Written evidence submitted by the Chartered Trading Standards Institute (ECG0040)

About The Chartered Trading Standards Institute

The Chartered Trading Standards Institute (CTSI) is the professional membership association for trading standards in the UK. Founded in 1881, we represent the interests of trading standards officers and their colleagues working in the UK.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence based policy advice to support local and national stakeholders including central and devolved governments.

Following a Government reorganisation of the consumer landscape, CTSI are responsible for business advice and education in the area of trading standards and consumer protection legislation. To this end, we have developed the Business Companion website to deliver clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI are also responsible for the Consumer Codes Approval Scheme which facilitates high principles of assisted self regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector’s approved code.

CTSI is also a key member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas vital to UK consumers, businesses and the economy. Since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period.
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The Tobacco Focus Group (the TFG) is a group of expert regulatory officers, mandated to represent all nine Trading Standards regions of England and facilitated and lead by the Chartered Trading Standards Institute on behalf of the Department of Health.

**The Committee has called for evidence in respect of the following matter:**
**Health - The uptake of e-cigarettes among young people and evidence on whether e-cigarettes play a role in ‘re-normalising’ smoking.**

The CTSI has considered the main sources of evidence of the uptake of E cigarette use by young people as detailed below and, has reviewed the data for the illegal sale of E cigarettes and liquids to young people under the age of 18 years.

**National survey of young people 2016**

![E-cigarette prevalence, by year](chart)

*Source: Smoking, drinking and drug use among young people England 2016*

This data suggests that although regular use is low there has been an increase since 2014; it should be noted however that the age of the respondents (pupils) is between 11-15 years. There is no data for the 16-17 year olds.

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A large survey of young people (14-17 years) in the North West suggests that there has been an increase in the number of young people that have tried an e cigarette before first trying a cigarette; and those that have tried an e cigarette but have never smoked.

Source: Trading Standards North West Young Persons Alcohol, Tobacco and E cigarette Survey 2017^3
Supply of E cigarettes and Liquids to young people under the age of 18 years

It is illegal to supply a nicotine inhaling product (including E cigarettes and associated products such as refills that contain nicotine) to a young person under the age of 18 years. The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 came into force on the 1st October 2015.

Despite the implementation of these regulations, illegal sales to young people under 18 years remains an area of considerable concern to CTSI; the following data highlight the issue.

Background: 2014
In 2014, [at the request of Public Health England] and prior to the introduction of age of sale requirements for Nicotine Inhaling Products, the CTSI was commissioned to conduct a coordinated a programme of test purchasing of E-cigarettes and associated products across England; the purpose was to determine the state of the market place with regard to supply of products to young people:

- 574 visits to a variety of premises were undertaken by trading standards services across England working with young people under the age of 18 years who attempted to purchase products
- Purchases were made on 227 occasions from a wide variety of business premises including pharmacies, off licenses and petrol station kiosks
- The youngest purchasers were 13 years old; the oldest 17 years
- A wide variety of products were purchased with a correspondingly wide range of purchase prices from disposable e cigarettes at £1.99 to re-chargeable products at £20

2015-16
- The Regulations were implemented in October 2015, in early 2016, the Department of Health supported a project delivered and managed by CTSI to assess business compliance with the Regulations with the following outcomes:
  - A total of 634 compliance tests using young people under the age of 18 years were conducted at retail business premises in England between January and March 2016. The tests were carried out by Trading Standards Services.

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- Compliance with the age of sale aspect of these Regulations was found to be disappointingly low, with illegal sales made on 246 occasions from a wide variety of business premises including: Independent pharmacies, specialist E cigarette suppliers, discount stores and markets.
- The range of the non-compliance rate varied between business types.
- A variety of products, from E liquids, disposable e cigarettes to re-chargeable products were purchased with a correspondingly wide range of purchase prices with prices ranging from £1 to £20. The most frequently purchased products were E liquids.

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Illegal sale rate to under 18’s – 39%
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**2016**

Further testing was carried out in November 2016\(^6\) arising from the previous compliance testing conducted by Trading Standards Services in early 2016. The visits comprised of businesses that had sold illegally during the first round of compliance testing (61% of the total) as well as a number of new premises.

