

**To: All CTSI Members**

**This message has been sent today to all Heads of Trading Standards Services and Regional Coordinators with the attachments mentioned below. Due to the sensitive nature of these documents, they have not been included in this wider circulated email but can be obtained from your Head of Service as appropriate.**

On 6 February, the Daily Mail published an article claiming that in tests, a number of Elf Bar 600 products purchased from major supermarkets had been found to contain 3ml of liquid rather than the maximum 2ml permitted under Regulation 36 (2)(b) of the Tobacco and Related Products Regulations 2016 (TRPRs).

The Daily Mail sent details of the investigation to the Office for Health Improvement and Disparities (OHID) who provided them to the Medicines and Healthcare Regulatory Agency (MHRA).

Meetings have taken place between Elf Bar and MHRA.

MHRA have made it clear that under the vigilance requirement of Regulation 39 in the TRPRs

**“Where the producer has reason to believe that an electronic cigarette or refill container which it intends to or has supplied, is not safe, not of good quality or fails to conform with Part 6 of the Regulations, they must (as appropriate):**

**(a) immediately take the corrective action necessary to bring the product into conformity with Part 6 of the Regulations;**

**(b) withdraw the product;**

(c) recall the product”

Elf Bar have now provided MHRA with details of their corrective action plan (attached) and MHRA have replied asking for further information including details of their withdrawal plan (attached). **Attachments are only to be shared with Local Authority Trading Standards Officers in order to make enforcement decisions. No further circulation is permitted without written permission from MHRA.**

CTSI and MHRA would advise:

1. There is no suggestion that the over-filled Elf Bars are a greater risk to health in normal use.
2. However, the vigilance requirements in Regulation 39 clearly apply to non-compliant products as well as unsafe ones.
3. Some businesses have been told that there is only a voluntary withdrawal of non-compliant products, and have interpreted this as meaning they do not have to withdraw non-compliant products from sale if they do not want to. This is not correct, all non-compliant products must be withdrawn from sale.

4. The advice to businesses is that non-compliant products must not be made available for sale to consumers.
5. It is clearly the responsibility of the producer to meet the vigilance requirement, not the responsibility of Trading Standards. We feel that any responsible business would want to remove non-compliant products from sale and compensate those in the supply chain who suffer detriment as a result. We expect suppliers to act responsibly and ensure any non-compliant products are removed from shelves and returned to the producer for recycling and disposal.
6. Where products from non-compliant batches remain on the shelves it is as always a local decision whether action should be taken or not depending on local priorities, competing demands and available resources

**In offering this advice CTSI wishes to make it clear that:**

- only the courts can interpret statutory legislation with any authority
- this advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.

Please direct any enquiries to [policy@tsi.org.uk](mailto:policy@tsi.org.uk) – we will direct enquiries to the appropriate Officer to respond.