

# ***Enforcement Guide – Single-Use Vapes Regulations 2024 (Scotland)***

*For use by Trading Standards Officers – Retail Inspections*

This guide has been prepared independently and reflects the author's professional experience and interpretation. It is intended to assist Trading Standards officers in understanding and applying the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024 in retail settings. It does not replace formal legal advice or official guidance from regulatory bodies.

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# **The Enforcement of the Environmental Protection (Single-Use vapes) (Scotland) Regulations 2024 (SUVR)**

Introduction .....	3
Key Questions to Consider:.....	3
Additional Considerations: .....	4
When inspecting premises .....	5
Regulation 4 - Offence: supply of single-use vapes .....	5
Regulation 5 - Offence: failure to comply with an enforcement requirement .....	5
Regulation 6 - Offences by bodies corporate .....	5
Regulation 7 - Defence of due diligence .....	6
Regulation 8 - Enforcement.....	6
Regulation 9 - Powers of entry, investigation and examination, etc. ....	7
Regulation 9 (b).....	8
Regulation 9 (c) .....	9
Regulation 9 (1) (e) (f) and (g).....	10
Regulation 9 (6).....	12
Regulation 11 – (6) and (7) Requirement to provide Name and Address .....	13
Regulation 11 - Fixed Penalty Notices .....	13
Regulation 12 -Contents of a fixed penalty notice .....	13
Regulation 13 - Fixed penalty amounts and payment periods .....	13
Regulation 14 - Disposal of single-use vapes.....	13
“Keeping It Simple” .....	14
A Local Programme of Inspection or a Disposable Vape Complaint at Retail Premises.	14
Larger Premises – Retail with Illegal Tobacco Intelligence, Wholesalers, Warehouses, and factories. ....	14
Domestic Property .....	14
Conclusion.....	15

# Introduction

When inspecting trade premises, officers often enforce multiple pieces of legislation, not just the law that initially prompted the visit. Vape inspections are no different. Before entering a premises, officers must determine the **primary purpose** of the visit, as this will define which powers and procedures apply.

For example:

- If the visit is to check **Tobacco Registration**, it falls under the *Tobacco and Primary Medical Services (Scotland) Act 2010*.
- If it concerns **pricing**, it may fall under the *Prices Act* and the *Price Marking Order 2004 (PMO)*.
- Some visits require **entry notices** under the *Consumer Rights Act 2015 (CRA)* — others, including the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024 (SUVR), do not.

While investigating one issue, officers may uncover others, such as non-compliant vapes, requiring enforcement under different legislation. This is common and to be expected.

For example, if you are inspecting vapes under these regulations and you discover some that have not been registered with the MHRA, you would seize them under the Tobacco and Related Products Regulations (TRPR). If these vapes are priced incorrectly, you may decide to seize any signage under the PMO.

The *Single-Use Vapes Regulations 2024 (SUVR)* do not replace existing powers but provide a new and significant enforcement tool, particularly in most retail settings. Being aware of these regulations will prepare you for certain offences.

## Key Questions to Consider:

- What legislation **justifies your entry**?
- What legislation **supports your enforcement action**?
- Under what legislation are you **seizing products**?

Suppose your authority is content to continue using existing legislation, such as the Tobacco and Related Products Regulations 2016, and to bear the cost of storage and disposal of seized goods. In that case, you may choose to proceed as before.

However, the SUVR may offer a more efficient enforcement option, particularly where your authority wishes to:

- Issue **Fixed Penalty Notices (FPNs)**
- Recover **storage and disposal costs** (not yet established)
- Avoid the need for **forfeiture orders or court proceedings**

This guide is designed to help officers become familiar with the new regulations, apply the powers appropriately, and make clear decisions about:

- The **legislation under which an inspection is conducted**
- The **legislation under which enforcement or seizure is carried out**

## Additional Considerations:

Most **single-use vapes** will also be non-compliant under the TRPR, as they are being removed from the MHRA notification list from April. However, **not all** will be removed immediately. Products like **CBD vapes, zero-nicotine vapes**, and **vitamin vapes** do not require TRPR notification or conform to any TRPR vape requirements, but they must comply with these regulations. They cannot be seized under TRPR unless you suspect them to contain nicotine liquid.

Whether you issue a **Consumer Rights Act notice** on entry will depend on your **primary purpose**—for example, whether you are responding to a complaint, conducting a targeted project, or carrying out a planned inspection under the SUVR.

The decision on **which legislation to seize goods** should follow similar logic regarding your authorities' priorities (it does not always depend on your visit's primary purpose).

