



## Enhanced Tobacco (and NVP) Sales Enforcement Programme

Including Operation CeCe (Scotland) illegal tobacco disruption update.

2022-2023 report

### **Executive Summary**

Smoking remains the greatest threat to public health in Scotland and SCOTSS is pleased to continue to play a valuable role in the Scottish Government's Tobacco Control Strategy. Over the past twelve years the Enhanced Tobacco Sales Enforcement Programme (ETSEP) has been a central and effective tool in reducing the availability of tobacco to young people. The Programme has also included NVPs since 2017 and this past year has seen their greatest impact yet with the proliferation of single use vapes (Nicotine Vaping Products), which have been aimed particularly at young people with brightly coloured packaging and low prices.

These 'disposable vapes' have brought other problems with waste and other environmental issues coming to the fore, and the market moving very quickly and mostly ahead of regulation. This has resulted in calls for a ban, or at least a display ban to bring them into line with tobacco, something that SCOTSS fully supports as their long-term impact on young peoples' health is not yet fully appreciated.

2022/23 has been a busy year for SCOTSS, supporting and encouraging a post-pandemic increase in local authority enforcement activity, as well as separate but related efforts around the disruption of the trade in illicit tobacco at retail level. The SCOTSS online enforcement database continues to make it easy for councils to submit data returns on enforcement activity that is done locally, so that it can be reported nationally.

Enforcement activity has recovered to a reasonable level after the hiatus caused by the Covid-19 pandemic, although it is fair to say that many local authorities are not operating at the same levels as in 2019/20 and some are still limited in the action they can take against under-age sales of tobacco and NVPs. More detail on the consequences of the Pandemic is outlined below along with some numbers on the limited activity that took place over 2020-22.

Local authorities continue to disrupt the supply of illicit tobacco in partnership with HMRC, acting on intelligence from the public and from enforcement partners. We have maintained the facility for councils to utilise detection dogs funded through SCOTSS, and this has brought significant positive results and media attention.

We are pleased that continued grant funding from Scottish Government has been confirmed for the coming year and hope that SCOTSS and local authority Trading Standards can build on the progress made during 2022/23 and re-establish the excellent level of pre-pandemic enforcement activity. We look forward to working with the Scottish Government over the course of the new Tobacco Action Plan to reduce harm from underage tobacco and vape use.

## The COVID 19 Pandemic

As mentioned above, the two years immediately following the outbreak of the Covid-19 pandemic in March/April 2020 saw very little enforcement activity on underage sales of tobacco or NVPs. Simply put, local authority officers were almost all redeployed onto Covid restrictions enforcement duties and were indeed unable to visit premises for other purposes for much of that emergency period. Certainly, any work with young people in test purchasing operations was completely halted and there was very little contact with retail premises for other 'normal' functions.

The two tables below summarise the ETSEP enforcement work over these two years and it has been separated out from the main tables (3&4) below as it is not directly comparable and falls well short of the usual activity levels.

An un-intentioned impact however appears that, with the lack of visibility and diligence of the enforcement regime, the failure rates of sales of tobacco and NVPs to those under 18 has increased up to and including the current year, with illegal sales of NVPs to young people around twice as prevalent as for tobacco. There is no doubt this has been exacerbated by the explosion in popularity and accessibility of single use vapes, the availability of which is relatively unregulated compared to traditional tobacco products.

Enforcement activity did pick up in the final quarter of 2021/22 however and It is encouraging to note that for 2022/23 levels are starting to get back to what they were in 2019/20, especially around NVPs, and the continued funding of this programme by Scottish Government has played a large part in that.

