

Age of Sale Guidance for Vape Shops



Assured Guidance developed in
partnership with our Primary Authority,
Kent Trading Standards

www.ibvta.org.uk



**Independent British
Vape Trade Association**

Age of Sale Guidance for Vape Shops

About This Guide

This guide is provided by the Independent British Vape Trade Association in consultation with our Primary Authority, Kent Trading Standards.

This guide is intended to assist you with your staff training on how to comply with age of sale regulations for vaping products. The legal protection of the Co-ordinated Primary Authority Partnership Scheme only applies to members of the IBVTA, and is just one of the many benefits of membership we offer.

What are the relevant regulations covering underage sales of vaping products?

There are currently different age restrictions in place for the sale of vape products; see below for the situation in each country.

England & Wales

Since 1st October 2015 it has been illegal to:

- Sell vape products (e-liquid or devices) to anyone under the age of 18
- For adults to buy (or attempt to buy) vape products to anyone under the age of 18 (proxy sales)
- It is advisable to have age verification software in place when selling online, it is not enough to ask 'are you over 18?'

Scotland

Since 1st April 2017 it has been illegal to:

- Sell vape products (e-liquid or devices) to anyone under the age of 18
- For adults to buy (or attempt to buy) vape products to anyone under the age of 18 (proxy sales)
- Not operate an online age verification process
- Sell vape products via vending machines

Since 1st October 2017:

It is a requirement for retailers of vape products to register their business on the Nicotine Vapour Products (NVP) Register.

Northern Ireland

To date:

There is currently no age of sale restrictions in Northern Ireland, although this may change in the future.

What are the penalties for underage sales?

There are significant penalties for both staff and retailers. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale. (Up to £2,500). However, the reputational damage to your shop and the wider sector should also be considered, as it can have far wider reaching implications.

Age Verification Policy

Having an age verification policy is a good way to show due diligence and protect you and your business.

What should be in the policy?

The record of the policy should include the following details:

- The name and address of the premises
- The date on which the policy was agreed
- The category of products sold on the premises
- The preferred age that the retailer or staff will use to decide whether a challenge to a customer's age will be made (e.g. below 25)
- The way staff will raise the need for proof-of-age with a customer
- The proof-of-age documents that the retailer has decided that can be used on the premises
- What staff have been asked to look for in proof-of-age documents
- The way staff will handle refusals on the basis that proof-of-age has not been provided or where proof of age documentation is not convincing
- Information about the refusals log
- Details of how staff training will be conducted and recorded

How do I protect my business from serving someone we shouldn't have?

Exercising due diligence is important in making sure that your business does not break the law. So too, is keeping sufficient records of this due diligence.

Asking for ID

Asking a customer for proof of age isn't a difficult process and won't take up much of your or the customer's time. It may seem like a burden having to ask every young-looking customer for evidence that they're over 25, but it's much less cumbersome than the penalties you could face if you're found to be breaking the law.

What ID Can I Accept?

- Passport (UK or International)
- Photo Driving Licence (UK or European)
- EU National ID Card
- Ministry of Defence Form 90 (Defence Identity Card)
- Proof of Age Card which carries the PASS hologram

You can choose to advise your staff on what type of ID you are willing to accept and include this in your Age Verification Policy.

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Remember to follow the following steps when checking a PASS ID card:

- Check the hologram on a PASS card. (Is it genuine?)
- Check the photograph. Does it match the person in front of you?
- Check the date of birth. Is the person old enough?
- Check the ID. Has it been tampered with?
- Check the person. Are you satisfied about the person's age?
- If in doubt, refuse the sale

How best to refuse a sale

Retailers and staff may feel apprehensive or awkward about asking people to prove their age. However, these concerns are best dealt with through approaching the issue that best suit the individual situation. Here are some approaches you can use:

- **Deflect:** refer to the company policy of asking for ID and if none can be provided, refusing the sale.
- **Flatter:** where the customer provides ID that proves they are of age, use flattery to deflect any awkwardness, complimenting the customer on their youthful looks.
- **Be Constructive:** explain the types of ID that you can accept, and point to the company's age of sale policy where the sale is being refused, due to the customer not having ID to prove their age.

