

Trading Standards Vapes Enforcement

Problems in the vapes market:

Vapes are a key tool to stop adults from smoking tobacco. They are much safer than smoking tobacco and can be used to effectively manage nicotine addiction. The sale of vapes is a rapidly growing market, with sales reaching £792m in 2022. However, the introduction of disposable vapes in the last couple of years has seen a rise in problems in the market. There are problems with the safety of the vapes themselves, alongside growing evidence that there has been a sharp rise in under 18's vaping.

Safety of vapes: There are a range of compliance issues with vapes including:

- Not being registered with the Medicines and Healthcare products Regulatory Agency (MHRA) for sale in the UK. If the products are not registered, then there is no assurance about the chemicals they contain and whether they are safe to be inhaled. They must be registered to be legally sold.
- Having a liquid tank size that is larger than the maximum permitted. This enables excessive consumption of nicotine, which is increasingly harmful as the quantity of it being inhaled rises.
- Having incorrect labelling (often the labelling was designed for a different market than the UK). This may mean that it doesn't have the information about safe use or warnings required by our legislation.
- Counterfeit vapes, again with no knowledge of the chemicals they contain there is no assurance that they are safe.

Use of vapes by under 18's: It is illegal to sell vapes to under 18's and Public Health are clear that they should only be used by smokers of tobacco as a tool to quit. There may be several reasons for the rise in demand for vapes from under 18's including:

- The child appealing flavours of vapes such as popcorn, blueberry, mango ice, watermelon-cherry, and bubble-gum.
- The child appealing packaging of vapes, with bright colours and interesting imagery (see examples below).
- The low cost, particularly of disposable vapes, making them accessible on pocket money. Disposable vapes can be bought for a little as £2 and are often under £5 (compared to around £15 for a typical packet of cigarettes).
- The addictive nature of nicotine causing children to quickly become addicted.




Current enforcement and its' challenges:

Retailers about whom Trading Standards receive complaints of selling vapes to under 18's all receive advice from the Service. We then undertake test purchasing using under 18's. During 22/23, 24 attempts were made with 7 sales representing a 29% failure rate. We plan on doing more underage test purchasing in this year, although a challenge for us is recruiting under 18 volunteers. We sometimes do test purchasing in conjunction with the Police using Police Cadets as the volunteers.

Working with the UK Vaping Industries Association (UKVIA) in a Primary Authority Partnership we continue to support them to educate their member businesses through advice and webinars with the aim of reducing the risk of underage sales from both physical premises and internet sales.

Working with the Association of Convenience Stores (ACS) in a Primary Authority Partnership we have produced advice guides for members to educate regarding the sale of age restricted products. The vapes guide can be found here: [acs advice - vaping april 2023.pdf](#) Being present at their annual conference enabled us to demonstrate the difference between compliant and non-compliant vapes to help businesses understand what they can sell and why.



This guidance document contains Assured Advice under the ACS Primary Authority Scheme. For more details visit www.acs.org.uk/assured-advice

ACS advice
SELLING VAPES RESPONSIBLY

This guide explains how to source and sell vapes (otherwise known as e-cigarettes) responsibly. These are products that heat a nicotine containing liquid to generate an aerosol.

Vapes must be notified to the MHRA before being legal to place on the UK market. When sourcing new products, check the Notified Product lists on the MHRA website at <https://cms.mhra.gov.uk/acp-new>. If a product is not listed on the MHRA website in the Notified Products List, it is not allowed to be sold in the UK.

An ACS advice guide for retailers
www.acs.org.uk

ACS the voice of local shops

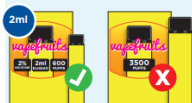
ACS the voice of local shops acs.org.uk

ELECTRONIC CIGARETTES. An ACS advice guide for retailers

1. HOW TO RECOGNISE LEGITIMATE PRODUCTS


There are strict requirements for vapes that are allowed to be placed on the UK market. Check the following to ensure the products you stock are legitimate:

The maximum tank size is 2ml. This is equivalent to 600-650 puffs for disposables. Products advertising significantly more usage than this are illegal.



