

A GUIDE TO NEW REGULATIONS
**NICOTINE VAPOUR PRODUCT
AND TOBACCO COMPLIANCE
IN SCOTLAND**



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Disclaimer: The author and producers of this guide do not accept legal responsibility for actions taken by you in reliance on content. If you have any questions or concerns then you should talk to your local trading standards officer. All information in this guide is correct at time of print.

WELCOME

New laws on the sale of tobacco products and e-cigarettes come into force in 2017. The SGF has been supported by the Scottish Government to work on behalf of retailers to understand those laws.

This guide is to help you understand those changes and to provide tips and advice on how retailers in Scotland may comply with them.

SGF are committed to working with retailers to keep them informed of changes that affect them and to seek clarification on their behalf where required.

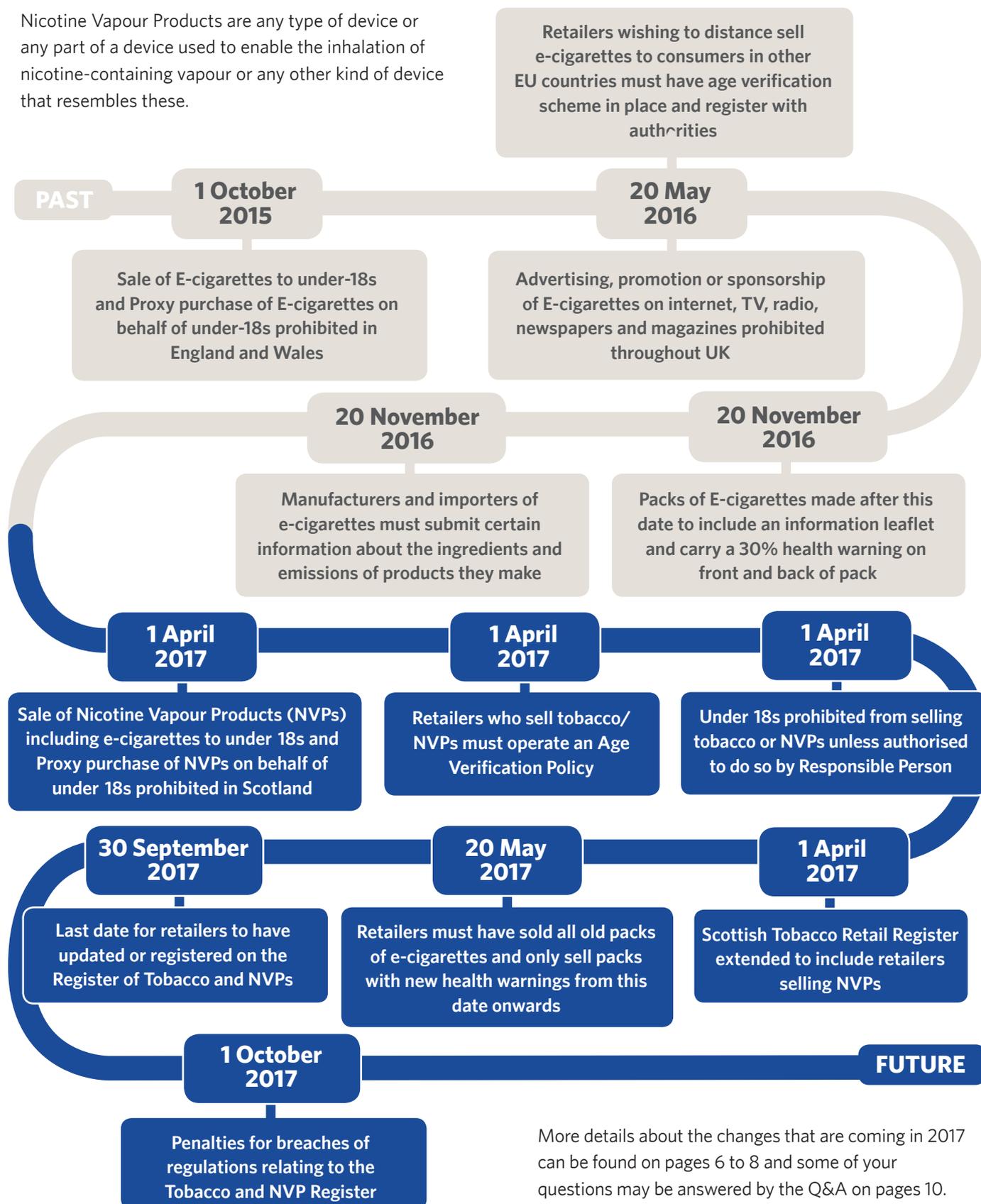
We would like to thank the Scottish Government Tobacco Control Team for their collaboration in producing this guide.

