

**London Boroughs of Brent & Harrow
Trading Standards Joint Advisory Board
12 OCTOBER 2022
Report from the Senior Service Manager**

FOR INFORMATION

TRADING STANDARDS WORK REGULATING NICOTINE INHALING PRODUCTS

1.0 Purpose of the Report

- 1.1 The purpose of this report is to provide members with information of Trading Standards work on the supply of non-compliant disposable 'nicotine inhaling products' (a device used to inhale nicotine through a mouth piece) commonly referred to as "vapes" or 'e-cigarettes'. For the purpose of this report, these products will be referred to as 'e-cigarettes'.

2.0 Recommendations

- 2.1 That Board Members consider the report and make recommendations or comments where appropriate.

3.0 Details

- 3.1 It was brought to the attention of Brent and Harrow Trading Standards (the Service) that retailers were being supplied and supplying non-compliant disposable e-cigarettes within both Boroughs. This is also an issue that has been widely reported regionally across London and the United Kingdom.
- 3.2 Regulation 31 of the Tobacco and Related Products Regulations 2016 (TRPR) and the Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020 makes The Medicines and Healthcare Products Regulatory Agency (MHRA) the competent authority for a notification scheme for e-cigarettes and refill containers in Great Britain and each district council in Northern Ireland.
- 3.3 Regulation 53 of the Tobacco and Related Products Regulations 2016 (TRPR) makes it the duty of each Weights and Measures authority in Great Britain and each district council in Northern Ireland to enforce the supply of e-cigarettes in accordance to the provisions of TRPR. 'Weights and Measures' authorities are the legal title used to refer to Trading Standards teams.
- 3.4 The TRPR sets out the following requirements in relation to e-cigarettes or refill container presented for retail sale;
- the tank not to exceed 2millilitres for disposable or a single use e-cigarette, 10 millilitres for a refill container
 - must not contain nicotine in excess of 20 milligrams per millilitre

- the packaging must be child resistant and tamper evident as well as protected against breakage and leakage
- must not contain additives such as vitamins, colouring or prohibited additives in tobacco products
- must not contain substances other than the ingredients notified under regulation 31
- must include instructions for use, storage, list of ingredients, contact details of the producer/importer, warnings of risks, adverse effects, addictiveness and toxicity
- all e-cigarettes and e-liquids be notified to the MHRA before they can be sold

3.5 Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020 also sets out the requirement as of 1 January 2021 for new products to be notified to MHRA by the producer.

3.6 A producer is anyone who manufactures, imports or re-brands these products.

3.7 Whilst many legal and compliance duties must in the first instance be fulfilled by the producer, in many cases, there is a prohibition that *'no person'* may supply e-cigarettes where the physical product, the products labelling or its presentation requirements as set out in the relevant legislation have not been met. It is therefore the retailer's responsibility to ensure that these requirements are fully met, before they are exposed for sale, offered for sale or supplied to consumers.

3.8 In March 2022, the Service started to engage with businesses to make them aware of the issues of non-compliance identified with e-cigarettes already being supplied in the U.K. Verbal and a specifically prepared guidance document was given to each business that was visited.

3.9 To date a total of 199 business premises have been visited and have been given a comprehensive advice. Inspections of stock within the premises has led to over 3,700 non-compliant e-cigarettes voluntarily removed from sale by businesses. A total of 770 e-cigarettes have been seized from businesses following re-visits which identified voluntary undertakings had not been followed. General none compliance covered areas such as tank size capacity, non-registration and incorrect warnings.

3.10 The visits were made to retail premises with the exception of one visit which was to a wholesaler and following a referral from another local authority, a local business trading on-line which had imported 25,000 e-cigarettes, following intervention and advice from the Service, the business successfully recalled 19,000 units. The issues were, the e-cigarette not having the adequate warnings, some of the vapes exceeded the maximum liquid volume and nicotine concentration and the importer was not able to provide adequate documentation for products imported in. The products had not also been registered.