2ml

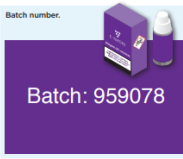
The maximum size of refill containers is 10ml.



2ml **10ml**


DISPOSABLES = 2ml REFILLS = 10ml

Batch number.




Batch: 959078

Recommendation to keep the product out of the reach of children.



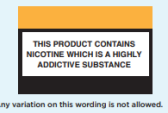
18+ ADULTS ONLY

The maximum nicotine content allowed for vapes is 20mg/ml.



20mg/ml


Health warnings must cover 30% of the front and back of the pack. The health warning must read:



THIS PRODUCT CONTAINS NICOTINE WHICH IS A HIGHLY ADDICTIVE SUBSTANCE


Any variation on this wording is not allowed.

Offers and discounts, product safety/health claims are prohibited on packs.



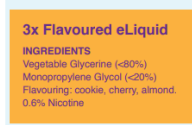
20% OFF!

Vapes that are charged from the mains electrical supply should bear the CE mark or UKCA mark. The UKCA (UK Conformity Assessed) mark became part of UK law when the UK left the EU and must be included on all packaging from January 2023 onwards.



CE UK CA

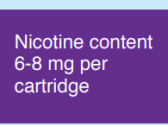
List of ingredients in nicotine-containing liquid, if present.



3x Flavoured eLiquid


INGREDIENTS
Vegetable Glycerine (<80%)
Monopropylene Glycol (<20%)
Flavouring: cookie, cherry, almond.
0.6% Nicotine

The product must indicate the nicotine content and delivery per dose.




Nicotine content 6-8 mg per cartridge

All vapes and refill containers must be tamper-evident and have child-resistant packaging. Electronic/electrical products must be disposed of separately from household waste, more information about recycling vapes and WEEE regulations is available on page 7.



Packaging must also contain the manufacturer or importer name and contact details.



Imported and distributed by
E-Smoke Ltd
90 Eastern Road,
Slough SL3 1XS
Tel: 01753 100100
Email: info@e-smoke.co.uk

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ELECTRONIC CIGARETTES An ACS advice guide for retailers

2. PREVENTING UNDERAGE SALES

It is illegal to sell vaping products to anyone under 18. Anyone doing so is committing an offence, and both the business owner and staff members who made the sale can be penalised.

Challenge 25

ACS recommends the use of Challenge 25 policies for all underage sales. Challenge 25 is a store policy based on two simple principles:

- All staff serving customers should be trained to think 25. This means if a customer is seeking to buy an age restricted product (of any kind), the staff member should ask themselves the question - 'Does the person in front of me look like they might be under the age of 25 years?' If the answer is yes, then they should ask the person for a valid proof of age. If the identification confirms they are over the legal age of purchase for that product, then it can be sold to them.
- The store policy is clearly communicated to customers, usually through the use of visible in-store signage.

Posters are available to download and print from <https://www.acs.org.uk/challenge25>

3. PROXY SALES

It is an offence for an adult to purchase nicotine inhaling products on behalf of someone under age. This is commonly called a proxy sale. You should consider adopting a common approach to identifying and preventing proxy sales across all age restricted products.

It can be very difficult to know if an adult intends to buy an age restricted product for or on behalf of someone who is underage. Therefore, you are only expected to act when an obvious proxy sale is taking place. More information on common scenarios that retailers may encounter when dealing with attempted proxy sales is available in the ACS Assured Advice guide on Preventing Underage Sales.

To mitigate proxy purchasing, some manufacturers might enforce product quantity limits that restrict bulk orders that may be distributed to these underage. Check and comply with manufacturer product quantity limits if they have such policies in place.

4. ONLINE SALES

For retailers that sell vapes online through a delivery service or online ordering platform, ACS recommends conducting ID checks before any goods are delivered to a customer. More information about selling age restricted products online is available in the ACS Assured Advice guide on Preventing Underage Sales.