For inspections involving **larger or domestic premises**, or where access to **locked containers or third-party information** may be required, we recommend that applications for warrants and enforcement actions be pursued under **alternative legislation**, such as the TRPR and the Consumer Rights Act. The SUVR does not provide sufficient powers for these types of investigations.

## When inspecting premises

### Regulation 4 - Offence: supply of single-use vapes

- (1) A person who supplies, offers to supply, or has in their possession for supply a single-use vape commits an offence.**

### Regulation 5 - Offence: failure to comply with an enforcement requirement

- (1) A person who fails without reasonable excuse to comply with any requirement imposed in the exercise of an enforcement officer's powers under regulation 9(1)(c)(iii), (i) or (k) commits an offence.**
- 9(1)(c)(iii) concerns the provision of documents
  - 9 (1)(i) concerns providing assistance
  - 9 (1) (k) concerns name and address (see regulation 11)

### Regulation 6 - Offences by bodies corporate

**(1) Where —**

**(a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association, and**

**(b) It is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—**

**(i) a relevant individual, or**

**(ii) an individual purporting to act in the capacity of a relevant individual,**

**the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.**

**(2) In paragraph (1), “relevant individual” means—**

**(a) In relation to a body corporate—**

**(i) a director, manager, secretary or other similar officer of the body,**

**(ii) where the affairs of the body are managed by its members, a member,**

**(b) in relation to a Scottish partnership, a partner,**

**(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.**

## Regulation 7 - Defence of due diligence

**(1) Where a person is charged with an offence under these Regulations, it is a defence for that person to show that the person took all reasonable precautions and exercised all due diligence to prevent the offence being committed.**

**(2) Where the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within the period of 7 days before the hearing, the person charged has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in the possession of the person charged.**

In practice, it is uncertain what constitutes “all reasonable precautions and exercised due diligence.” It will depend on the circumstances, and officers must judge those before issuing FPNs or reporting to the Fiscal.

What would not be -

- Purchasing vapes from non-established suppliers (white van man)
- Not keeping Records of purchases

What may be -

- Premises that keep records showing that when the vapes were placed on sale, coils, pods, and replacement containers were separately available for purchase, but have been subsequently withdrawn.

## Regulation 8 - Enforcement

**(1) A local authority may authorise any person to exercise in its area, for an authorised purpose and in accordance with the terms of the authorisation, any of the powers specified in regulation 9, if that person appears suitable to exercise them.**

**(2) An authorisation under paragraph (1) must be in writing.**

It is recommended that Officers authorised to enforce these regulations should also be authorised to enforce the following –

- General Product Safety Regulations
- Consumer Protection Act 1987 and the Tobacco and Related Product Regulations 2016
- Tobacco and Primary Medical Services (Scotland) Act
- Price Marking Order
- Trade Marks Act

## Regulation 9 - Powers of entry, investigation and examination, etc.

- (a) An authorised officer may, at any reasonable time, enter any premises they have reason to believe it is necessary to enter for the purpose of determining whether an offence under Regulation 4 has been or is being committed. (*“Authorised Purpose” as defined in Reg 2*)”

### Key Points:

#### 1. “Authorised officer”

- This usually means a **Trading Standards Officer** or other enforcement officer formally appointed under Regulation 8.

#### 2. “Enter at any reasonable time”

- This means **during normal business hours**,

#### 3. “Any premises”

- This includes **shops, storage facilities, warehouses, or any place connected to the business**. It does not include domestic properties (unless that’s where the business is run, and even then, only with a warrant).
- It is suggested that inspections are not conducted under these regulations in domestic properties and larger premises due to restrictions in enforcement powers, such as obtaining information from 3<sup>rd</sup> parties.

#### 4. “Has reason to believe it is necessary to enter”

- The officer **must have a legitimate reason**—they can’t just randomly walk into any shop without cause.
- This could be based on:
  - A complaint from a customer or competitor
  - A previous inspection
  - Evidence from surveillance or online sales
  - A routine compliance check

## How "Routine Compliance Check" Fits the Regulation

The phrase in the regulation says the officer must have *"reason to believe it is necessary to enter for the purpose of determining whether an offence under Regulation 4 has been or is being committed."*

A **routine inspection** is carried out to determine whether offences are being committed, so it falls within the scope of this power.

## But There's a Subtle Legal Distinction

To stay lawful, the officer must:

- **Genuinely intend to check compliance with the regulations** (not use it as an excuse to do other things)
- **Act proportionately and professionally**
- Be able to **explain why they chose that premise** (e.g. part of a routine programme, higher-risk product category, etc.)

They don't need to suspect wrongdoing at that particular premises, but they *do* need to justify why they believe it's **"necessary" to enter**—and a routine inspection programme is a recognised basis for that.

