



# Project Report

## **SCOTSS Product Safety and TARP Groups – Single Use Vaping Products Project 2021**

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## Background

Throughout the summer of 2021 there were various press reports and information from Trading Standards throughout the UK that indicated that there may be many illegal single use nicotine vaping products (NVPs) on sale at retailers in Scotland. Some of these reports suggested that these devices were being used by young people under the age of 18.

These single use NVPs have a retail value between £5 and £7 each. They consist of a tank of nicotine salt liquid and a lithium-ion battery in a brightly coloured sealed unit which are similar in appearance to a large highlighter pen. They are designed to be thrown away once they run out of charge or e-liquid. The battery supplies energy to a coil which heats rapidly. The coil is contained within a cotton wool wadding. The liquid from the tank soaks into the wadding and vaporises when the coil heats up. The devices are activated by a small sensor through the action of sucking air through the device. There are no other electrical components such as an on/off switch. These products are usually boxed and contain the disposable NVP inside a plastic wrapping. The devices discovered during this project were all imported from China.

Preliminary surveillance of the disposable vaping device market was conducted by two authorities in Scotland during September 2021. This preliminary surveillance concluded that they were widely available across Scotland, not only in retail premises but also on the internet.

The key issues discovered by this preliminary surveillance were not linked to any individual brand.

It discovered that -

1. There were no disposable vaping devices found that complied with the Tobacco and Related Product Regulations 2016 (TARP Regulations).
  - Many disposable vaping devices were not published by the Medicines and Healthcare products Regulatory Agency (MHRA) on their website. Before any vaping device is put onto the market, it must be submitted and approved by the MHRA - who act as the regulator for these products in Great Britain. Until a product has been published as approved on their website it must not be supplied,
  - there were disposable vaping devices advertised on the internet with tanks which contained more than 2ml of nicotine liquid,
  - there were disposable vaping devices advertised on the internet which contained more than 20mg/ml of nicotine,
  - labelling of these devices must include the manufacturer and importer, and if both are outside GB, a GB representative. Many devices did not have the name of anyone in GB on their packaging,
  - instructions for use and storage information were often missing from the packaging,
  - the health warnings on the packaging of the disposable vaping devices were missing, wrongly worded, or not prominent enough. A health warning must be on the front and back of the packaging and cover at least 30% of the area,
  - the packaging must include information on addictiveness, and toxicity on the packaging and accompanying information leaflet. This should include a reference that the product is not recommended for use by young people and non-smokers, as well as warnings for specific risk groups and possible adverse effects. It was lacking from the packaging of many devices.

- the packaging must not suggest the device has vitalising, energising, healing, rejuvenating, natural or organic properties. Several disposable devices had flavours which referred to the word “Energy” therefore implying energising properties. e.g., “Energy Burst” “Strawberry Energy” and “Energy Ice”
2. There was evidence disposable vaping devices were available for young people under the age of 18. Initial enquiries with schools and Police Scotland discovered that there was a particular problem with young people using these devices, often inside school premises. References to these devices on social media described school toilets as “the new shisha lounge.” Social media was encouraging their use. It is illegal for anyone to supply NVPs to anyone under the age of 18 by virtue of the Tobacco and Primary Medical Services (Scotland) Act 2010 yet these devices were available and being used by pupils.
  3. The packaging of the disposable vaping devices was deficient in information required by the CLP Regulation 1272/2008 (Classification, Labelling, and Packaging) (‘the CLP Regulation’). They often lacked a tactile warning sign. Some had no CLP information at all.
  4. During this surveillance, communications with some suppliers indicated that there may be a problem with counterfeit disposable vaping devices being supplied contrary to the Trade Marks Act 1994. Some companies had incorporated security devices into the packaging of their products. Geek initially made representations to Trading Standards claiming any “Geek” product we found which did not comply with the regulations was probably a counterfeit product. They stated that approximately 1 in 3 of “Geek” devices sold in the UK was counterfeit.

At the beginning of October 2021 these initial findings were put to the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) National Safety and the National Tobacco and Age Restricted Products (TARP) groups where it was agreed that we should run a national project.

## **The Disposable Vaping Devices Project**

The Project was a collaboration between the SCOTSS National Safety and the National Tobacco and Age Restricted Products (TARP) Groups.

The project ran from 15 October until 24 December 2021.

In total 28 local authorities expressed an interest in the project. Not all these authorities were able to conduct inspections over the project period.

## Project Approach

Each participating authority was free to take any enforcement action they considered necessary in accordance with the Enforcement Policy of their authority. The project protocol offered some guidance and outlined the aims of any enforcement action.