Table 1 – Tobacco

Year	Premises	Test Purchases	% TP (10% KPI)	TP failures	% failures	FPNs	Advice Visits	% visited (20% KPI)
2020/21	6915	4	0.1	2	50	0	103	1.5
2021/22	7058	52	0.7	6	11.5	16	524	7.4

Table 2 – Nicotine Vapour Products

Year	Premises	Test Purchases	% TP (10% KPI)	TP failures	% failures	FPNs	Advice Visits	% visited (20% KPI)
2020/21	3603	6	0.1	6	100	1	97	2.7
2021/22	3746	39	1.0	8	20.5	16	526	14.0

## Tobacco

The number of premises selling tobacco continued to fall as shown in table 3, to under 7000 (6926) for the first time, which is the baseline number agreed with local authorities in April 2022 for 2022/23 KPI purposes. This appears to be a consequence of the continuing rise in popularity of Nicotine Vapour Products, with over 5000 premises selling both tobacco and NVPs for the first time and increasing numbers of High Street brands specialising in NVP sales, up almost 10% on the previous year. To avoid double counting of premises when we monitor the performance of local authorities, SCOTSS splits the number of premises selling both products and adds half to each of the other two categories, i.e. premises selling tobacco, and premises selling NVPs only. This ensures that no premises are missed from the indicator and it more appropriately reflects enforcement activities as almost no operation would test purchase both categories of product on the same occasion.

Enforcement activity in respect of under-age tobacco sales dropped significantly this year on 2019/20, due to local authority recovery from the Covid-19 pandemic<sup>1</sup>, but also due to an understandable focus on NVP enforcement with a massive increase in sales of NVPs in 2022/23 with increased accessibility and attractiveness of single use vapes to children and young persons.

Test purchases on the tobacco side dropped to 268, less than 40% of target, with a failure rate of over 12% a notable increase from 2019/20 the last comparable year. We feel this is partly due to a lack of enforcement activity over the preceding two years and local authorities are determined to increase activity in next year to improve visibility and the deterrent given to sellers. 38 penalty charge notices were issue to sellers.

Visits to tobacco sellers where advice was given were down to 1550, which is above the KPI figure of 20% agreed with Scottish Government. This is a good outcome, showing that officers are making sure the knowledge of the trade is high, especially new sellers, and there is less excuse for retailers not knowing exactly what is expected of them, underlining that 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 tables 3 & 4 below.**

<b>2022-23 results</b>	Tobacco	NVPs
Premises numbers	6926	3966
Test purchase visits	268	312
Test purchases (target 10%)	3.9%	7.9%
% failure on 1 <sup>st</sup> visit	12.3	20.2
% failure on follow up	13.0	20.5
Written warnings	23	19
Fixed penalties paid	38	50
Advice visits	1550	1394
Advice visits (target 20%)	22.4%	35.1%

## **Nicotine Vapour Products (NVPs)**

There continues to be an expansion in sales outlets with new entrants to the market requiring a great deal of advice from officers, continuing the approach taken in previous years.

There were 3966 premises selling NVPs in Scotland as of 1 April 2022, 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. It is worth noting that this figure has grown from 3029 in 2018/19, an increase of 30% in four years.

There were 312 test purchases of NVPs over the year, down from the last comparable year (2019/20)<sup>1</sup>, but a reasonable result given the post-pandemic circumstances. Over 20% of these were failures however, an outcome which has worsened considerably when compared to previous years. It is very likely this is due to the combination of an absence of enforcement activity over the past two years and also the explosion in sales of single use NVPs which can be found in an ever-increasing number of retail shops including those with no experience of selling age restricted products, such as hairdressers. A low cost, brightly coloured product, these disposables are very child appealing especially with flavours like 'candy floss' 'apple raspberry' and so on, which are clearly aimed at the younger population.

There were 1395 visits to premises where advice was given, or 35% of all premises, which shows that authorities are still providing an advice led service and it is good to see visit targets being met here, a significantly easier category of visit that does not require young volunteers to assist. With the tens of thousands of NVPs being approved for sale in the UK it is crucial that authorities are on hand to deliver advice to sellers, especially in those premises that might be new to the age-restricted sector.

Some headline results are shown above, but more detailed figures are contained in table 4 below.

## **Illicit Tobacco (Operation CeCe) and detection dogs**

2022/23 was the second full year of HMRC funding to local authorities for disruption of the trade in illegal and non-duty paid tobacco at retail level. Also known as Operation CeCe, this involves intelligence gathering from a number of sources, and subsequent seizure operations by local authority trading standards at retail premises in Scotland, often using a specially trained sniffer dog to detect illicit tobacco which can be hidden away in elaborate hiding places within shops, behind walls, behind radiators, behind other legitimate stock, or even in locked safes!

