UKVIA

UK Vaping Industry Association

Preventing Underage Sales Guide

PRIMARY AUTHORITY PARTNERSHIP WITH

Buckinghamshire&Surrey trading standards

SURREY

Preventing the sale of vaping products to minors is one of the most fundamental challenges the UK vaping industry faces. This guide will assist vaping retailers by underlining the importance of restricting sales of nicotine containing products to minors; ensuring that retailers are compliant with the law and consider best practice when trading.

This guide has been developed in partnership with our Primary Authority Partners, Buckinghamshire and Surrey and Trading Standards.

INTRODUCTION

Welcome to the UK Vaping Industry Association's Primary Authority Advice that is assured -guidance on preventing underage sales of vape products.

It is important to note that there are different regulations in place for the sale of vaping products in England, Wales and Scotland.

England & Wales

- In England and Wales, it is illegal to sell vape products (including e-liquids or devices) to anyone under the age of 18. There is an exception for nicotine vapour products that are licensed as medicines or medical devices.
- An adult who buys or attempts to buy tobacco, cigarette papers or nicotine inhaling products on behalf of someone under 18 commits an offence. This is called 'proxy purchasing' and it is the buyer and not the trader who commits an offence under these circumstances.

Scotland

The requirements in Scotland are more onerous.

- It is illegal to sell vape products to anyone under the age of 18. There is an exception for nicotine vapour products that are licensed as medicines or medical devices.
- It is an offence for staff under the age of 18 to make a sale without written authorisation.
- It is a legal requirement for businesses to have an age verification policy in place.
- It is illegal to sell vape products via a vending machine.
- Digital Age Verification is not currently permitted for sales of vape products in Scotland.
- In addition, it is a requirement for Scottish retailers to register their business on the Nicotine Vapour Products Register which can be found at **www.tobaccoregisterscotland.org**

Northern Ireland

Despite having publicly consulted on the issue, Northern Ireland currently has no age of sale restrictions. We therefore recommend that members in Northern Ireland follow the rules for England and Wales.

The sale of a vaping product to any underage person is a criminal offence – it ~~is also classified as a strict liability offence~~. This means that an enforcing authority does not have to prove that the retailer intended to commit an offence, merely that a breach of the law has been committed.

The owner of the business (as well as the member of staff which sold the product) can be held responsible for the offence. The penalty for selling a vaping product to a minor can include a fine of up to £2,500.

Retailers must prove that they have taken all reasonable precautions and exercised all due diligence to avoid the sale of products to minors and that means following all the aspects of this guide.

WHY IS IT IMPORTANT

The medical evidence is clear, nicotine is a highly addictive substance. Nicotine has also been proven to have damaging effects on both young people and adults and this is one of the principle reasons for it being a prohibited product for those under the age of 18.

If young people are denied access to vaping products at the point of sale, then it significantly reduces the availability of these products to under- age persons. The vaping industry has a responsibility to prevent irresponsible retailing practices and ensure that vaping remains for adults only.

Policy makers, politicians and consumers must be able to have confidence that the vaping industry is a responsible sector. This will be undermined if businesses do not implement and uphold robust age verification processes.

CHALLENGE 25

The UKVIA members Code of Conduct states that members must adopt the Challenge 25 policy for all sales of vaping products.

Vaping retailers should clearly communicate with their customers that it is enforcing the Challenge 25 policy. The UKVIA recommends that all retailers should have multiple signage points to demonstrate this, at least one in the window of stores and one at the point of sale.

Challenge 25 Poster - Age Restricted Products ➲

All staff should be trained to assess whether customers are 25 years of age, not just 18.

“Does the person in front of me look 25 years old?”

If the answer to this question is no, then they should ask the customer in question for a valid proof of age. If the customer presents valid ID which confirms they are above the age of 18 then the sale can be completed.

BEST PRACTICE WHEN ENFORCING CHALLENGE 25

It can often be awkward for retail staff to ask potential customers to prove their age. It is important staff are able to overcome this and they must bear in mind that the majority of customers under the age of 25 will be well accustomed to being asked for identification. Customers will be more aware of this if there is clear signage to demonstrate that they will be required to have ID if they look under the age of 25.

