

## Tobacco and nicotine vapour products

### In the guide

What is meant by tobacco, tobacco products and nicotine vapour products?

Age restriction on the sale of tobacco products

Age restriction for the sale of nicotine vapour products

Age of the person making the sale

Proxy purchase of tobacco or nicotine vapour products

Is it legal to sell single cigarettes?

Can tobacco or nicotine vapour products be sold from vending machines?

Register of tobacco and nicotine vapour products retailers

Tobacco or nicotine vapour product retailing banning orders

Tobacco display

Tobacco prices

Cigarette lighter refills

Matches and lighters

Defences

Keeping within the law

- Age verification checks

- Operate an age verification policy

- Staff training

- Maintain a refusals log

- Till prompts

- Signage

- Closed circuit television (CCTV)

- Online sales

Penalties

Key legislation

### This guidance is for Scotland

Certain products cannot be sold to persons below a legal minimum age; for tobacco and nicotine vapour products this legal minimum age is 18.

A packet of cigarettes must contain a minimum of 20 cigarettes and must only be sold in its original packaging. A notice must be displayed stating 'It is illegal to sell tobacco products to anyone under the age of 18'.

Tobacco products must not be on display in-store and there are also restrictions on how prices and price lists are displayed.

Young people should always be asked for proof of their age.

## **What is meant by tobacco, tobacco products and nicotine vapour products?**

'Tobacco' is defined as including cigarettes, any product containing tobacco for oral or nasal use (for example, snuff) and smoking mixtures used as a substitute for tobacco (for example, herbal cigarettes). 'Cigarettes' include cut tobacco rolled up in paper, tobacco leaf and other material in a form that is capable of immediate use for smoking.

A 'tobacco product' is defined as "a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed".

'Smoking related products' are cigarette papers, tubes, filters, holders, apparatus for making cigarettes and pipes for smoking tobacco products.

A 'nicotine vapour product' is any type of device or any part of a device used to inhale nicotine vapour or any other device that resembles these. Included in the definition are e-cigarettes, e-cigars and e-shisha, and other products such as flavoured non-nicotine vapour products. Also included are the individual parts that make up the device, refill containers and their contents.

The following are not included in the definition of a nicotine vapour product:

- tobacco products
- smoking-related products
- medicinal products
- medical devices

## **Age restriction on the sale of tobacco products**

The law states that it is an offence for any person to sell tobacco products or cigarette papers to anyone under 18. This is a strict-liability offence, which means the owner of the business can be held responsible as well as the member of staff who made the sale. If you are charged with this offence, you have the legal defence that you took all reasonable precautions and exercised all due diligence to avoid committing the offence. This is commonly known as the 'due diligence' defence. The '**Keeping within the law**' section of this guide includes steps that can be taken to provide a 'due diligence' defence.

You must display a notice that states:

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

The notice must be displayed in a prominent position and be easily visible at the point of sale. The notice must be no less than 297 mm x 420 mm (A3) and the characters must be no less than 36 mm in height. Your local trading standards service or your tobacco supplier may be able to provide a notice for you to use.

## **Age restriction for the sale of nicotine vapour products**

A person who sells a nicotine vapour product to someone under 18 commits an offence. This is a strict liability offence; the owner of the business can be held responsible as well as the member of staff who made the sale.

There is an exception for nicotine vapour products that are licensed as medicines or medical devices. This exemption only applies to the extent to which the product is authorised.

If you sell e-cigarettes and associated devices you might want to display a poster advising customers that you will not sell to under-18s:

### **Buying tobacco or nicotine vapour products? If you look 25 or under we need to ask for proof of age**

**Note:** unlike the tobacco poster, this is not a legal requirement and is simply suggested wording.

## **Age of the person making the sale**

A responsible person who permits the sale of a tobacco product, cigarette papers or a nicotine vapour product by a person under 18 commits an offence. If the sale takes place on registered premises and the person making the sale is authorised to do so in writing, no offence is committed.

## **Proxy purchase of tobacco or nicotine vapour products**

An adult who buys or attempts to buy tobacco, cigarette papers or a nicotine vapour product on behalf of someone under 18 commits an offence. This is called 'proxy purchasing'.