Participants regularly sent feedback and information to the co-ordinator of the project. The co-ordinator was able to disseminate this and provide authorities with regular project updates regarding intelligence and best practice.

The project aimed to -

- advise suppliers of the issues we had discovered and remind them of their obligation not to supply disposable NVPs to anyone under the age of 18.

Note: The Scottish Government were asked if they could help by contacting all NVP businesses in Scotland on the National Tobacco and NVP Retailers Register to alert them to the issues with disposable vaping devices and to provide advice on checking compliance of their stock. They sent out letters to all registered NVP retailers in Scotland by email on 5th October 2021.

- visit suppliers both at wholesale and retailer level, to check stock and provide guidance and/or enforcement action as considered appropriate. The primary aim of this engagement was to:
  - stop the sale of non-complaint stock from within retail premises,
  - trace routes back to wholesalers and importers and stop the distribution of non-compliant products into the market,
  - check product labelling compliance,
  - confirm product was on the MHRA register,
  - check tank sizes and nicotine strength,
  - confirm supplier details and to inform the Trading Standards authority where that supplier was based by email and through IDB intelligence database logs of any compliance issue.
- Local authorities were requested to make contact and send information to their education authority and schools to explain the issues and to encourage open dialogue regarding the use of these products by their pupils.
- Formal product testing was not a part of this project.

## Project Results

1. **21 local authorities across Scotland** supplied statistics of their participation in the project.
2. **In total they visited 721 premises in the 10 weeks from 15 October to 24 December 2021.** Most of the premises visited were retailers but wholesalers were also visited.
3. **88,839 disposable vaping devices were removed from sale.** They were either not labelled correctly in accordance with the TARP Regulations, did not contain sufficient CLP regulation information or had not been published by the MHRA.
4. **3683 disposable vaping devices were seized.** They had a capacity of over the legal limit of 2ml

Examples of seized disposable vaping devices included –

- the Elux Legend disposable which contained 10ml of nicotine liquid,
- the Geek Bar Pro which contained 4.5ml of nicotine liquid,
- the Elf Bar 1500 which contained 4.8ml of nicotine liquid, and
- The Reymont Bar which contained 5ml of nicotine liquid.



During the project several novel devices were discovered.

Fife TS found some TNGO GLOW BARS. The whole device lights up when puffed. The concern here is not only the TARP non-compliances but also the fact the glow aspect may make them more child appealing.



South Ayrshire TS discovered a device called HIPSTER BARS. These devices are a two in one device and have 2 different flavours in two separate 4ml tanks. The user can choose which flavour they would like.



At the start of the project authorities were finding disposable vaping devices which did not have the name of a representative in GB. Our interventions resulted in suppliers adding stickers to the products with the name of a GB representative. This caused other problems, as the stickers obscured other important safety information. It was also obvious that suppliers were just adding these labels to try and evade having their products removed from sale. In one case devices were found with the name of two different importers. Over the project the situation did improve, and most products now do have a name and contact details of a representative in GB pre-printed on the packaging.

Throughout the project the main problems we found were a lack of safety information including instructions for their use and information on how they could safely be stored. There was a general lack of information regarding health concerns especially that they should not be used by non-smokers or by people with some medical conditions. Around 95% of the brands of these devices lacked one or more pieces of information required by the TARP regulations.

One issue which caused some confusion was the definition of the term “DELIVERY DOSE” as required by regulation 37 of the TARP Regulations. There is no definition in the regulations of what the delivery dose should be. The advice on the MHRA website is that the delivery dose is required information for the submission of a product. The delivery dose could be measured and expressed e.g., as nicotine content per puff (where the puff regime is accurately described) or per pack as appropriate. The project took the view that as these devices were mainly sold with a reference to the number of puffs the user would get from the device, that it was appropriate that these single use devices should have a delivery dose of the amount of nicotine per puff. Some suppliers did not agree.

Approximately 70% of all products and brands found during the project had not been approved and published by the MHRA. The MHRA do not inspect the actual product, labelling, brand, or sub-brand name. They inspect technical data provided within the submission of the product. There are 89 disposable NVPs published on the MHRA database which have the word “Energy” in the product flavour name. One is “Energy Drink” flavour for a brand called “B Careless.”

Geek and Elf bars represent about 60% of the UK market in disposable vapes. They first appeared in the UK at the start of 2021. They are separate companies but are part of the same group. They were the most common devices found during inspections.

The Co-ordinator of the project had many meetings with Geek, their GB Trading Standards liaison officer- Bilal Rahman, and with ARCUS compliance (a compliance company employed by Geek and

Elf) to try and resolve problems we were finding in relation to the product packaging and the publication of their products by the MHRA.

