



Department
of Health



Chartered Trading
Standards Institute

NICOTINE INHALING PRODUCTS – AGE OF SALE RESTRICTIONS & PROXY PURCHASING

GUIDANCE FOR PHARMACIES – KEY POINTS

The following guidance has been prepared by the Department of Health in conjunction with the Medicines and Healthcare products Regulatory Agency and the CTSI.

In offering this advice the CTSI wishes to make it clear that:

Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.

Only the courts can interpret statutory legislation with any authority.

This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.

Introduction

- The [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing \) Regulations 2015](#) introduce a statutory minimum age of sale of 18 for nicotine inhaling products as part of a wider strategy to protect children and young people from the health harms of tobacco and nicotine addiction.
- The Regulations provide exemptions for nicotine inhaling products that are licensed as medicines so that they can be made available to children and young people.
- An offence will be committed where a retailer sells a device (or liquid) covered by the regulations to a person aged under 18. As with underage sales of tobacco, a retailer found guilty of selling e-cigarettes to under 18s could be fined up to £2,500. Please see section below – Due Diligence for practical steps you make wish to take in order to avoid committing such an offence.
- It will also be an offence for an individual to purchase products on behalf of young people under 18, subject to exemptions. This is known as ‘proxy purchasing’ and guidance is included for your information.
- Local trading standards officers will be responsible for the enforcement of the regulations, which will apply in England and Wales.

Age of Sale for Nicotine Inhaling Products

- The statutory minimum age of sale of 18 for nicotine inhaling products comes into effect on **1 October 2015**.
- The regulations introducing this age restriction 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 generally cover e-cigarettes, certain component parts and e-liquids that contain nicotine.

- The regulations do not apply to tobacco, cigarette papers or other devices intended for the consumption of lit tobacco, for which age restrictions already exist.
- The definition encompasses e-cigarette devices (both disposable and rechargeable devices), certain component parts such as pre-filled refill cartridges and refill liquids – known as ‘e-liquids’ provided they contain nicotine.

- The regulations cover all nicotine inhaling products regardless of how they are powered and whether they resemble conventional cigarettes or not.
- Although some devices may not contain nicotine at the point of sale, they would be covered by the regulations if they are intended to enable nicotine to be inhaled through a mouthpiece.
- The age of sale restrictions do not apply to certain ancillary components such as batteries, charging devices and electrical leads which are covered by wider consumer protection and safety legislation.
- These regulations apply to any premises or business selling nicotine inhaling products (with special rules about medicines). These devices are currently available in a wide range of settings including newsagents, convenience stores, pharmacies, discount shops, specialist vaping shops, markets, car boot sales, barbers and many other retail outlets.

Reference: [Youth Access to E cigarettes and associated products \(2014\)](#).

Medicinal Products

- Nicotine inhaling products that make medicinal or therapeutic claims, such as “Helps you to quit smoking”, require authorisation under medicines legislation, for which the Medicines and Healthcare products Regulatory Agency (MHRA) is responsible.
- From May 2016, nicotine inhaling products or e-liquids that contain more than 20mg/ml and do not have a marketing authorisation as a licensed medicine from MHRA will be prohibited by the Tobacco Products Directive (2014/40/EU).
- The age of sale regulations provide exemptions for nicotine inhaling products that are licensed as medicines so that they can be made available to persons under 18. Firstly, where the product is a medicine or medical device and is sold/dispensed by a pharmacist in accordance with a valid prescription an e-cigarette could be made available to a person under 18.
- Secondly, the regulations also exempt the sale of any nicotine inhaling products licenced as non-prescription medicines where the product is indicated for use by under 18s. The product licence (or Marketing Authorisation) would specify that the product was indicated for the treatment of persons under 18. In such cases, the seller does not have to be a pharmacist as such medicines can be sold in any type of shop – in the same way, for example, that paracetamol is sold.
- At present, a licence has been granted for only two products that would meet the definition of nicotine inhaling products.

Proxy Purchasing (for information)

- From 1 October, it will be an offence for an adult to purchase, or attempt to purchase, tobacco, cigarettes, e-cigarette devices and e-liquids on behalf of a person aged under 18.
- A proxy purchase offence would not be committed where a nicotine inhaling product had been prescribed to a child in accordance with a valid prescription or where it could lawfully be sold to a child as a medicinal product.
- The proxy purchase offence could apply to certain licensed e-cigarette products. For example, where a device has been granted a licence by the MHRA as a non-prescription medicine but is indicated for use by over 18s only, it would be an offence for an adult to purchase this device on behalf of a person aged under 18.
- The adult making the purchase would be committing the offence, not the retailer.

Due Diligence

What you can do to prevent illegal sales of nicotine inhaling products to young people

- The law makes the sale of age restricted products to those that are under age a criminal offence. There are various penalties. You may have a defence to these offences if it can be shown that you have done all that is reasonable to avoid committing the offence.

A responsible retailer should:

- Implement a policy on the sale of age restricted products.** This could include the circumstances in which a customer will or will not be served. For example, only on production of acceptable photo ID that is a Passport, photo driver's license or a [PASS accredited proof of age card](#). It might also include a requirement for staff to refer to other senior staff before making a sale. Challenge 25 is an example of an age verification policy that requires customers to be challenged if they appear to be under 25 years and asked to produce suitable ID for checking before a sale can be considered.
- Provide staff training.** Ensure that ALL relevant employees are aware of the legal requirements relating to the sale of age restricted products. Train your staff on a regular basis and keep a record of the training received and the date. Ensure your employees sign a declaration to say that they have received training and understand the legal requirements imposed upon them and your business.

- iii. **Notices.** Notices that are required by law should always be displayed prominently. Additional notices may also be displayed to deter potential under age purchasers and to act as a reminder to employees. Display legal signs and deterrent posters for example Challenge 25 posters.
- iv. **Refusals log.** This will demonstrate to any enforcement body that refusals do occur. It also enables you to monitor refusals made by individual employees; if an employee rarely refuses a sale this MAY indicate that they require additional training. A history of refusals acts as evidence that your business is attempting to comply with the law. Keep a record of refusals.
- v. **Till stickers/prompts.** These help to remind employees that the product is age-restricted and encourages them to consider what they need to do when a purchase is attempted.
- vi. **Sample Declaration**

As employees of....., we have received training relating to the sale and supply of Nicotine Inhaling Products to persons under the age of 18 years .

Name of employee	Date of training	Signature of employee