



Enhanced Tobacco (and NVP) Sales Enforcement Programme

2018-2019 report

Executive Summary

Enforcement activity around tobacco, and now nicotine vapour products, remains the key priority for SCOTSS and it has been a busy year, supporting and monitoring local authority enforcement work especially in respect of illicit tobacco detection, and innovative project work, and of course test purchasing and advice to retailers. Our online enforcement database has made it easy for councils to submit data returns on work that is done locally.

The approach taken by the Scottish Government in resourcing front line enforcement capability for the NVP duties last year has been a success, resulting in a clear injection of resource into trading standards services, boosting the existing staff involved in tobacco and other under-age sales work to a level that can sustain an effective enforcement framework across Scotland.

Enforcement activity over the year has therefore been at a high level, with agreed targets for test purchases and advice visits to premises exceeded for the first time in several years, both for tobacco and for the more recent Nicotine Vapour Products. Failures, where product is sold to a person under 18, remain at a level just above 10%, showing that there is a persistent issue with some sellers not taking sufficient diligence when dealing with these products, and allowing under 18 access to product is simply unacceptable. Authorities have done a significant amount of work this year in advising sellers and also in designing new approaches to raise awareness of the risks, particularly around proxy sales.

Out-with the sales of genuine product, there has been a significant increase in the work done by councils to tackle the trade in illicit tobacco, using a detection dog funded through SCOTSS, and working with other agencies such as HMRC and Police Scotland has brought significant positive results and media and political attention.

We would hope SCOTSS can continue to support this area of enforcement into 2019/20, and in particular around the quickly evolving market for Nicotine Vapour Products.

Tobacco

The number of premises selling tobacco only has fallen by over 15% since last year as shown in table 1, from 9286 to a figure of 7764, which is the baseline number agreed with local authorities in April 2018 for 2018/19 KPI purposes. The reason for this is the surge in sales of Nicotine Vapour Products, with over 4400 premises selling both tobacco and NVPs. To avoid double counting of premises when we monitor the performance of local authorities, SCOTSS has split the number of premises selling both products and added half to each of the other two categories, i.e. premises selling tobacco and premises selling NVPs.

Enforcement activity in respect of tobacco sales has increased this year, entirely due to the additional funding for new NVP duties from Scottish Government. Test purchases on the tobacco side increased to 925, which is 11.9% of premises, with 101 failures or 10.9% which is exactly the same figure as last year. Failures during follow up visits remain higher at 18.8% although this is not unexpected as authorities are quite rightly focussing on repeat offenders.

Eighty-two penalty charge notices were paid by sellers, mainly around sales to persons under 18, but also for carrying on an unregistered tobacco business, non-compliant display of tobacco products, failure to display an age warning notice, and failure to operate an Age Verification Policy.

Visits to premises where advice was given were down from 3248 to 2971, although the KPI figure of 35.8% is still well above the 20% target agreed with Scottish Government; normally when officers give advice in premises that sell both tobacco and NVPs they will give advice that is relevant to both areas as the officers will be knowledgeable in both.

This shows that enforcement staff are working hard with tobacco sellers to bring them into compliance, and enforcement action is only used as a last resort, and is intelligence led, targeting those premises that have a higher risk of selling to under 18s.

Brief results are shown below, but more comprehensive figures are detailed in table 1

2018-19 results	Tobacco	NVPs
Premises numbers	7764	3029
Test purchases (target 10%)	11.9%	12.5%
% failure on 1 st visit	10.9%	13.2%
% failure on follow up	18.8%	23.1%
Written warnings	168	43
Fixed penalties paid	82	62
Advice visits (target 20%)	35.8%	48.5%

Nicotine Vapour Products (NVPs)

This is the first full year of enforcement activity around sales of NVPs as 2017/18 was used to bed in systems and make sure sellers were aware of their obligations. There was a significant number of new entrants to the market who had never sold age restricted products before, so it was quite appropriate to focus mainly on advice last year.

There were 3029 premises selling NVPs in Scotland as of 1 April 2018, and as with tobacco this takes account of half the total number of premises registered to sell both tobacco and NVPs so we can clearly monitor local authority performance over the two distinct product areas without any double counting.

There were 378 test purchases of NVPs over the year, from 12.5% of premises, well above the 10% target, and 50 or 13.2% of these were failures, mainly sale of an NVP to a person under 18, but penalty notices were also given for operating an NVP business while unregistered. Failure rates are slightly higher than for tobacco which is what you might expect in a newer market, as are failures on a follow up test purchase visit, at 23.1%. As with tobacco, it is likely that without the specific Scottish Government funding for these new duties the amount of enforcement activity would be a fraction of what it was.