In advance of the second phase of testing, businesses were provided (where possible) with tailored advice and display materials prior to a further testing using young people under the age of 18 years.
- Illegal sales were made on 65 occasions;
- 40 of these were made by premises that had made illegal sales previously.

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Illegal sale rate to under 18’s – 25%
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**2016-17**

The annual tobacco control survey of Trading Standards activity provides the following data in respect of the sale of nicotine inhaling products to young people under 18 years:

- 74% of councils had undertaken activity in respect of sales of nicotine inhaling products to young people under 18

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Figure 8: Number visited by volunteer young persons and number at which underage sales of NiPs were made to volunteer young persons
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[Accessed online 12 November 2017]
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Source: Tobacco Control Survey of Trading Standards Activity 2016-17

The CTSI draw the attention of the Science and Technology Committee to the following aspects of the Tobacco Products Directive and the Regulations:

- Paragraph 43 of the Directive states: Electronic cigarettes can develop into a gateway to nicotine addiction and ultimately traditional tobacco consumption, as they mimic and normalize the action of smoking.
- Paragraph 7 of Article 20: Member States shall 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 among young people and non-smokers.
- Regulation 32 (5) of The Tobacco and Related Products Regulations 2016: 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 ask the Committee to consider the products below:

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We believe the actions of the vaping industry along with the results of the test purchase data and the young people’s survey suggest it is certainly possible that nicotine inhaling products are becoming more attractive to young people and non-smokers.

The Committee has called for evidence in respect of the following matter:
Regulation: Compliance Monitoring

The CTSI is coordinating a review of product compliance with the Tobacco and Related Products Regulations 2016; the scope of this review is outlined below:

<table>
<thead>
<tr>
<th>E cigarettes &amp; refill containers: Part 6 of the TRPs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reg 36 product is compliant with size requirement</td>
</tr>
<tr>
<td>Reg 36 product is compliant with nicotine strength requirement</td>
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<tr>
<td>Reg 36 product is child resistant &amp; tamper evident</td>
</tr>
<tr>
<td>Reg 37 product has information leaflet</td>
</tr>
<tr>
<td>Reg 37 product carries health warning</td>
</tr>
</tbody>
</table>

**Notification of sample of products – checking MHRA notification list**

*Note:* At each business premises up to 10 different products are to be assessed for compliance.

As of the 1st December 2017, there were approximately 33,000 products / items notified to the MHRA. This illustrates the scale of the market and the size of the task for compliance monitoring purposes.

The CTSI will report the findings in May 2018 -

- In addition to compliance monitoring at retail level, the on-line market place is also being assessed. Previous regulatory activity has indicated a range of problems including:
  - Lack of suitable age verification measures
  - Non-compliant products
  - Breaches of consumers rights re cancellation periods
  - Cross border supply of products to EU countries
- In addition to compliance monitoring, there are a number of regulatory matters that are currently the subject of review and interpretation; these include [but not limited to]:
  - The presence of nicotine free flavours in excess of 10ml, envisaged to be mixed with concentrated nicotine (safety implications if user does not mix the product correctly AND take precautions whilst handling a toxic substance)
  - The practice of changing parts in e-cigarettes post sale to increase tank size well above permitted capacity
  - The practice of some e-liquid manufacturers designing outer retail display packaging in such a way that it covers the warning notice on e-liquids at point of sale
  - That producers are investing money in designing attractive packaging likely to appeal beyond the smokers market and to non-smokers/young people.

Advertising and Marketing of E cigarettes

The CTSI has recently responded to the CAP and BCAP’s proposal to remove the prohibition on health claims from unlicensed nicotine-containing e-cigarettes. We did not agree with the proposal.
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We questioned whether such robust evidence for specific brands would actually exist apart from those brands that are licensed by the MHRA. In our view, if a business is in possession of robust evidence for specific brands there is no reason why they should not apply for a license which would enable them to make health claims based on their evidence.

*December 2017*