It is the buyer and not the trader who commits an offence under these circumstances. However, be aware of young people loitering outside your premises; they may ask adult customers to buy tobacco, cigarette papers or a nicotine vapour products for them. It is advisable to refuse such sales.

## **Is it legal to sell single cigarettes?**

No. A packet of cigarettes must contain a minimum of 20 cigarettes. It is an offence to sell cigarettes to any person other than in their original package. This means you must not split a pack and sell in lesser quantities.

## **Can tobacco or nicotine vapour products be sold from vending machines?**

No. It is illegal to provide a cigarette or nicotine vapour products vending machine that can be operated by customers.

Any vending machine on the premises can only be used for storage where the public does not have access (such as behind the counter).

## **Register of tobacco and nicotine vapour products retailers**

You must register with the Scottish Government to become a tobacco and/or nicotine vapour product retailer. This can be done online and the application must contain your name and the address of the premises (including moveable premises) from which you intend to retail tobacco and/or nicotine vapour products. If you are registered to sell tobacco and you intend to retail nicotine vapour products you must apply to change your registration to include nicotine vapour products.

## Tobacco or nicotine vapour product retailing banning orders

A person may be banned from carrying on a tobacco or nicotine vapour product business from the premises at which they committed three or more offences against tobacco or nicotine vapour product legislation within a period of 24 months. The ban can be for any period up to 24 months.

A person banned from retailing tobacco or nicotine vapour products at a premises commits an offence if they retail tobacco or nicotine vapour products at those premises during the period of the ban.

## Tobacco display

Under the Sale of Tobacco (Display of Tobacco Products and Prices etc) (Scotland) Regulations 2013 you are required to cover your display of tobacco products. It is an offence to display tobacco products unless a specific request to purchase tobacco has been made to you by a person over the age of 18.

Retailers must not have tobacco products and smoking-related products (cigarette papers, tubes, filters, holders, apparatus for making cigarettes and pipes for smoking tobacco products) on permanent, open display - for example, on public view on gantries behind the counter. The size of each display must not exceed 1,000 cm<sup>2</sup>. Tobacco retailers must make sure that tobacco products and smoking-related products are out of public sight and cannot be seen unless the display is incidental to normal stocktaking, cleaning, pricing or restocking.

There are specific rules for bulk and specialist tobacconists (see paragraphs 34-35 and 54-57 of the detailed guidance linked to below).

Detailed guidance on the tobacco display ban has been produced by the Scottish Government to assist you in compliance.

## Tobacco prices

Only three types of tobacco price display are permitted:

- 1.** Poster style lists (up to A3 in size), which can be permanently on show. The legislation states that these must not exceed 1,250 cm<sup>2</sup> (A3-sized paper falls within the legal size limit).
- 2.** A price list available on request (picture price list), which must not be left on permanent show but which can be shown to any customer who asks for information about tobacco products or smoking-related products. Good practice would suggest that age checks should be carried out before showing the picture price list and requests from children and young people under 18 should be refused.
- 3.** Price labels, which can be placed on shelving, storage units or tobacco jars. One price label is permitted for each product, either on the covered shelf where the product is stored or on the front of the storage unit where the particular tobacco product or smoking-related product is held pending sale.

## Cigarette lighter refills

Under the Cigarette Lighter Refill (Safety) Regulations 1999 it is an offence to supply any cigarette lighter refill canisters containing butane to anyone under 18. This is because of the potential for abuse by 'sniffing' the gas, which can be extremely dangerous. See 'Cigarette lighter refills' for further details.

## **Matches and lighters**

It is not illegal to sell matches or lighters to children. However, it is recommended that you do not sell these items to children, who are unlikely to have a legitimate use for them.

## **Defences**

If you are charged with any of the offences detailed above, you have the defence that you took all reasonable precautions and exercised all due diligence to avoid committing the offence. For age-restricted products such as tobacco, cigarette papers and nicotine vapour products this generally means that you believed the person was aged 18 or over and you had taken all reasonable steps, including being shown photographic identification, to establish their age.

## **Keeping within the law**

In order to keep within the law and therefore satisfy the legal defences, you should introduce an age verification policy and have effective systems to prevent sales of tobacco products, cigarette papers or nicotine vapour products to under-18s. Your written age verification policy should state exactly what steps are to be taken to establish the age of a person who appears to be under 25 years. Staff should receive regular training and records of the training and refusals of sales should be maintained. These systems should be regularly monitored and updated as necessary to identify and put right any problems or weaknesses or to keep pace with any advances in technology.