IT IS ALWAYS IMPORTANT TO AVOID CONFLICT WHEN ASKING FOR PROOF OF AGE. BELOW ARE SOME EXAMPLES OF HOW TO PREVENT THE ESCALATION OF SITUATIONS:

1

It is helpful to make early interventions - if you see a group of youths or an individual that you believe is trying to buy vaping products, you should offer assistance to ensure they know you are aware of them. This will often deter a full attempt to buy products if they are indeed under-age.

2

When asking for proof of age, it is useful to explain that it isn't personal. Staff members should make it clear to the customer that it is not your decision to ask them for proof of age but company policy and also a legal duty.

3

It is crucial to ensure that staff always stay calm, polite and professional. Staff should also explain to customers the valid pieces of identification they can use for future purchases and demonstrate that they would be more than willing to sell them product if they return with ID.

4

If a customer becomes aggressive and you fear for your safety, you should try and remove yourself from the situation and ask a member of management for assistance.

PROXY PURCHASING

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 can be difficult to know if an adult intends to buy a product for a minor and it is easy to assume that if a customer is accompanied by a minor that they are purchasing it for them. Proxy sales, like for most age restricted product industries, are a significant issue for the vaping sector.

Some key things to look out for if you believe an adult could be conducting a proxy purchase are:

- Is the adult asking a minor what kind of vaping product (flavour, device etc.) they would like?
- Is a minor acting generally as if the vaping product is for them?
- Are there minors hanging around outside a store asking adults to purchase products on their behalf?
- Is a regular customer purchasing an unusual product that may be popular with young people?

Retail outlets are only expected to act when it is obvious that a proxy sale is taking place, but with scrutiny on youth access to age restricted sales it is important that outlets stay vigilant to proxy sales.

IDENTIFICATION

You must only accept the following forms of identification:

Passport

Photo driving license

Proof of Age Standard Scheme (PASS)

Approved proof of age cards. (There are a number of different types of PASS cards, it is therefore important to familiarise your staff with the PASS hologram to ensure they only accept verified cards).

Military ID

Military ID cards can be used as proof of age. There are a number of different cards and so understanding what is, and is not, a legitimate card can be confusing.

If you trade near a military base, or have a large number of service personnel as customers, then we recommend you should familiarise yourself with the types of military ID used in your area. There are separate ID cards for each of the armed forces (army, navy and air force).

Military ID cards are held by all serving personnel, including 16 and 17 year olds, so you must check the details on the card, including date of birth and expiry date.

Foreign ID

You may have customers that seek to prove their age with non-UK passports or National Identity Cards. You can expect that all EU and most other international passports will carry the following distinguishing features:

- paper that does not reflect ultraviolet light or whose fluorescence is easily distinguishable from the blue used in commonly available fluorescent materials;
- watermarking on the biographical data and visa pages;
- an intricate, repetitive pattern as the background design on each page;
- a background design on the biographical data page that is different to the design(s) on other pages in the passport;
- ultra-violet fluorescent ink on the biographical data page.

Digital Age Verification, a few points to consider:

There are now additional ways that customers can provide proof of their ID digitally, this can be particularly helpful for online sales.

- Before selecting a method of digital age verification, you should ensure you fully understand how to use the system and that it fits in with the checkout methods you use, as well with your online sales, where relevant. It should be a part of an age verification system that has been implemented in your business.
- Think about the checkout methods that customers will use to order and obtain products captured by the legislation and select suitable systems for those methods.
- Ensure that the Digital Age Verification system has been developed and certified in accordance with PAS 1296:2018 – Code of Practice for Online Age Verification.

NB Digital Age Verification is not currently permitted for sales of vape products in Scotland.

It is crucial to bear in mind when conducting ID checks that young people may well be attempting to deceive you into selling them a vaping product. They can do this through various means including:

- Tampering with their genuine ID.
- Using somebody else's ID.
- Using a fake ID that is an imitation of a genuine form of ID.
- Using an ID that is made for the purpose of looking genuine but is not a real scheme – this is particularly important with the PASS scheme.