The labelling information on Geek and Elf products, particularly of older stock did not comply with the TARP regulations. Discussions between the co-ordinator and ARCUS Compliance has resulted in new packaging being introduced for Geek products. Elf products will also have redesigned packaging. The new packaging is compliant with the TARP regulations but there is still older stock in circulation.

At the start of the project only 4 flavours of the “ELF bar 600” had been published by the MHRA and around 20 other Elf bar products and flavours had not. We discovered these were on general sale in Scotland and these had been supplied by retailers across GB for many months before the project started. Discussions between the MHRA, ARCUS and the project co-ordinator found that there had been an error during the referral process of Elf products to the MHRA and some information had not been supplied. Elf products were eventually all published on the MHRA website on 6 December 2021.

The project uncovered discrepancies between the entries on the MHRA published list and Geek disposable vapes. The co-ordinator brought all these errors to the attention of ARCUS. The submissions are dealt with by a separate Chinese company, and they have been informed and asked to correct them.

The project discovered that there were several products being sold which had flavour names which used the word “Energy” such as “Energy Burst,” “Strawberry Energy,” and “Energy Ice.” The TARP regulations prohibit the use of any name which infers that the product has some energising property, and these names clearly do. These products were referred to the regulator - the MHRA.

One of the Geek products is called the “Geek Lite” disposable vape. The TARP regulations prohibit the use of names which suggests that a particular device is less harmful than other electronic cigarettes. Advice from the MHRA is that the use of the word “Light” implies this. The project co-ordinator has had discussions with ARCUS on the use of the term “Lite” and has been informed that a new name is being considered.

Some participating authorities prioritised their inspection visits to businesses to areas around schools and they were able to emphasise the message that these products must not be supplied to anyone under 18 and to provide other underage sales information.

Some authorities combined the project with compliance testing to check whether retailers were asking young people for proof of their age. Compliance tests are conducted using someone over the age of 18 but who is well under the age of 25. All retailers of NVPs are obliged to have an “age verification policy” which states that they ask anyone attempting to buy NVPs who looks under the age of 25 for photographic proof of age.

Between 1 August 2021 and 31 January 2022 there were 36 intelligence logs from Scotland added to IDB database relating to the supply of NVPs to under 18s. A further 9 logs related to the supply of NVPs to 18-year-olds who had not been asked for any proof of age during integrity testing projects run by Aberdeen City and North Lanarkshire Council. These figures support the initial findings that disposable vapes are not just appealing to teenagers but were actively being sold by retailers.

Disposable vapes are sold from many retail establishments, for example - newsagents, off licence premises, supermarkets, and garages. Project participants found that after they had visited a retailer and asked them to return the stock to their supplier, the retailer would return their stock but would

then also pick up new stock. Revisits to these premises would find that the new stock was also non-compliant. One authority visited the same retailer on 5 occasions, and, on each visit, the new stock was requested to be removed from sale. Some authorities in Scotland have hundreds of retail outlets which stock disposable vaping devices and having to revisit each one doubles this workload.

Nearly all the disposable vaping devices sold in Great Britain are imported from China. It therefore makes sense that these products are inspected at the importer to avoid any non-compliant stock from entering the supply chain. We have supplied a list of identified importers to the National Product Safety Group of Trading Standards authorities.

Whilst the project took into consideration that some products found could be counterfeit, it was not an issue that arose whilst authorities were participating in this project.

The project did produce some press publicity, especially relating to seizures of non-compliant products. The sale of vaping products which do not comply with regulations damages the reputation of the vaping industry and the project received support and help from the UKVIA, one of the main trade bodies for the GB vaping market. They had a product information checklist for retailers which was updated after work by the project co-ordinator and Surrey TS who are their Primary Authority. The UKVIA were happy for the project participants to circulate this checklist to retailers in Scotland.

Several leaders from the vaping industry also aided the project co-ordinator and were helpful in supplying valuable information for the project.

None of the disposable vaping devices found had clear instructions on how to dispose of the item after it had either run out of liquid or battery charge. Some did have a crossed-out wheeled bin symbol showing that it should not be put with normal household waste, but there was no other information.

There was interest in the project from other trading standards authorities in GB and the project documents were circulated via the Chartered Trading Standards Institute. The co-ordinator became aware of a similar project in the South-west region of England and has shared the Scotland project documents, information and attending their meetings.

## Recommendations

1. There are thousands of retail establishments in GB which have disposable vaping devices on sale. Enforcement at this level is ineffective when conducted by individual trading standards offices as they are dealing with a small part of the market. It would be more constructive if these devices were inspected at the importer's premises.

