this offence with public health colleagues and as part of local communications work, reminding people of the importance of reporting instances of non-compliance to TSS locally.

⁵ Business Companion Guidance for tobacco and nicotine inhaling products available on-line at : <https://www.businesscompanion.info/en/quick-guides/underage-sales/tobacco-and-nicotine-inhaling-products#Whatismeanbytobaccotobaccoproductsnicotineinhalingproducts> [accessed 21st April 2016]

Annex 1 – Summary of On-line Retailer Review

Twenty websites were inspected in January 2016. Nineteen of the sites remain active at the time of reporting with one site appearing to have ceased trading and the domain becoming available.

All the websites bar one made at least some reference to an age restriction on the nicotine inhaling products. Whether or not this demonstrates a proper awareness of the 'new' legislation remains to be seen as prior to the age restriction becoming law many retailers operated to the same principle as best practice.

However, awareness did not in all cases translate to effective measures. All sites visited have been recommended for full test purchases, two to confirm the existence of claimed measures and for the remainder to ascertain if system is in place to prevent such a sale to a minor.

The marketplace is fairly saturated with websites offering an array of devices and liquids in an abundance of flavours and strengths far in excess of those found in the majority of high street locations. The abundant range of luxury flavours can only be assumed to increase the product appeal and as such potentially entice non-smokers to try nicotine inhaling products while doing little to encourage existing smokers to reduce their usage. It can therefore be suggested that the true intent of such extensive supply is to merely replace one addictive product with another.

It is also suggested as a result of this review that Trading Standards services local to the identified websites may wish to further investigate websites for compliance with other Trading Standards legislation. Frequent reference was found to 7 day cancellation rights, restocking fees and in a number of cases a lack of business details.

This report was compiled by Oliver Jewell of Royal Borough of Greenwich Trading Standards Service

Annex 2 Participants in compliance testing

Participating Trading Standards Service	
Bucks & Surrey	South East
Hampshire	
Isle of Wight	
Portsmouth	
Royal Borough Windsor & Maidenhead	
Slough	
Southampton	
Blackburn with Darwen	North West
Cheshire East	
Halton	
Lancashire	
Manchester	
Oldham	
Rochdale	
Salford	
St Helens	
Trafford	
Warrington	
Wigan	
Wirral	
Hartlepool	North East
South Tyneside	
Northumberland	
Redcar and Cleveland	
Bexley	London
Havering	
Newham	
LB Hammersmith & Fulham	
Enfield	
Redbridge	
Greenwich	
Islington	
Brent	
Lewisham	
Barnsley MBC	Yorkshire & Humber
North Yorkshire County Council	
City of York Council	
North Lincolnshire Council	
West Yorkshire Trading Standards	
Doncaster MBC	
Derbyshire	East Midlands
Leicester City	
Leicestershire	
Lincolnshire	
Northamptonshire	
Nottingham City	

Birmingham	Central
Dudley	
Herefordshire	
Sandwell	
Shropshire	
Solihull	
Staffordshire	
Stoke	
Walsall	
Warwickshire	
Wolverhampton	
Southend on Sea Borough Council	Eastern
Central Bedfordshire Council	
Thurrock Council	
Luton Borough Council	
Hertfordshire County Council	
Bedford Borough Council	
Essex County Council	
Peterborough City Council	
Suffolk County Council	
Plymouth	South West
Torbay	
Cornwall	
Wiltshire	
Poole	
Bath & NE Somerset	
Dorset	

Annex 3 Testing in each region by premise type

Premise type	London	NW	Eastern	East Mids	SW	NE	Y&H	SE	Central Mids	Total
Specialist E cigarette supplier	5	32	8	20	23	10	14	9	16	137
Large retailer	7	12	9	5	2	5	5	15	10	70
Convenience store / grocer	16	12	20	4	11	8	10	12	18	111
National newsagent	5	2	10	4	4	3	4	3	0	35
Independent newsagent	11	22	12	8	6	6	6	7	7	85
Pharmacy National chain	6	4	0	0	1	0	0	2	1	14
Pharmacy Independent	6	0	2	1	2	2	0	2	0	15
Market stall /car boot sale	1	4	4	2	1	3	6	4	3	28
Petrol station kiosk	5	5	3	5	3	3	3	1	5	33
Discount store	6	14	2	2	11	3	6	5	8	57
Mobile Phone shop	3	3	0	1	1	3	1	5	0	17
Other	3	2	4	2	7	2	4	3	5	32
Total	74	112	74	54	72	48	59	68	73	634

Annex 4 Examples of products purchased during compliance testing