Visits to premises where advice was given were an impressive 1470, or 48.5%, which shows that authorities are continuing to provide an advice led service, and also it underlines the complexity of this market compared to tobacco, where new products, flavours and innovations are being seen on a regular basis.

Some headline results are shown above, but more detailed figures are contained in table 2 below.

Illicit Tobacco and detection dogs

SCOTSS is pleased to have been able to continue to fund the use of tobacco detection dogs by Scottish local authorities in 2018/19, with excellent results in uncovering hidden supplies of non-duty paid and counterfeit cigarettes and hand rolling tobacco, and excellent local and national media attention, raising the profile of the unwelcome trade in illicit tobacco.

Seventeen local authorities utilised the detection dog over the year, with a total of 32 days of operations funded by SCOTSS through Scottish Government grant assistance. This has by far been the most successful and active year, with over 50,000 cigarettes and over 20kg of hand rolling tobacco seized by trading standards officers, mainly from small shops, and businesses completely unrelated to normal supply, for example hairdressers and restaurants. Officers also worked with other agencies and services on many of the operations, for example environmental health and officers from HMRC and Police Scotland.

A wide range of illicit products were found all over Scotland from non-duty-paid cigarettes and tobacco to completely illicit products not found on sale in genuine retailers' premises.

In Moray, large quantities of illicit tobacco were found at a restaurant, and in the Highland Council area, two days of operations using two dogs, with visits to 40 premises brought similar results with a range of illicit Chinese and Latvian cigarettes being seized and destroyed.

In Inverclyde an educational and media event was staged with the detection dog, as links had been established between four house fires and the non-RIP (Reduced Ignition Propensity) attributes of illicit cigarettes compared to genuine tobacco products that self-extinguish without active use.

Apart from physical seizures of goods, and the ensuing penalties for those responsible, the dogs create a very high profile and visible deterrent especially with the resultant press and

Sniffer dogs lead way to £6,000 of illicit tobacco

Crime: Two premises in Elgin are searched by Trading Standards officers

BY DAVID WALKER

Sniffer dogs have helped recover thousands of pounds worth of illicit tobacco and cigarettes in Elgin.

Trading standards officers searched the two premises in Elgin as part of a joint operation with HMRC, and discovered the £6,000 haul.

The raid was part of a joint operation with HMRC, and discovered the £6,000 haul. The raid was part of a joint operation with HMRC, and discovered the £6,000 haul.

to take the control of tobacco very seriously

Following a tip-off, officers and a sniffer dog visited on Monday and found tobacco and other items which are yet to be seized.

Environmental health



DRAMATIC HAUL: PC Bobby Cranie with his sniffer dogs Daisy and Duke with counterfeit cigarettes and tobacco. Photograph by Jason Hedges

community interest. We certainly hope to be able to continue to support local authority trading standards services in this way in the coming year.

Spaniels help Highland Council uncover illicit cigarettes

🕒 5 November 2018

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There is also considerable political interest in what is being done within local communities to fight the sale of illicit tobacco, and the use of a detection dog is a particularly good example of efficient and effective central support for targeting local issues where required.

Tobacco and NVP project work

SCOTSS funded a range of small projects in 2018/19 with the help of a Scottish Government grant, continuing the initiative that was started in 2016/17 and was such a success last financial year. This year we have extended the scope of the grants to include work around Nicotine Vapour Products, which is a quickly evolving area as retailers and manufacturers adapt to changing market demands. As always the grants were intended to support work in this area that would be out-with the capacity of the local authority to resource, and be innovative or provide some additionality to the enforcement community.

- In Highland, a small range of vaping liquids were test purchased from a local producer and analysed by a test house, to check for nicotine levels and the presence of undesirable contaminants. The products passed.
- In Aberdeen, awareness work was carried out around university Freshers Weeks and also students attending Health & Wellbeing Fairs organised in the city. The campaign also supported the #Notafavour campaign and was very successful in reaching young students as well as those over 18 about the risks from tobacco and illegality of proxy purchase.
- In Angus, educational materials and an interactive workshop were produced to help raise awareness of the consequences of underage sales of tobacco and NVPs, including support for the ASH Scotland #Notafavour campaign. The approach taken also supports the ASSIST school-based smoking prevention programme, which helps reduce adolescent smoking.