**Disposable Vaping Devices should be inspected by Trading Standards at their point of entry into the country.**

2. There is no purpose for these devices to be brightly coloured other than for aesthetic reasons. The flavours of the vast majority are fruit based or have the names of sweets such as "Bubble-gum," "Candy," "Sherbert," or "Gummies." The use of these names and their design makes these devices particularly attractive to young people.

Regulation 32 of the TARP regulations requires that the Secretary of State must monitor the market developments concerning electronic cigarettes and refill containers, including any evidence that their use is a gateway to nicotine addiction and ultimately traditional tobacco consumption amongst young people and non-smokers. We believe that the supply and use of these disposable devices is such a gateway.

**The monitoring of the market is conducted on behalf of the Secretary of state by the Office of Product Safety and Standards (OPSS) and MHRA and we would like them to look at the disposable vaping device market.**

3. Millions of these disposable devices are imported into GB each year. These devices should not be disposed of with normal household waste, and they also cannot be put in the recycling bin. The devices have a lithium-ion battery contained in a plastic covering. In GB, batteries and accumulators are regulated to help protect the environment through the Waste Batteries and Accumulators Regulations 2009 (as amended)
  - making it compulsory to collect/take back and recycle batteries and accumulators
  - preventing batteries and accumulators from being incinerated or dumped in landfill sites. Their disposal should not be through the normal household refuse system.

The project found no evidence of any take back scheme in any premises they visited. They are not collected or taken back and are discarded as general waste, finding their way to landfill sites, are incinerated; or they are just discarded as litter.

**The regulations relating to waste batteries are enforced by the OPSS and we would like them to consider this aspect of the disposable vaping device market.**

4. Nicotine is a listed product in the CLP regulations. Certain information must be provided on products which contain a listed product.

The absence of this information, including the use of tactile labels on NVPs, is detrimental to consumers.

**The CLP regulations are enforced by the Health and Safety Executive (HSE), and we would like them to consider the lack of this information on disposable vaping devices.**

5. The MHRA do not inspect the actual product, labelling, brand, or sub-brand name of a disposable vaping device. They inspect technical data provided within the submission of the product.

As the products and packaging are not part of the submission process, the labelling of disposable vaping devices is not a consideration of their publication and their entry into the market.

**We consider that including inspection of the packaging and the disposable vaping devices as part of the notification process conducted by the MHRA would be a positive step in controlling this market.**

6. There are considerable differences in the interpretation of the term “delivery dose” required by regulation 37 of the TARP regulations. It is not defined in the regulations and there is no definitive advice provided by the MHRA on their website.

Whilst many in the vaping industry accept that the dictionary definition of a dose would imply that it means the amount of nicotine inhaled per puff and this is appropriate for a disposable vaping device, others take it to be the amount of nicotine contained in 1ml of liquid. Clarity is needed so that all manufacturers are using the same definition.

**We would like the MHRA to add definitive advice to the electronic cigarette information pages on their website.**

## Legislation and guidance

[Consumer Protection Act 1987](#)

[The General Product Safety Regulations 2005 – \(reg 8\)](#)

[The Tobacco and Related Products Regulations 2016](#)

[CLP Regulation 1272/2008 \(Classification, Labelling, and Packaging\) \[‘the CLP Regulation’\]](#)

[Trade Marks Act 1994](#)

[Consumer Rights Act 2015 – schedule 5](#)

[Tobacco and Primary Medical Services \(Scotland\) Act 2010](#)

[MHRA Advice for retailers of e-cigarettes and nicotine-containing e-liquids](#)

[Retailer advice from the UKVIA](#)

## **Project Participants and Contributors**

**Aberdeen City Council Trading Standards**

**Fife Council Trading Standards**

**The Highland Council Trading Standards**

**Scottish Borders Council Trading Standards**

**The Moray Council Trading Standards**

**Shetland Islands Council Trading Standards**

**North Ayrshire Council Trading Standards**

**North Lanarkshire Council Trading Standards**

**Dundee Council Trading Standards**

**East Ayrshire Council Trading Standards**

**Glasgow Council Trading Standards**

**Orkney Island Council Trading Standards**

**West Lothian Council Trading Standards**

**East Lothian Council Trading Standards**

**East Dunbartonshire Council Trading Standards**

**Perth & Kinross Council Trading Standards**

**City of Edinburgh Council Trading Standards**

**East Renfrewshire Council Trading Standards**

**South Lanarkshire Council Trading Standards**

**Dumfries & Galloway Council Trading Standards**

**Argyle & Bute Council Trading Standards**

**Angus Council Trading Standards**

**Renfrewshire Council Trading Standards**

**Falkirk Council Trading Standards**

**South Ayrshire Council Trading Standards**

**Stirling & Clackmannanshire Councils Trading Standards**

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