Strengthening the alliances between Trading Standards and HMRC to tackle the supply of illicit tobacco in Scotland through the Enhanced Tobacco Sales Enforcement Programme is an important Scottish Government commitment from the Tobacco Control Strategy published in 2013, and SCOTSS is keen to maintain that working relationship to reduce the availability of illicit product.

The continued funding by SCOTSS of detection dogs in 2022/23 produced excellent results in uncovering hidden supplies of non-duty paid and counterfeit tobacco, and excellent local

and national media attention, raising the profile of the unwelcome trade in illicit tobacco and its linkages to serious organised crime. Some examples noted below:

[Aberdeenshire operations](#)

[Aberdeen City Project](#)

[North Lanarkshire Operation](#)

[Edinburgh Operation](#)

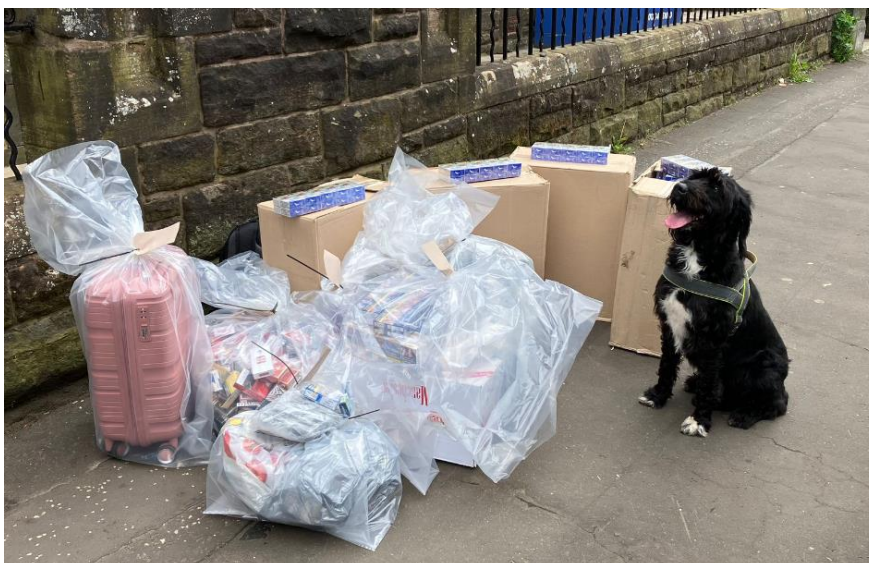
[Dundee Operation](#)

Fifteen local authority teams utilised the detection dogs over the year, with a total of 40 days of operations funded by SCOTSS. This was the most active year yet, with over one million cigarettes (1,081,483) seized by trading standards officers, mainly from small shops, and in addition 115kg of hand rolling tobacco was also seized. Officers also worked with other agencies and services on many of the operations, such as HMRC and Police Scotland.

In Moray, officers received intelligence that a Bulgarian man was selling illegal tobacco online described as 'biscuits'. An online test purchase through Facebook was organised and the tobacco received was confirmed as counterfeit by the manufacturer. The man was issued with Fixed Penalty Notices but is believed to have subsequently left the country.

In Fife, local police contacted trading standards officers to say they were looking to obtain a warrant for domestic premises, which was subject to intelligence from HMRC with regards to the supply/storage of counterfeit tobacco. They also had intel about a shop the person was alleged to be supplying. Trading Standards officers visited the shop the same day with a detection dog and seized 1040 counterfeit cigarettes and in the afternoon, a larger seizure of over 13,000 cigarettes was also made from a vehicle associated with the warrant address. A great example of local trading standards officers working with other enforcement agencies in a joined-up way to disrupt illicit trade in tobacco.