Pete Cheema
Chief Executive



Quick reference timeline of changes to regulations on the sale on Nicotine Vapour Products

Nicotine Vapour Products are any type of device or any part of a device used to enable the inhalation of nicotine-containing vapour or any other kind of device that resembles these.





Retailer Compliance

What do the changes mean for you?

What do you have to do?

The next few pages explore the changes in more detail and will help you to comply with the new legal requirements.

What are NVPs? - ‘Nicotine Vapour Products’ is the new term introduced in Scotland through the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 to cover any type of device or any part of a device used to enable the inhalation of nicotine-containing vapour or any other kind of device that resembles these. This includes E-cigarettes, E-cigars and E-shisha but could include other similar products (designed for other vapour) such as flavoured non-nicotine vapour products or those yet to be invented. NVPs also include any part of a device, or substance intended to be used with the device – such as e-liquids.

Retailers Selling Tobacco and/or NVPs

1. Minimum Age Requirement

From 1 April, if you (or any member of your staff) sells tobacco and/or NVPs to someone under the age of 18 you will be committing an offence unless you believed that person to be 18 or older and you took reasonable steps to check their age.

What should you do?

Ensure that everyone in your shop who sells tobacco and/or NVPs has training to understand that they have to check a customer’s age if they do not believe they are 18 years old or above. Ensure that you set up and maintain an Age Verification Policy (which is also now a legal requirement – see page 11).

The only documents that are legally permitted for proof of age are a passport, European photocard driving licence, Ministry of Defence Form 90 (Defence Identity Card), Photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram – such as Young Scot Card, EU identity card and Biometric Immigration Document.



2. Age Verification Policy for selling Tobacco and/or NVPs

From 1 April, you must operate an age verification policy to check the age of anyone attempting to buy a tobacco product, cigarette papers or an NVP who appears to be under the age of 25.

What should you do?

The Scottish Government has provided some direction as to what should be in your age verification policy. Many of you will already use the Challenge 25 scheme for your sale of alcohol and you can extend this to cover tobacco, cigarette papers and NVPs. Other forms of age verification policy are also permitted.

Step A – CREATE YOUR POLICY

Establish a policy or course of action for your staff to adhere to. It makes sense to have a written document that sets out the process for age verification that your staff can refer to at any time. See page 11 for our example Age Verification Policy.



Step B – TRAIN YOUR STAFF

It's really important that you regularly train all staff who are going to be selling tobacco, cigarette papers and NVPs to follow your age verification policy. Everyone should be made aware of their own duties and warned that you may be fined if they don't follow the policy. You may consider using role play during training to show how to politely challenge a customer about their age and how to deal with any problems that may arise. Your staff should be encouraged to challenge and to refuse the sale if they have any doubts. It is good practise to record any sale refusals they make in a refusals register. You should train any new employees and it's a good idea to provide refresher training for existing staff several times a year.



Step C – PROOF OF AGE

If a customer looks younger than 25 years old then ask to see identification to confirm their age. Be strict about acceptable ID which should only include a passport, European photocard driving licence,

Ministry of Defence Form 90 (Defence Identity Card), Photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram – such as Young Scot Card, EU identity card and Biometric Immigration Document. If the customer does not have suitable ID then refuse the sale.



Step D – ESTABLISH A CUSTOMER'S AGE

Check the ID carefully to ensure that it is genuine and has not been tampered with. Check that the photo matches the person seeking to buy the product and that the date of birth confirms that they are aged 18 or over. If a PASS card, check that the hologram is visible. If in doubt then refuse the sale.



Step E – DISPLAY OF NOTICES

As well as the statutory warning notice 'It is illegal to sell tobacco products to anyone under the age of 18' which must be displayed in a prominent position at point of sale it also is advisable to include other posters warning customers about challenging their age.