For this reason it is important for staff to be made aware of this and be confident to take the ID from the customer to examine it and check the look and feel of it to ensure that it is genuine.

If you have suspicions about the validity of any foreign passport or ID card you can refuse the sale, but UK equality legislation requires that you do not impose a policy of refusing all foreign passports or identity cards.

When a customer presents you with ID it is important to go through the following checklist:

1. Ensure that the photograph on the ID is the person who is presenting the card and ensure that the photo is printed directly onto the card – not stuck on top.
2. Ensure that the date of birth confirms the person is over the age of 18.
3. Ensure that the document is a legitimate form of ID.
4. Check for any security features such as watermarks and holograms.
5. Check the back of the ID - fake IDs will often state they are not a genuine ID on the reverse.
6. If you are still unsure about the person's age, remember it is your legal responsibility to refuse to sell.

It is also important for staff to be mindful of periods of time where they may experience more minors attempting to buy vaping products.

Staff should be made aware of when school holiday periods are to ensure that they understand that minors may be around during the week more often than usual.

It is crucial that staff consider the importance of age restrictions at all times. During busy retail periods, such as in the run up to Christmas, staff may be incredibly busy but must still remain vigilant to underage sales.

BRITISH PASSPORT
DIEU ET MON DROIT
UNITED KINGDOM OF
GREAT BRITAIN
AND NORTHERN IRELAND

STAFF TRAINING

As previously mentioned, as a retail owner you are liable for the actions of your staff. It is therefore crucial to ensure that your staff are trained sufficiently in preventing underage sales. This guide provides some basic guidance on how to approach training your staff.

All new members of staff must be given formal induction training which (at a minimum) should include a clear explanation of the law and the company policy and processes which have been put in place. Members of staff should not be able to sell age restricted products until they have received full training or are being supervised by fully trained members of staff.

This guide covers all the elements of restricting sales of vaping products to young people and should be talked through with a new member of staff as a form of induction training. In addition to this, any new member of staff should be supervised for a sufficient length of time for them to have demonstrated that they understand Challenge 25 principles, are confident to request a customer's ID, and can demonstrate they can check ID, refuse sales and record these refusals in the refusals register.

You should undertake regular refresher training for staff (at least once per quarter). This does not have to be as formal as induction training, but should serve as a reminder to all staff of their legal obligations, company policies, and processes they should be adhering to.

During the refresher training it may be useful to ask members of staff to walk you through their thought processes for dealing with customers who look under the age of 25, and to share their own experiences of what has worked in certain situations

It is crucial that all staff training is fully documented and records kept on file. After completing any training session, ensure staff sign and date a copy of their training record to demonstrate they fully understand the requirements. These training documents should be retained in a separate file record for each staff member with other training records.

Retailers who sell a variety of products, some which are age restricted and some which are not, may employ an electronic point of sale system (EPoS). This prompts the member of staff to employ the Challenge 25 policy when an age restricted product is scanned.

In vaping stores the majority of products are age restricted, so staff should be employing Challenge 25 at all points of sale. However, if you use an EPoS please remember that this does not replace the need for staff awareness of how to prevent underage sales.

ONLINE SALES

If your company provides an online retail store and delivery of goods you still need to ensure you have a robust age verification policy in place. Age verification can take place either online, or face to face at point of delivery.

Online Verification

Online age verification must be achieved by the use of a digital age verification system that has been independently certified as meeting the requirements of PAS 1296:2018 – Code of Practice for Online Age Verification. This way you can satisfy yourself that the system is sufficiently robust and operational to an acceptable level of confidence so that you can rely upon age verification results for the purpose of securing compliance with age restricted sales legislation.

There are a number of different types of digital age verification, and you need to look at the different options and find one that is appropriate for your business.

Where a customer's age cannot be verified the sale must NOT go ahead. If any money has already been taken this should be refunded and the goods must not be despatched. Your system should be sufficiently robust that this can be achieved.