3.11 Using a base of £5 per item, the removed products total a minimum retail value of £117,350 worth of noncompliant e-cigarettes have been removed from the supply chain within Brent and Harrow, thus far.

Examples of e-cigarettes containing nicotine that are non-compliant and not legal to be sold in the UK



3.12 All businesses that were visited were advised when sourcing new supplies of any e-cigarettes or e-liquid products to;

- Check that a compliant notification has been published in one of the Notified Product list and if the product cannot be found on the MHRA's website <https://cms.mhra.gov.uk/ecig>, to ask the supplier to confirm that it has been published and provide details to enable the retailer to confirm the products status.
- Check the 'Puffs' numbers that may be indicated on the products packaging. Any indicated 'puff' capacity above 650 is a good indicator that the liquid tank has a greater maximum capacity than the law allows.
- Check the indicated capacity of the tank is not greater than 2ml, if so then the products are not legal.
- Check if the products have the manufacturers/producers, importers or UK Responsible Persons contact details applied to them or on their packaging. One of these addresses must be in the U.K.
- Check the front and rear surfaces of the products packaging have the following health warning: "This Product contains nicotine which is a highly addictive substance"

**This product
contains
nicotine,
which is
a highly
addictive
substance.**

✓ **CORRECT**

**WARNING:
This product
contains
nicotine.
Nicotine is
an addictive
chemical.**

✗ **INCORRECT**

- 3.13 The businesses were advised to ensure that they acquire and retain documents such as receipts and invoices for the products they have purchased. This is not only good for tax and accounting purposes but it will also provide evidence as to who supplied the business should the products be found to be non-compliant, unsafe or counterfeit. Therefore, any documentary evidence that is to be relied upon for such purposes must indicate the full business name and address of the supplier and a description of the products. An invoice with a generic address and description of the products would not be acceptable.
- 3.14 Each business was also given advice not to sell e-cigarettes that contain nicotine to a person under the age of 18.
- 3.15 The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 prevents general retail sale of electronic cigarettes to people under 18 years old. The offence is derived from the Children and Families Act 2014 and is limited to a "person". The offence is therefore, restricted to the seller and a limited company rather than the owners of a business. The penalty is a maximum of £2,500.
- 3.16 The Regulations also makes it an offence for an adult who buys or attempts to nicotine inhaling product on behalf of someone under 18. This is intended to prohibit proxy sales, where a young person asks somebody over the age of 18, to buy the items for them.
- 3.17 The Service has carried out a total of 28 test purchases using child volunteers under the age of 18 purchase e-cigarettes. Sales were made on 8 occasions, this represents a noncompliance rate of 28.5%. The sales are currently under investigation.
- 3.18 Disposable e-cigarettes have increasingly becoming popular with younger people. They are cheaper than cigarettes and due to the variant sweet flavours hence the popularity and are very much being sold in business premises such as hair

dressers, phone accessories that one would commonly not associate with these types of products.

- 3.19 E-cigarettes are an age-restricted product because there is potential for users to become addicted to nicotine-containing e-cigarettes, and we do not yet know the long-term effects of these on health.

4.0 Financial Implications

- 4.1 The staffing resource to implement this will be met from within the Trading Standards base budget.

5.0 Legal Implications

- 5.1 There is no legal implications arising from this report.

6.0 Equality Implications

- 6.1 The proposals in this report have been screened to assess their relevance to equality and were found to have no equality implications.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 There is no requirement to specifically consult Ward Members about this report as it affects all wards across both Boroughs.

8.0 Human Resources Implications

- 8.0 There are no significant staffing implications arising from this report.

Contact Officer

Any person wishing to obtain more information should contact Anu Prashar, Senior Regulatory Service Manager, Brent Civic Centre, Engineers Way, Wembley Middlesex HA9 0FJ. Telephone: (020) 8937 55215, anu.prashar@brent.gov.uk

ANU PRASHAR
SENIOR REGULATORY SERVICE MANAGER