Key best practice features of an effective system include the following.

### **Age verification checks**

Always ask young people to produce proof of their age. The Chartered Trading Standards Institute, the Scottish Government and Police Scotland support the UK's national Proof of Age Standards Scheme (PASS), which includes a number of card issuers. You can be confident that a card issued under the scheme and bearing the PASS hologram is an acceptable proof of age. The Scottish Government also endorses the Young Scot card.

A passport, photocard driving licence, Ministry of Defence form 90, European Union national identity card or a biometric immigration document is also acceptable but make sure that the card matches the person using it and the date of birth shows they are at least the minimum age of 18.

You do not have to accept all of the above forms of identification and it may be best to exclude any type of document that your staff are not familiar with.

Some young people may present false identification cards so it is advisable to also check the look and feel of a card. For example, the PASS hologram should be an integral part of a PASS card and not an add-on.

If the person cannot prove that they are at least the minimum legal age - or if you are in any doubt - the sale should be refused.

## **Operate an age verification policy**

This means that if the person appears to be under the age of 25, they will be asked to verify that they are over 18 by showing valid proof of age.

## **Staff training**

Make sure your staff are properly trained. They should know which products are age restricted, what the age restriction is and the action they must take if they believe a person under the legal age is attempting to buy. It is important that you can prove your staff have understood what is required of them under the legislation. This can be done by keeping a record of the training and asking the member of staff to sign to say that they have understood it. These records should then be checked and signed on a regular basis by management or the owner.

## **Maintain a refusals log**

All refusals of tobacco and tobacco products should be recorded (date, time, incident, description of potential buyer). Maintaining a refusals log will help to demonstrate that you actively refuse sales and have an effective system in place. Logs should be checked by the manager / owner to ensure that all members of staff are using them.

A specimen refusals log is attached.

Some tills have a refusals system built in. If using a till-based system, you should ensure that refusals can be retrieved at a later date. You should also be aware that some refusals are made before a product is scanned.

## **Till prompts**

If you possess an EPoS system then it may be possible to use it to remind staff of age restrictions via a prompt. Alternatively, stickers can be used over certain product barcodes.

## **Signage**

You must display the legally required tobacco notice (see '**Age restriction on the sale of tobacco products**' above). It is not a legal requirement but you can, if you wish, display a poster advising customers that you will not sell e-cigarettes or nicotine refills to under-18s (see '**Age restriction on the sale of nicotine vapour products**' above). These should deter potential purchasers and act as reminders to staff.

## **Closed circuit television (CCTV)**

A CCTV system may act as a deterrent and reduce the number of incidents of underage sales.

## Online sales

If you sell by distance means, such as online or via a catalogue, you should set up an effective system capable of verifying the age of potential purchasers. Please see 'Online sales of age-restricted products' for more information.

## Penalties

Failure to comply with trading standards law can lead to enforcement action and to sanctions, which may include a fine and/or imprisonment. For more information please see 'Trading standards: powers, enforcement and penalties'.

## Key legislation

Children and Young Persons (Protection From Tobacco) Act 1991

Cigarette Lighter Refill (Safety) Regulations 1999

Sale of Tobacco (Register of Tobacco Retailers) Regulations 2010

Tobacco and Primary Medical Services (Scotland) Act 2010

Sale of Tobacco (Display of Warning Statements) (Scotland) Regulations 2011

Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011

Sale of Tobacco (Display of Tobacco Products and Prices etc) (Scotland) Regulations 2013

Sale of Tobacco (Prescribed Documents) (Scotland) Regulations 2013

Standardised Packaging of Tobacco Products Regulations 2015

Health (Tobacco, Nicotine etc and Care) (Scotland) Act 2016

Tobacco and Related Products Regulations 2016

Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017

Sale of Tobacco and Nicotine Vapour Products by Persons Under 18 (Scotland) Regulations 2017

Last reviewed / updated: October 2020

## In this update

Information added about signage for nicotine vapour products

## Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.

© 2020 Chartered Trading Standards Institute

**Source URL:**

<https://www.businesscompanion.info/en/quick-guides/underage-sales/tobacco-and-nicotine-vapour-product-s-s>