Glasgow City Council is by far the most active service in this area and mounted 17 different days of operations during the year to disrupt the supply of illicit tobacco within the city, with

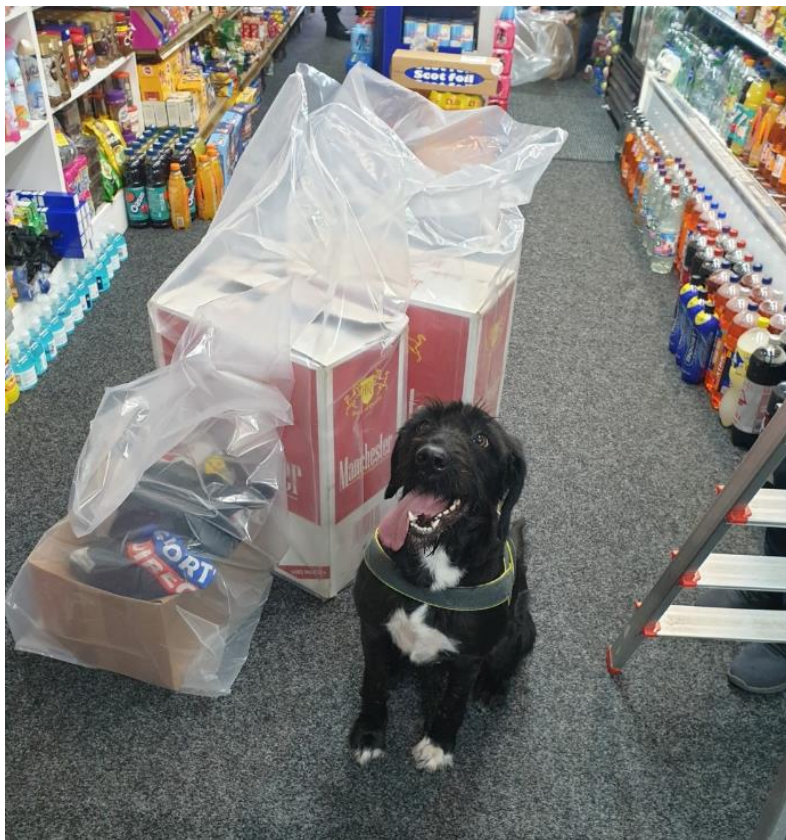


every day consisting of several targets, mostly smaller retail shops. On one particular day, over 50,000 cigarettes were seized from four shops in the Govanhill area with the help of sniffer dog 'Boo'! Without the help of a detection dog it would be impossible in most cases for officers to uncover illegal tobacco as often it is hidden away at the

back of the shop or in roof or wall spaces, or within storage units, or even refrigerators. Shops have also been known to spray the tobacco with vinegar or use pepper to try and put the dogs off the scent, mostly without any effect!

Also in Glasgow, a large seizure of illicit tobacco was made from an apartment flat in the southside of Glasgow. The discovery of over 210,000 cigarettes and 5kg of hand rolling tobacco was made by Police Scotland, but Trading Standards officers took the tobacco and accompanying documentation for analysis as it was suspected that the person living in the flat may have been supplying to local shops.

Officers in Edinburgh had good success over two days of Operation Cece visits in March with 16 intelligence led visits to premises and illegal products found in 10 out of 16 or 63% of shops, mostly using the sniffer dogs Boo and Daisy to find hidden product. In one shop the cigarettes



were hidden under floorboards in the back of the shop, and in another in a hidden drawer concealed under the greeting card section!

Almost 4000 cigarettes were seized along with a quantity of hand rolling tobacco, but the officers also seized a large quantity of illegal chewing tobacco, lots of illegal vapes with much larger tanks than are permitted and even a bottle of counterfeit Smirnoff Vodka with a tampered seal.

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 community interest. We certainly hope to be able to continue to support local authority trading standards services in this way in the future years to help reduce the supply of illicit tobacco across Scotland.

### **Tobacco and NVP project work**

SCOTSS funded a project by Aberdeen City Council in 2022/23 aimed at reducing the availability of illegal tobacco within the City.

These grants are intended to support work in this area that is out-with the capacity of the local authority to resource and is innovative in nature or provides some additionality to the enforcement community.

The project was aimed at raising awareness of illicit tobacco and generating intelligence from members of the public so that enforcement action could be taken.