Step F – KEEP RECORDS

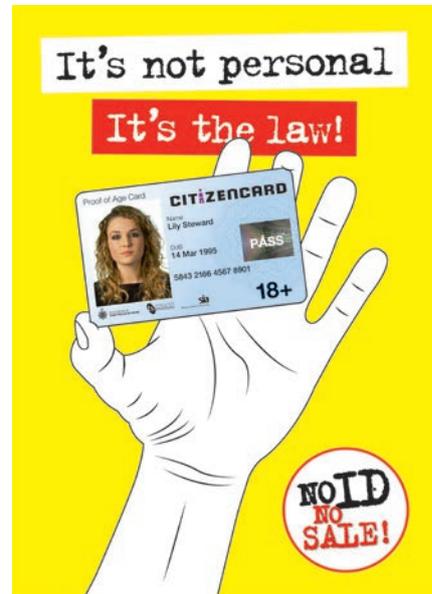
This is an essential area of good practice that should not be forgotten. Keeping records about training your staff demonstrates compliance with the legal duty to operate an age verification policy and maintaining a refusals register shows that the policy is being followed. The refusals register may also help you in any investigation by Trading Standards into under-age sales. From 1 April it is a legal requirement to keep a record of any staff under the age of 18 you authorise to sell tobacco, cigarette papers or NVPs (see page 8 on Sales Authorisation for Under Age Staff). See our example Age Verification Policy and Staff Acknowledgement Form, Sales Authorisation Record and Refusals Register on pages 12 and 13.

Useful information and free to use materials for your shop can also be found at www.noidnosale.com and www.challenge25.org.

Display of notices



IT IS ILLEGAL TO SELL TOBACCO PRODUCTS TO ANYONE UNDER THE AGE OF 18



3. Sale Authorisation for Underage Staff selling Tobacco and/or NVPs

If you allow a member of staff who is under the age of 18 to sell tobacco, cigarette papers or NVPs then you will be committing an offence UNLESS you as the owner or registered tobacco retailer of your shop or your shop manager has authorised that staff member to sell them and you have kept a record of that authorisation.

What should you do?

Whilst you should be training all staff about your age verification policy you should give any staff under the age of 18 additional training and satisfy yourself that they are able to adhere to your age verification policy. Anyone under 18 should only be permitted to sell these products when they have the authority from you or the shop manager to do so. You also have a duty to keep a record of each staff member who is under 18 and has authorisation from you to sell these products at each shop. See our example Sales Authorisation Record on page 13.

Anyone under the age of 18 should be made aware that if they do not follow the age verification policy then it is you as the registered retailer who may be prosecuted.

4. Retail Register for Tobacco and/or NVPs

From 1 April 2017 the tobacco retail register is extended to include anyone selling NVPs at their shop. Anyone selling tobacco, NVPs or both tobacco and NVPs must be a registered retailer.

What should you do?

Even if you already have a certificate for the registration of your tobacco business at your shop, if you sell NVPs, you must apply to change your registration to record that you carry on both a tobacco and NVP business. You have until 30 September 2017 to register the change, after which time, if you have not done so, you will be committing an offence.

If you cease to sell either tobacco or NVPs from your shop then you must notify the tobacco retail register of your changes within three months.

There is an easy to complete Retailer's Change Request Form on the home page of www.tobaccoregistersscotland.org that you can use to notify the change or if you are registering your business for the first time you can use the online registration form.

Consequences of Non-Compliance

What does it mean for you if you have 'committed an offence?'

The penalties will vary and depend on what you have or haven't complied with.

Example.....

If you are guilty of an offence for selling Tobacco and/or NVPs to someone under the age of 18 years then you may be fined up to £2,500.

Example.....

Failing to operate an age verification policy carries a fine of up to £500 and failing to authorise sales of tobacco, cigarette papers or NVPs by a member of staff who is under 18 could result in a fine of up to £200.

Example.....

Failing to register your tobacco or NVP business could result in a fine of up to £20,000, and six months in prison or both.

In all cases, unless you can show that you exercised all due diligence to avoid committing an offence then if the offence is so serious that it is intentional and ongoing then you may receive a prison sentence of up to two years, a fine of unlimited value or both.

Retailers who persistently breach any of the laws relating to the sale of tobacco and/or NVPs or the retailer register requirements may be subject to a tobacco and NVP banning order preventing the retailer from selling tobacco and NVPs at their shop for up to two years or from being involved in any other business selling tobacco and/or NVPs.

The Scottish Government has confirmed that it won't be enforcing the penalties for non-compliance with the Tobacco and NVP register until 1 October 2017.

What else is new?

Other changes introduced that may have an impact on you...

Proxy Purchasing

From 1 April 2017 the current law relating to the prohibition of the 'proxy purchase' of tobacco products for anyone who knowingly buys tobacco products or cigarette papers for someone under the age of 18 years old will be extended to cover NVPs.

NVPs and Vending Machines

Under the EU technical notification directive, the sale of NVPs from vending machines will be banned sometime in late 2017. Penalties for breaching the ban will be enforced at the same time.

What else is coming?

The Scottish Government has the ability to make further changes by regulation as they see fit and there are plans to restrict further the general promotion and advertising of NVPs as follows.