## So, in plain terms:

*"I'm visiting this shop as part of our local programme of compliance checks on vape retailers following the new regulations coming into force."* is legitimate.

### 5. "For the purpose of determining whether an offence under Regulation 4 has been or is being committed"

- Regulation 4 deals with **offences related to the sale or display of banned disposable vapes**.
- So, the officer is entering **specifically to investigate compliance** with the vape ban.

## Regulation 9 (b)

When entering any premises under sub-paragraph (a)—

- **to be accompanied by another enforcement officer (Authorised under Regulation 8),**



- and if the enforcement officer has reasonable cause to apprehend any serious obstruction in the execution of that person's duty, a constable, and
  - to bring any equipment or materials required for any authorised purpose for which the power of entry is being exercised.
- i. There must be at least two enforcement officers.  
***Note:** This is a minimum figure, and there is no reason not to have additional officers (including non-authorised officers).*
- ii. The Officers can take any equipment or materials.
- iii. If Police Officers are deemed to be required, at least one can accompany the enforcement officers.  
***Note:** This is a minimum; in practice, this number would be at least two.*

## Regulation 9 (c)

**On entering any premises under sub-paragraph (a)—**

- (i) to make such examination and investigation as may in any circumstances be necessary,
- (ii) to take such measurements and photographs and make such recordings as the enforcement officer considers necessary for any examination or investigation, and
- (iii) to require any person to produce, or where the information is recorded in computerised form, to furnish extracts from, any documents which it is necessary for the enforcement officer to see for the purposes of any such examination or investigation and to inspect and take copies of the documents,

Once an enforcement officer has lawfully entered a premises in accordance with regulation 9 (1) (a), has three central powers while on-site:

### **(i) To examine and investigate as needed**

This means the officer can:

- Look around the premises
- Inspect stock, shelves, storage areas, etc.
- Ask relevant questions
- Investigate anything relevant to the offence they're checking for (e.g. presence of banned vapes)

**In practice:** You can walk around the shop, ask to see vape products, examine displays, and check for signs of non-compliance.

## **(ii) To take measurements, photographs, and recordings**

You can:

- Take photos of any evidence (e.g. banned products, signage, labels)
- Record measurements (e.g. product volume or packaging dimensions)
- Make video/audio recordings (if needed and appropriate)

**In practice, you** can photograph shelves of disposable vapes, record signage, or document how products are stored/displayed—useful later if enforcement action is taken.

## **(iii) To require access to documents and digital records**

You can:

- Ask to see any relevant documents (e.g. invoices, stock records, shipping info)
- If the info is on a computer, ask them to provide printed or digital copies/extracts
- Take copies of any necessary documents (*original documents can only be seized under these regulations if you have entered by warrant*)

**In practice, you might request a supplier invoice to check when banned stock was received or print out** stock control data showing purchase dates.

## **Key Phrase: "As may in any circumstances be necessary"**

This gives you **discretion**—you don't need to do all these things every time. But you can use these tools **if the situation calls for it**.

## **One Limitation:**

This doesn't give you the power to **force open locked containers**. **If that is necessary, you would have to act** under the Consumer Rights Act and TRPR.

## **Regulation 9 (1) (e) (f) and (g)**

**(e) to take any samples, or cause samples to be taken, of any single-use vapes, or components of single-use vapes found in or on any premises which an enforcement officer has power to enter under sub-paragraph (a), and to cause any such single-use vapes to be analysed or tested,**

**(f) In the case of any single-use vape, or component of a single-use vape, found in any premises to which an enforcement officer has the power to enter, to cause it to be**

dismantled or subjected to any process or test (but not to damage or destroy it, unless that is necessary),

(g) In the case of any single-use vapes found in or on any premises which an enforcement officer has power to enter under sub-paragraph (a), to take possession of it and to retain it for so long as is necessary for all or any of the following purposes—

- (i) to examine it, and subject it to any process or test, or cause it to be examined, and subjected to any process or test,
- (ii) to ensure that it is not tampered with before the examination is completed,
- (iii) to ensure that it is available as evidence in any proceedings for an offence under these Regulations.

These **three subsections (e), (f), and (g)** relate to the same core activity (examining and testing products), but they each have **slightly different powers** and purposes. Here's how they differ and how they work together:

### **(e) – Taking Samples for Analysis or Testing**

*"To take any samples... and to cause any such single-use vapes to be analysed or tested."*

**Purpose:** This allows the officer to take a **sample of a vape or its components to be tested** (e.g. can it be refilled; can the coil be replaced).

**Use Case:** You're not seizing the full product range—just a representative sample for lab testing or analysis. Sampling Procedures should be adopted if you are seizing vapes, intending to send them to a lab for testing.