- In North Ayrshire, Project 'Responsible Trader' was around supporting retailers to reduce proxy sales. Awareness raising materials such as counter mats with relevant messages were produced and a training event for retailers and staff was delivered.
- In Fife, an online resource pack with comprehensive information on the sale of tobacco and NVPs was produced which can be accessed by retailers as well as enforcement staff. Both Falkirk and Renfrewshire Councils have used this resource to produce their own local awareness materials.
- In Inverclyde, a range of materials were produced to raise awareness and reduce the level of proxy sales, including ground stencils, age verification guidance and counter mats.

Tobacco and NVP Training

SCOTSS has delivered a comprehensive and well received programme of training on the tobacco and NVP legislation over the past two years, with Scottish Government funding, to all officers in post at that time, over 120 officers in total.

We are aware however that staff do move to other posts, and with the fixed term nature of the grant funded NVP posts, there is an element of churn.

SCOTSS is therefore expecting to organise at least one 'refresher' course, that can support any new officers since the last training and also update officers on what is an extremely challenging and fast faced landscape, particularly where Nicotine Vapour Products and vaping liquids are concerned.

There are also significant technological changes in the way the market works with innovations such as digital proof of age for age verification policies, 'Track and Trace' for cigarettes, and a massive expansion in the market for e-liquids over the past two years. We would expect the courses not just to include training on the legislation and practical issues, but also include input from stakeholders such as MHRA and HMRC, and perhaps commercial interests such as 'Yoti'.

Looking ahead

Mentioned above but worth reiterating, are some of the issues that SCOTSS sees as current or emerging over the next year, in particular around the developing NVP market which is seeing innovative products emerge that require detailed engagement with MHRA, for example around 'pick and mix' liquids, and technicalities around the way nicotine content and density is calculated.

There continues to be discussion around heat not burn products and their advertising and officers have also had concerns around tobacco companies and sellers introducing split price lists in some stores.

Digital ID is an issue that is not envisaged nor addressed within our legislation but it is something that needs to be considered quickly. We are aware that companies such as Yoti are already active in this area, and we feel a trial with digital ID should be started in Scotland to assess what changes are necessary, and what improvement (if any) to failure rates that using digital ID might make. From a trading standards point of view, any technology that makes it easier for sellers to comply with the law and easier for young people to prove their age can only be a good thing, but there needs to be open engagement with all parties involved. We

know that the Office for Product Safety and Standards (OPSS) are planning to offer Digital ID training for officers in England and Wales, and we would like to see similar events being organised in Scotland.

We understand that there is a strong call for the age of tobacco sales in England & Wales to be increased to 21, supported by the Chartered Trading Standards Institute. SCOTSS has no view on increasing the age limit, however there is no doubt that there would be costs and potentially confusion associated with implementation. Any change to the age of purchase would have to be managed carefully, with a sensible lead in time so that young people and sellers were not put in a difficult position

Finally, SCOTSS would like to thank the Scottish Government for their support to local authority trading standards services over the year, it is encouraging that the grant funding to local authorities has in the main found its way to the frontline, and it has we think led to good outcomes both for legitimate business and for young people.

SCOTSS National Coordinator

Table 1 - Tobacco Products

Year	Premises	Test Purchases	% TP (10% KPI)	TP failures	% failures	FPNs	Advice Visits	% visited (20% KPI)
2015/16	9122	872	9.56	104	11.9	125	3527	38.7
2016/17	9153	821	8.97	65	7.9	111	2077	22.7
2017/18	9286	893	9.6	97	10.9	134	3248	35.0
2018/19	7764^	925	11.9	101	10.9	82	2781	35.8

Table 2 – Nicotine Vapour Products

2017/18*	4418	208	4.7	40	19.2	36	2274	51.5
2018/19	3029^	378	12.5	50	13.2	62	1470	48.5

*This number of registered NVP sellers was probably unreliable at the time it was agreed in early 2017 and was taken from the Tobacco Register of NVP sellers plus NVP and tobacco sellers and agreed or revised with the individual local authority. Test purchase and advice visit performance is given as a narrative only for 2017/18.

^Because SCOTSS monitors performance across sales from sellers of tobacco or NVPs only, we combine the number of premises registered for selling both, 50/50 across the two distinct sales categories. Also we agree premises numbers with local authorities, so where they are in a position to give a more accurate number that is what is recorded at the start of April as the KPI denominator.