5. ADVERTISING

Retailers that advertise vapes should consult advice on the restrictions on advertising e-cigarettes and refill containers from the Department of Health and Social Care and from the Advertising Standards Authority.

UK MEDICATED E-CIGARETTES

- E-cigarettes which are licensed as medicines are exempt from the age restriction and can be sold to persons under 18.
- E-cigarettes that contain over 20mg/ml of nicotine are required to be licensed as medicines.
- You can check if e-cigarettes you stock are licensed as medicines by visiting the Medicines and Healthcare products Regulatory Agency (MHRA) website here: www.gov.uk/guidance/e-cigarettes-regulations-for-consumer-products

ACS advice

ABOUT THIS GUIDE

This guide is provided by the Association of Convenience Stores in consultation with Buckinghamshire and Surrey Trading Standards. It was last updated in January 2023. Please refer to the ACS website for the most current version of this guidance.

ACS Primary Authority Scheme

This advice was developed by ACS, Buckinghamshire and Surrey Trading Standards, Woking Borough Council and Surrey Fire and Rescue Service, as part of a dedicated primary authority scheme. This means that all the advice that has this mark against it is 'Assured Advice'.

Assured Advice means that if you adopt the policy in your business, when it must be respected by all other local authorities and they cannot ask you to adopt a different policy.

This guide covers a range of different issues of best practice and the shops that qualify as assured advice are marked by this hallmark.

To benefit from assured advice you must sign up to the ACS scheme. All ACS members can sign up to the ACS Primary Authority Scheme for details of how to join visit www.acs.org.uk/advice

CONTACT

For more details on this guidance, contact a member of ACS on 0203 330000.

For more details on ACS:
Visit: www.acs.org.uk
Call: 0203 330000
Follow us on Twitter: @ACS_UK, @acsshops

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Relevant legislation and additional guidance

- Tobacco and Related Product Regulations (TRPR) <https://www.legislation.gov.uk/ukdsi/2016/5001/contents/made>
- MHRA Notified Products List: <https://onlinetools.mhra.gov.uk/npl/>
- MHRA Retailer Guide: <https://bit.ly/3mVU6U6>
- Yellow Card Reporting System: <https://yellowcard.medicines.gov.uk/>
- Restrictions on advertising electronic cigarettes (OHS2) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/610676/hs2-restrictions-on-advertising-of-e-cigarettes-substance-20-may-2017-vcf-complete
- ASA Code Section 22, Electronic Cigarettes: <https://www.asa.co.uk/industry-guidance/asa-code-section-22.html>

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When we find illegal vapes, we will seize them and usually we will ask for them to be forfeited, giving the retailer advice. We have seized nearly 8,000 non-compliant vapes in the year 2022-2023. This creates storage and disposal issues as they need to be appropriately recycled and are a complex product.

Although not funded by the Office for Product Safety and Standards (OPSS) alongside our usual product safety work at Heathrow, we do occasionally work with Border Force (usually by providing advice) to deal with the attempted import of vapes that are non-compliant. Most recently this was to deal with a batch of oversized disposable vapes (pictured right) that claimed to give 9,000 puffs when the approximate number of puffs for the legal maximum 2ml tank size would be around 600.



A further challenge for enforcement is the range of disposable vapes in the marketplace, and retailers keeping a similarly wide range of stock. Testing all the products we suspect to be non-compliant to provide the evidence for this is prohibitively expensive.

Recent government announcement / future enforcement:

Whilst the risk of potential health impacts of vaping is lower than smoking cigarettes, vapes usually contain the addictive substance nicotine. As such, vaping should only be used as a harm reduction aid to support smokers to stop smoke. The Government is clear on this and has two objectives for vaping. The first is to maximise the opportunities of using vapes as a 'quit aid' to help tobacco smokers to switch away from that to vaping. The second is to prevent non-smokers and young people from starting to vape.



In April 2023 the Government announced measures designed to reduce the sale of illegal vapes by providing £3million of funding for trading standards enforcement including an illicit vapes enforcement squad. The announcement aims to tackle the high numbers of non-compliant and unsafe vapes available in the marketplace and to tackle sales of vapes to under 18's.