Where age has been verified online, retailers must ensure that the addressee details on the delivery package is the same as the person who has placed the order online and whose ID has been used to verify the sale. Finally, any issues or refusals to deliver the item should be recorded, as with refusals made in-store.

Face to face verification

If you choose to carry out age verification at the point of delivery, you must ensure that the customer is aware that age verification will be taking place on the doorstep. They must understand that unless someone who looks over 25 or who has appropriate means of identification is available at the time of delivery, the package will not be delivered.

The delivery person must comply with the challenge 25 policy and, where necessary, check physical identification on the doorstep, before the package is handed over to the person accepting the product, to ensure they are over the age of 18.

The delivery person should receive the same Age Verification training as the retail staff in store would, and be confident enough to refuse to hand over the package if they have doubts that the person taking delivery is over 18.

Any issues with the delivery must be communicated by the delivery person back to the retailer.

Testing of Age Verification systems

Retailers must exercise due diligence to ensure that they do not supply age restricted goods, to underage customers. This includes regular tests to ensure that their systems are working properly the number of tests should be appropriate to the number of products you sell.

The UKVIA will also carry out test purchasing exercises on randomly selected retailers both online and in store, to ensure compliance with age restrictions in place. The results of these will be fed back to the retailer for their records. Those which have failed a test purchase, will be expected to review their policy to try and identify the cause of the failure and any improvements that can be implemented. Premises that have failed will be automatically targeted in the next round of test purchases.

Businesses should have a system for dealing with any non-conformities they become aware of, such as test purchase failure from enforcement authorities or the UKVIA, or from internal tests, such as checks on refusals records or training records.

Businesses should be able to demonstrate that they have taken corrective action and if necessary implemented further preventative measures.

REFUSALS REGISTER

A record should be kept of each time you refuse a sale for failure to provide valid identification or under suspicion the product was being bought under proxy. They can be used as a management and training tool to ensure that staff are following their instructions and training. It is also good practice to keep a record of all challenges whether or not they lead to a sale. Some digital epos systems will keep a digital record of refusals for you.

Any register should include these key details:

- Date and time of the refusal
- Staff member who refused the sale
- Reason for refusal – i.e. was the customer underage, refused to provide ID etc.

Management should regularly review the register to ensure there is no evidence of the following:

- Days and times when refusals appear not to be taking place
- Staff members that do not appear on the register.

If you notice anything unusual about the register or patterns of refusal you should ask members of staff or review CCTV footage if you have it. If you conduct an investigation you should also make a record of this and any action taken to address the findings.

Example Refusals Register ➲

KEEPING RECORD

Keeping good records is imperative to showing your excellent standards in preventing underage sales.

We recommend you have a document on file which sets out your company's policy on preventing underage sales. This should be easily accessible to all staff.

Your records should also clearly demonstrate your compliance with this guidance.

SHOWING REASONABLE PRECAUTIONS AND DUE DILIGENCE

The measures detailed within this guide are in place to ensure you play your part to prevent vaping products landing in the hands of children and to provide you with a strong defence should an underage sale take place at your premise.

You must be able to show that you took 'all reasonable precautions' and exercised 'all due diligence' to avoid committing an offence. For age-restricted products this generally means that you believed the person was aged 18 or over and you had taken all reasonable steps to establish their age.

In order to demonstrate this defence you must be able to show that you have:

- Implemented your Challenge 25 procedures effectively.
- Trained all members of staff, provided refresher training and kept training records.
- Only accepted forms of ID listed in this guide.
- Kept an up-to-date refusals book.
- Accepted Digital ID (where you want to accept it) strictly in accordance with this guide.
- For online sales, ensured appropriate online age checks are carried out in accordance with this guidance.
- Complied with all aspects of this guidance.

UKVIA
For more information on the restrictions around the sale of vaping equipment please visit www.ukvia.co.uk

UKVIA

www.ukvia.co.uk

34 Smith Square,
London
SW1P 3HL