Preventing proxy sales

It is illegal to sell nicotine inhaling products to a person who you know is going to supply to a person under age. This is commonly called a 'proxy sale'. It can be very difficult to know if an adult intends to buy something for or on behalf of someone who is underage. Therefore, you are only expected to act when an obvious proxy sale is taking place.

It is up to your business to decide if you wish to allow people under 18 to accompany an adult into your store. But be aware that you are obligated to refuse the sale to the adult if you suspect that the product is being purchased for the person under 18.

Likewise, if there are young people outside of your store and someone over the age of 18 enters your store, you have the right to refuse the sale if you believe the person is purchasing on behalf of one of the young people outside.

Refusals Log

Keeping a refusals log is vitally important because it shows that your business is complying with the law on an ongoing basis.

It would be advisable to use till prompts to remind staff that they need to ask for identification.

The information you need to record includes the date and time, which product was refused, why you refused the sale, plus any other details that may be useful to others in future. You should make a note of the refusal straight away and then ask another staff member or manager to countersign your entry to confirm that they witnessed the refusal and witnessed you asking for ID.

The IBVTA recommends that you keep a record of every time you ask a customer for proof of age, even if the person provides a valid ID, including the date and time this occurred as well as the product the customer was seeking to purchase.

Staff Training

New members of staff should not begin serving customers until they have received age-of-sale training, or are being supervised by a fully trained staff member. Training should, as a minimum, include a clear explanation of the law and your company policy as well as talking through this IBVTA guide, as well as how to fill in the refusals log. You should also undertake at least one full hour of directly supervised customer service training with a manager or other experienced staff member as part of induction training.

Provide a written summary to staff

It is important that you give the trainee something in writing, such as a training checklist which they sign to say that they have read and understood the training. This can protect your business if the trainee makes an underage sale.

If you send staff on an external training course, keep records of this.

Provide refresher training for staff a few weeks after they have first been trained and then periodically (maybe every six months) until they leave your employment. Refresher training reinforces the key messages of the training and allows you to satisfy yourself that staff have remembered and understood them.

Training records should be kept for each member of staff, detailing the initial training and the refresher training received. It should detail the person giving the training, how and when it was given and be signed by the trainee.

Reminders do not need to be recorded on the training record but should be given daily: the more you mention the need to avoid underage sales, the more important it will seem to staff.

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You can remind staff by keeping and checking refusals records and giving feedback to staff you have seen serve a young customer or when providing staff briefings about new products, sales targets, etc., and requesting staff to sign to say they attended and understood.

You should be able to say you have trained your staff, have a system in place and that you know it works. This would assist in showing that your business has exercised all due diligence and taken all reasonable precautions to ensure an underage sale does not happen.

If your till system allows, you should also consider setting up prompts to remind staff to ask for ID if the customer looks under 25.

Retrain regularly

It is important that staff training on underage sales is regularly conducted, and a log of the training is kept. The IBVTA and Trading Standards recommend every 6 months. Mistakes can be costly to a business, so every staff member should be asking for ID in every situation where the customer looks under 25.

Online Sales

If you sell products online, it is important to ensure you are not selling to consumers under the age of 18. Having statements such as 'you must be over 18 to use this site', asking for a date of birth (with no further check) or requesting a box is ticked to confirm a consumer is over 18 is unlikely to satisfy the requirements of due diligence.

It is important to have a suitable age verification system and to monitor and assess this system is working and suitable for your business needs.

As part of this Assured Guidance and best practice, we would advise you to install age verification software as this is currently the most effective way to ensure no on-line underage sales take place.

Before engaging any online verification service, you should test thoroughly to make sure it is a usable system and blocks underage sales, but allows sales to people of legal age without too much disruption to the transaction.

Records you need to keep

Keeping good records is essential should Trading Standards come to check your business compliance. If you are visited by Trading Standards or another enforcement authority, this record keeping acts as evidence to prove that your business is carrying out proper due diligence. Simply put, "due diligence" means that you have taken all reasonable precautions and exercised all necessary steps to ensure an offence is not committed. It is not an absolute defence, but if all reasonable steps to avoid committing the offence have been taken and you have done all you reasonably could, then it may be looked on favourably by an enforcement authority, that there is no need to pursue a prosecution or other action against you.