Plans for the funding are still being developed with the aim to help Trading Standards Services across the country to be as effective as they can be in tackling these problems through enforcement.

This money is likely to help the team in the following ways:

- by targeting enforcement on vapes that are known to be illegal
- by providing a route for safe storage and destruction of this environmentally complex product
- by centralising an approach to online sales of illegal vapes, allowing our resources to be focused on local sellers
- by providing resource to stop more illegal vapes as they enter the Country, meaning fewer will reach retailers and get out to vape users
- by providing a central source of business advice materials and officer training to ensure we can act as efficiently and effectively as possible

We believe that the £3m may (but not yet fully agreed) be spent in some of the following areas:

What	Why	Impact for Buckinghamshire and Surrey
Increasing enforcement activity focused on vapes at our ports and borders	All (or the vast majority of) vapes are imported, they are not generally produced in the UK. Enforcement at the border is more efficient than at retail level as it prevents illegal vapes from being spread out across multiple retail venues. Costs/lost (seized) product are targeted at the importer at fault.	Trading Standards are likely to be directly involved in this work for Heathrow and receive funding to do so. Depending on the level of work we may need to increase our officers working at Heathrow, which may require recruitment.
Developing a national intelligence and data picture	Collating the data on issues and LA activity in this area will enable patterns to be seen and the case to be made for ongoing / future funding requirements.	We are likely to be asked for a regular information return in the same way as we currently give on illegal tobacco. We are likely to receive a small amount of funding to ensure we can provide this.



<p>Money to the regions to assist in managing the storage and disposal of illegal vapes</p>	<p>Storage and disposal are ongoing problem for local authorities. Vapes are a complex product for disposal adding to the challenge of ensuring seized products do not find their way back to the marketplace.</p> <p>To give an example one LA was quoted £1/vape for destruction.</p>	<p>This will simplify things and reduce the potential costs which were likely to have fallen on the Service (we currently have over 5,000 seized vapes in our secure stores awaiting destruction).</p> <p>This will reduce the barriers to us seizing vapes and enable us to seize more illegal product.</p>
<p>Coordinated national market surveillance</p>	<p>Most products are sold countrywide. Testing is expensive and difficult so currently the level of testing is low because it doesn't make sense for a LA to invest its resources in that way.</p> <p>Most vapes sellers sell a massive range of products, so testing all of them by the LA seizing them would be prohibitively expensive and time consuming.</p> <p>Therefore, coordination of their assessment and testing and sharing the results nationally will help all TS Services to target their resources on known illegal products.</p>	<p>Will give us a better understanding of (and evidence of) what products are illegal enabling us to take enforcement action.</p> <p>Will put us more in control of enforcement, by providing choices whether to prosecute or not.</p> <p>Will reduce the need to rely on information from vape manufacturers which can vary in accuracy.</p>
<p>Online test purchasing of vapes</p>	<p>Online sites make illegal vapes available across the country, so it makes more sense for the enforcement to be centralised</p>	<p>Reduces availability of illegal vapes in Buckinghamshire and Surrey without us having to take on national level issues.</p>
<p>Increased availability of information for businesses operating in this market on how to comply</p>	<p>Most businesses want to be compliant with the law, and therefore providing them with high quality information will drive up compliance in the market.</p> <p>It is logical and efficient for this to be provided centrally because there is no local variation in the legislation</p>	<p>Helps us to provide high quality advice materials to our local businesses in the most efficient way.</p>



<p>Increased coordination of enforcement best practice and training of TS Officers conducting enforcement</p>	<p>Many Trading Standards Services are facing the same problem and rapidly needing to get to grips with a market of disposable vapes that didn't exist 3 years ago. It is more efficient to share best practice.</p>	<p>Helps upskill our workforce to meet the current challenge in an efficient way. Stops multiple TS Services re-inventing the same processes and procedures, helping us to be efficient and learning from others helps us to be effective.</p>
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The Joint Committee is invited to note this information and to provide any advice they feel appropriate about how the service could develop the work relating to vapes