Advertising and Brandsharing

The Scottish Government has plans for 2017 to introduce a ban on some forms of advertising of NVPs. However point of sale advertising will still be permitted in shops. The additional measures may restrict or ban the use of NVP branding on other products such as caps and T-shirts to prevent the promotion of NVP brands.

regulations in 2017 that prevent the free distribution or giving away of any NVP product or coupons, or any buy one get one free type offers for NVPs and also to prevent NVPs being sold at big discount prices.

Free Distribution and Nominal Pricing

The Scottish Government may introduce further

Sponsorship

The Scottish Government may by regulation extend the ban on electronic cigarette sponsorship of cross-border events to restrict or prevent any sponsorship activity which has the purpose or effect of promoting an NVP.

Useful Q&A

Q. What is an NVP?

A. An NVP or 'Nicotine Vapour Product' is any type of device or any part of a device used to enable the inhalation of nicotine-containing vapour such as an e-cigarette, e-cigar, e-shisha or e-liquid but also includes any other kind of device that resembles these or those designed for the delivery of other types of vapour such as flavoured (non-nicotine) liquid.

Q. What do I do if I find NVPs that are not compliant?

A. Talk directly to the manufacturer or your wholesale supplier about the products if you have any concerns about them not complying with packaging requirements or contact your local trading standards team who are responsible for enforcement of the new laws. See useful contacts on page 14.

Q. Are NVPs smoking related products?

A. No, smoking related products are defined as cigarette papers, cigarette tubes, cigarette filters, apparatus for making cigarettes, cigarette holders and pipes for smoking tobacco products. They do not include NVPs.

Q. Do I have to cover up NVPs at my point of sale or can I still display them?

A. No you don't have to cover up your NVPs at point of sale. As an NVP is not a tobacco product or a smoking related product, they do not need to be covered up at point of sale but remember that you should not incidentally display a tobacco or smoking related product when you sell NVPs, matches or lighters.

Q. Can I still use advertising and point of sale material for NVPs?

A. Yes, the current ban on advertising NVPs only applies to TV, radio, internet, newspapers and magazines so you can still advertise NVPs at point of sale and in your shop. The Scottish Government plans to introduce additional restrictions on the advertising and promotion of NVPs. Retailers are advised to be vigilant of future changes.

Q. What do I do if I think someone is using a false identification when challenged about their age?

A. If in doubt about a customer's ID then ask for another form of identification and/or politely refuse the sale. You should keep a record of a refusal in your

refusals register and if the customer persistently seeks to use illegitimate or fake ID then you should take advice from trading standards and if necessary, the police. See page 12 for an example refusals register.

Q. What do I need to do if I start selling NVPs?

A. If you already sell tobacco then you need to update your registration on the tobacco retail register using the Retailer's Change Request Form or if you don't already sell tobacco you should make a new online or paper application to register your NVP business at your shop on the tobacco register. Both forms and details can be found at www.tobaccoregisterscotland.org

Q. What do I need to do if I stop selling NVPs?

A. You should notify the tobacco retail register about the change of circumstances using the Retailer's Change Request Form at www.tobaccoregisterscotland.org

Q. Does the age verification policy also apply to smoking related products?

A. The legal requirement to have an age verification policy does apply to cigarette papers, which are a 'smoking related product' but it does not apply to other smoking related products (defined as cigarette tubes, cigarette filters, apparatus for making cigarettes, cigarette holders and pipes). However, remember that cigarette lighter refills and butane may only be sold to customers age 18 or older.

Q. What is the minimum age for the age verification policy?

A. The minimum age for your age verification policy is 25 so that if someone appears to be under the age of 25 then steps should be taken to establish their age. However, you may choose to set the minimum age higher so for example you may choose to set your policy to say that if someone appears to be under 30 years old then they should be asked for identification.

Q. Has the statutory notice for warning customers about the minimum permitted age for the purchase of tobacco been extended to include NVPs?

A. No, the statutory signage to be displayed prominently at your point of sale has not been changed and remains as 'It is illegal to sell tobacco products to anyone under the age of 18'.