- We recommend that you have a document on file that sets out your company's policy on preventing underage sales. This should be displayed in every shop that you operate, and be eye-catching to customers. An example template of this document is available in the Appendix of this guidance.
- It is important that you keep records of the training your staff undertake. This record should be signed by the employee after every training session. An example template of this document is available in the Appendix of this guidance.
- The refusals log must be regularly reviewed by you or other management employed in your business. You should assess the register for evidence of:
 - o days and times when refusals appear to not be taking place.
 - o staff members that appear to not be refusing (or recording refusals).
 - o if you notice anything unusual about the pattern of refusals recorded you should investigate to find the cause.
 - o each time your refusal records are thoroughly checked by you or other management, this should also be recorded. An example template of this document is available in the Appendix of this guidance.
 - o following any review of the refusals log, record any action taken to address any issues that arose. For example, if the audit shows a staff member has never refused a sale, has this been addressed, has further training been provided?
 - o keep records of any further action taken as a result of an audit.

Test Purchases

Test purchases can be carried out by Trading Standards at any time, and without prior notice. A Trading Standards Officer may use underage volunteers to attempt a test purchase in your store. These are not cases where an enforcement authority is trying to trick a business owner or their staff, but rather it is a check to make sure that the business is carrying out its due diligence.

It is likely a first offence will lead to the Trading Standards Officer getting the business back within compliance, but each case is considered on its own merits and extenuating circumstances. A second offence may lead to court action and upon summary conviction, a fine. This not only affects your business financially, but reputationally as well. Therefore, it is always better to ask for proof-of-age on every sale where the customer looks under 25, and exercise all other due diligence within this guidance at all times.

- Consider getting your own external audits done, and keep records of the audit visits, feedback, and any corrective action you take on the back of these audits.
- It is advisable to have your own testing system in place. Providing training is essential but ensuring your staff are working in line with the training is also very important. Independent test purchases should always be carried out. Preferably via a third-party service e.g. legal service or they can be completed by family or friends and then the results can be documented and kept on file as a record. This is the only real way to test if your system is working.

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Appendix

1. Sample Company Age of Sale Policy.

Age of Sale Policy



It is a criminal offence to sell or supply vaping or e-cigarette products to anyone under the age of 18.

This store/[**name of company**] of [**address of store**] which is a retailer of vaping and e-cigarette products, operates a Challenge 25 Policy.

This policy was agreed on [**date**].

Customers should not be offended if we ask for identification which proves you are over 18.

Identification we accept must bear a photograph, date of birth, and a holographic mark. This can include, for example:

- Passport (UK or International)
- Photo Driving Licence (UK or European)
- EU National ID Card
- Ministry of Defence Form 90 (Defence Identity Card)
- Proof of Age Card which carries the PASS hologram

Staff have been trained to complete the following steps when checking proof of age documents:

- Check the hologram on. (Is it genuine?)
- Check the photograph. Does it match the person in front of you?
- Check the date of birth. Is the person old enough?
- Check the ID. Has it been tampered with?
- Check the person. Are you satisfied about the person's age?
- If in doubt, they may refuse the sale

This store is obligated to refuse the sale to an adult if we suspect that the product is being purchased for a person under 18. In refusing a sale, staff of this store will approach the issue that best suits the individual situation, which may include asking for alternative proof of age documentation, and directing customers to this policy. This store keeps a sales refusals log, which includes the date and time of the sales refusal, which product was refused, why the sale was refused, plus any other details that may be deemed useful, and may include a record of every time a customer has been asked to prove their age.

All members of staff of this store receive age-of-sale training, which is updated every six months, and training records are kept for each member of staff.

Signed.....
Store Manager

Date.....

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2. Sample Staff Training Log

AGE OF SALE TRAINING LOG - Company Name

Date	Training Given By:	Employees Trained:

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2. Sample Refusal Log

Refusals Log							
Shop Name:				Shop Address:			
Date	Time	Product	ID Check?	Reason for Refusal	Signature	Witness Signature	Other Details



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Association

Vendor Guide



IBVTA is a not-for-profit organisation,
and all IBVTA members are free from
any ownership or control by the
tobacco and pharmaceutical industries.

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