### **(f) – Dismantling or Testing On-Site (Without Destroying)**

*"To cause it to be dismantled or subjected to any process or test (but not to damage or destroy it, unless necessary)."*

**Purpose:** This allows officers to **conduct tests or dismantle directly on-site**, as long as they're not unnecessarily damaged.

**Use Case:** You might test whether a coil can be removed or if a device is refillable, on-site, or back in the office. If destruction is necessary, that's permitted—but only if it's justified. Only testing one of each type.

### **(g) – Taking Possession (Seizure)**

*"To take possession of it and to retain it... for examining, preserving evidence, or preventing tampering."*

**Purpose:** This gives you the power to **take and hold the actual product:**

- For further testing
- To prevent tampering
- To preserve it as **evidence** for prosecution or FPNs

**Use Case:** You find 50 illegal vapes on display. You take possession of all of them, secure them, and either test them or hold them for use in enforcement action.

### Summary:

- The three subsections are related but are **not repetitive**—each allows a slightly **different action**.
- Together, they give officers a **flexible and proportionate approach**: Sample it, test it, or seize it—depending on the situation.

Think of it like a three-stage toolset: Use the tools as needed.

Subsection	Power Given	Practical Use
(e)	Take samples	Lab testing: There is no need to seize everything.
(f)	Dismantle or test	On-site checks or in-office tests.
(g)	Seize and retain items	Secure evidence, prevent tampering, and support enforcement action.

## Regulation 9 (6)

**An enforcement officer seeking to exercise a power under paragraph (1) must produce evidence of identity and authority if requested by a person who is, or appears to be—**

- (a) a supplier or employee of a supplier of single-use vapes,**
- (b) The owner or occupier of any premises where the enforcement officer seeks to exercise the power concerned.**

You must show evidence of your identity and authority to enforce the regulations if asked.

## Regulation 11 – (6) and (7) Requirement to provide Name and Address

**(6) An enforcement officer may require a person to give their name, address and date of birth if the enforcement officer proposes to give the person a fixed penalty notice.**

**(7) A person commits an offence if the person—**

**(a) fails to give a name, address or date of birth when required to do so under paragraph (6), or**

**(b) gives a false or inaccurate name, address or date of birth in response to a requirement under that paragraph**

In practice, it is unlikely that this alone will be enforced. Any offence must be reported to the fiscal and can be included with other offences.

## Regulation 11 - Fixed Penalty Notices

This regulation is self-explanatory and should be familiar to officers

## Regulation 12 -Contents of a fixed penalty notice

This regulation is self-explanatory and should be familiar to officers. It is important to note that there is no provision for a recipient of a fixed penalty to make representations as to why they should not have received one.

## Regulation 13 - Fixed penalty amounts and payment periods

This regulation is self-explanatory and should be familiar to officers

## Regulation 14 - Disposal of single-use vapes

The Scottish Ministers are expected to make an order allowing authorities, once a fixed penalty has been paid or a prosecution has occurred and the appeals process has passed, to treat the seized vapes as waste and dispose of them (recycled).

## “Keeping It Simple”

### A Local Programme of Inspection or a Disposable Vape Complaint at Retail Premises.

**Note: Not premises where you have intelligence that it is likely to have illegal tobacco.**

1. Make a plan to inspect retail premises that supply vapes.
2. Plan each visit -
  - Are two officers sufficient?
  - What equipment is required?
3. Inspect the premises.
  - Remove disposable vapes from sale, or
  - Seize any Disposable vapes.
4. Follow your Authority’s Enforcement Policy.
  - Warning Letters.
  - Fixed Penalty Notices.
  - Reports to Fiscal.
5. Disposal.

### Larger Premises – Retail with Illegal Tobacco Intelligence, Wholesalers, Warehouses, and factories.

You may want to obtain information from third parties or open locked containers in these premises.

- Consider entry under different legislation
- Consider whether a warrant is necessary. If so, apply for a warrant under different legislation.

## Domestic Property

A warrant is required to enter premises used wholly or partly as a dwelling.

- Consider application for a warrant under different legislation.

## Conclusion

The Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024 offer a new and practical route for enforcement in retail settings. They provide Trading Standards officers with an additional tool to tackle the ongoing challenge of single-use vapes, without replacing existing powers under broader legislation.

While these regulations are limited in scope, particularly for larger or more complex investigations, they allow for quick, effective action through Fixed Penalty Notices and product disposal. Officers must continue to make clear, reasoned decisions about the purpose of their visit, the legislation under which they act, and the powers they intend to use.

This guide has been designed to support officers in confidently conducting retail inspections. It helps ensure that action taken under the regulations is proportionate and professional while keeping enforcement processes workable and grounded in real-world capability.