Advice was followed from the FRESH illegal tobacco alliance which has operated in Northeast England for several years. It emphasised the links to organised crime and that sellers of illegal tobacco were unlikely to care who they sell to, including the cost of illegal tobacco to communities and to legitimate business.

Much of the activity revolved around advertising a dedicated telephone reporting line on the electronic displays in bus stops around the city. Posters were also printed with the same messages and were distributed and displayed in the City's 19 libraries. The Aberdeen City Council website and Social Media were also used to spread messaging.

Between 25 April and 12 June 2022, 150,000 plays of the adverts were electronically displayed in bus shelters around the city. And 150 x 30s adverts were played on Northsound Radio.

During the operation there were 7 reports received from the public, and on 8 June officers worked jointly with HMRC and Police Scotland on Operation Lighthouse. This illegal tobacco operation targeted 3 of the reported retailers and 6 others for which we had received separate intelligence. A significant quantity of illicit tobacco was seized and as a result of the operation a press release was issued to highlight the dangers to the public.

Although public engagement was lower than hoped, the operation was a success in raising the profile of what is essentially a hidden trade in illegal product.

### **Tobacco and NVP Training**

No specific training on this area of work was delivered during the year, however with the introduction of the new Sanctions Regime from next year, we are planning to deliver training on the Track and trace and Sanctions systems to all officers engaged in this area of work.

This will include scenario planning around the seizure of illegal tobacco and will also include a refresher element for underage sales and a review of our current enforcement and test purchase guidance for officers.

### **Looking ahead**

2022/23 has been successful in building back the enforcement activities of local authority trading standards and thanks to continued Scottish Government funding there is still a very capable cohort of officers engaged in this area of enforcement work. Councils are aware of the priority of this area of work, and we expect that activity will further increase to pre pandemic levels in 2023/24.

Much has been said about the HMRC Tobacco Track and Trace system, which was introduced in 2019 and gives HMRC the ability to monitor the manufacture and supply of legitimate tobacco products. This helps identify where genuine product is diverted towards the illicit market and prevents illicit products infiltrating legitimate supply chains.

New provisions from the Finance Act 2022 are expected to come into operation next year, which will provide powers to issue new penalties of up to £10,000 in respect of illegal tobacco and may exclude retailers from the system, revoking their 'licence' therefore restricting their

ability to buy duty paid tobacco for retail purposes. Sanctions will be imposed and administered by HMRC based on referrals by Trading Standards, who will carry out investigations via Operation CeCe and will be able to refer evidence of contraventions to HMRC for action.

There is no doubt that the massive increase in the use of single use vapes has caused real problems this year, both with legitimate products and also illegal or counterfeit product that may have non-compliant e-liquid or a greater tank capacity than is allowed by law. With many councils calling for a ban on disposable vapes because of the environmental issues they are causing as millions are being littered every week, we expect some regulatory action to be taken next year, and as disposable vapes are inevitably brightly coloured and child appealing this action is also needed on the health policy area. NVPs can be a useful cessation aid for current smokers, but they are not a lifestyle product and without tighter regulation on visibility and accessibility for under 18s, there are real health risks for future generations. SCOTSS is clear that the display of vapes should be treated in the same way as tobacco and we hope to see measures implemented next year to better control the way they are presented in stores.

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

July 2023

**Table 3 - 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 <sup>^</sup>	925	11.9	101	10.9	82	2781	35.8
2019/20	7316 <sup>^</sup>	826	11.3	73	8.8	49	2192	30.0
Covid								
2022/23	6926 <sup>^</sup>	268	3.9	33	12.3	38	1550	22.4



**Table 4 – 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
2019/20	3458^	390	11.3	50	12.8	46	1563	45.2
Covid								
2022/23	3966^	312	7.9	63	20.2	50	1394	35.1

\*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 than is recorded on the register at the start of April that is used as the KPI denominator.

<sup>1</sup>The Covid-19 Pandemic covered the two financial years 2020/22 and caused an almost complete halt to under-age test purchasing work by local authorities in Scotland. This was due of officers being redeployed onto premises restrictions duties, and the impracticality of employing young people to act as volunteers in small shops during the spread of the virus.