AGE VERIFICATION POLICY AND STAFF ACKNOWLEDGMENT (TO BE KEPT WITH STAFF RECORDS)

(An Age-Verification Policy is a legal requirement from 1st April 2017 and here we have combined it with the staff acknowledgment form which is recommended to evidence training)

| | |
|---|---|
| Name of Staff : | Example: <i>Joe Smith</i> |
| Date of Birth: | <i>29.11.99</i> |
| Is Staff under the age of 18? | Yes / No |
| Name and Address of 'Shop': | <i>Smiths News, 45 Argyll Street, Glasgow</i> |
| Name of the responsible person registered as the tobacco and/or NVP retailer for the above Shop on the Scottish Tobacco Register or name of the Shop Manager permitted to authorise sales if staff is under 18 | Your name and/or the name of the registered retailer or list managers of the Shop who can authorise sales |

The sale of tobacco, cigarette papers and nicotine vapour products (NVPs) to anyone under the age of 18 is an offence in accordance with the Tobacco and Primary Medical Services (Scotland) Act 2010 (as amended).

The above named Store operates this age verification policy as a legal requirement so that steps are taken to establish the age of a person attempting to buy a tobacco product, cigarette papers or NVP.

If it appears to staff selling those products that the customer may be under the age of 25 years old (or older if your company policy is to set the age limit higher), the customer will be asked their age. Where the staff member requires assurance of this, the staff member should ask the customer for proof of age.

At this Store, the following documents are acceptable proof of age forms of identification:

Passport, European photocard driving licence, Ministry of Defence Form 90 (Defence Identity Card), Photographic identity card bearing the national Proof of Age Standards Scheme (PASS) hologram – such as Young Scot Card, EU identity card and Biometric Immigration Document.

If the customer does not show you the correct form of ID or the data on the ID does not prove the date of birth or identification of the customer, or the document appears fraudulent then you must refuse the sale. If you are in doubt then ask another member of staff to assist you with the verification but if this is not possible then you must refuse the sale. If any tobacco products, cigarette papers or NVPs are sold to persons under the age of 18 then this is an offence which may result in you and/or the responsible person named above facing a fine of £2,500 or more and/or a term of imprisonment.

If you are under 18 years old then you must be authorised by the responsible person registered as a tobacco/ NVP retailer or the manager of the Shop (as named above) to sell tobacco, cigarette papers or NVPs. This authorisation must be recorded in the Tobacco Sales Authorisation Record. If you sell tobacco products, cigarette papers or NVPs without such authorisation then it is the registered tobacco retailer/ manager/ employer who has committed the offence and not you.

Staff Declaration:

I have read and understood this age verification policy and agree to comply with it

Signed..... Date.....

| Training Record | | |
|---|-----------------|-----------------|
| Training and Policy Reviewed (Date of Review) | Training Leader | Signed by Staff |
| | | |
| | | |
| | | |

REFUSALS REGISTER (Tobacco, Cigarette Paper and NVPs)

Shop Name and Address :

.....

| Date of Refusal | Time of Refusal | Name of Staff | Name of customer /description | Type of ID presented | Reason for refusal | Other comments | Staff Signature |
|------------------------|-----------------|---------------|---|----------------------|---|---|-----------------|
| Example 17 May 2017 | 10.30 am | Joe Smith | Name unknown Male , 6ft , dark brown hair | Driving License | Age on card appeared to be changed in pen | Customer could not produce other ID when questioned | JS |
| | | | | | | | |
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TOBACCO, CIGARETTE PAPERS, NVPs SALES AUTHORISATION RECORD

(to authorise sales of tobacco products, cigarette papers and NVPs by staff aged under 18)

NB this template can form part of your Age-Verification Policy

Shop Name and Address :

.....

| Staff Name | Staff Date of Birth | Date when Staff Member turns 18 years old | Date of Authorisation to sell Tobacco, Cigarette Papers and NVPs | Authorised by (Initials and Print) |
|----------------------|---------------------|---|--|---|
| Example – Joe Smith | Example 29.11.99 | Example 29.11.17 | 26 March 2017 | Your name as the registered tobacco retailer or the Store manager |
| Example – Rose Jones | Example 3.6.99 | Example 3.6.17 | 26 March 2017 | Your name as the registered tobacco retailer or the Store manager |
| | | | | |
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| | | | | |

Useful Contacts and References

Local Authority Trading Standards

www.tradingstandards.scot

Scottish Government Tobacco Control Team

E: tobaccocontrolteam@scotland.gsi.gov.uk

T: 0131 244 2169

Tobacco Retailers Register

www.tobaccoregisterscotland.org

Scottish Grocers Federation – John Lee

Head of Policy and Public Affairs

E: j.lee@scotgrocersfed.co.uk

No ID No Sale

www.noidnosale.com

Challenge25

www.challenge25.org

Electronic Cigarettes – Medicines and Healthcare products Regulatory Agency (MHRA)

T: 020 3080 6000

E: info@mhra.gsi.gov.uk

Business Companion

www.businesscompanion.info



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www.scottishshop.org.uk