



This document provides information on nitrous oxide, also known as ‘laughing gas’, and suggests some enforcement options for restricting its supply for recreational use.

What is nitrous oxide?

Nitrous oxide, also known as ‘laughing gas’, is a substance with a number of legitimate uses in medicine and catering. It is also the second most popular recreational drug amongst young people, with 7.6% of 16-24 year olds responding to the 2013/14 Crime Survey for England and Wales reporting nitrous oxide use in the last year. When inhaled, this substance can make users feel euphoric and relaxed, with some reporting hallucinations.



What are the legitimate uses?

It is a medical gas (a medicinal product) and, when mixed with oxygen, it is used to treat analgesia and as an anaesthetic. Use as a medicinal product typically involves large cylinders containing the gases which are administered to the patient using a face mask in a variety of settings such as hospitals, dental surgeries and by ambulance crews.

Nitrous oxide is also an approved food additive (E942) when used as a propellant for whipped cream. While there are no provisions in food additives legislation which would provide a basis for seizing nitrous oxide, there are a number of other enforcement options (see below). Nitrous oxide is also used in vehicle engines.

Where and how is it used recreationally?

Nitrous oxide is now being used recreationally in a number of settings such as clubs, private residences and parks, and is particularly prevalent at festivals. It is commonly sold in small metal canisters containing the gas (see picture page 4), which is then either transferred into a balloon for inhalation using a dispenser (see picture top right) or a ‘cracker’ (see picture bottom right). These small metal canisters are sold in bulk online presented for use as a whipped cream propellant.

What are the risks?

Inhaling nitrous oxide can be dangerous, and can lead to loss of blood pressure, fainting and even heart attack. Prolonged exposure to nitrous oxide may also result in bone marrow suppression and poisoning of the central nervous system. These risks are likely to be exacerbated if the exposure to the gas is combined with alcohol or other drugs.



What options are there for disrupting its supply?

(1) Intoxicating Substances (Supply) Act 1985

This Act prohibits the sale, to those under the age of 18, of substances which the seller has reason to believe may be inhaled for the purposes of intoxication. It was originally designed to prevent minors buying glue and other solvents, but has more recently been used in relation to other substances. For example, in 2013 West Yorkshire Police prosecuted a market seller under this Act for selling synthetic cannabinoids to a 16 year old. This Act is applicable to the sale of nitrous oxide when the supply is to a person under the age of 18, or to a person acting on behalf of someone under the age of 18.

The Intoxicating Substance (Supply) Act 1985 can be found here: <http://www.legislation.gov.uk/ukpga/1985/26/contents>.

(2) Street trading legislation and bye-laws

There is some local government legislation which may be useful for preventing people from trading in certain areas. For instance, councils can adopt legislation that makes it an offence to trade without consent or a licence on certain streets, or to undertake any form of street trading in certain streets and places (see Schedule 4 of the Local Government Miscellaneous Provisions Act 1982, and (within London) Schedule 38 of the London Local Authorities Acts 1990 and 2012). There may also be local bye-laws in place restricting unlicensed trade in parks and other areas.

Councils will undertake their own compliance and enforcement activity in relation to local street trading legislation and local bye-laws. Your council's town centre manager, licensing officers or trading standards officers should be able to provide further detail on local controls and on how relevant compliance activity can be coordinated.

The Local Government Miscellaneous Provisions Act 1982 can be found here: <http://www.legislation.gov.uk/ukpga/1982/30>.

The London Local Authorities Act 1990 can be found here: http://www.legislation.gov.uk/ukla/1990/7/pdfs/ukla_19900007_en.pdf.

(3) Community Protection Notices (CPN) and Public Space Protection Orders (PSPO)

CPNs and PSPOs are powers available under the Anti-Social Behaviour, Crime and Policing Act 2014, and come into effect on 20 October 2014¹. CPNs can be issued by police, local authorities (and those designated by the council) and police community support officers (if designated by their Chief Constable) while PSPOs are only available for local authorities to use. The PSPO is designed to stop individuals or groups committing anti-social behaviour in a public space and allows councils to make an order imposing conditions on the use of that area which apply to everyone or to particular categories of person.

A PSPO can be made if the council is satisfied on reasonable grounds that the activities carried out in a public space:

¹ On 20 October 2014 the new powers in the Anti-social Behaviour, Crime and Policing Act 2014 will replace previous powers to tackle anti-social behaviour.

- have had or are likely to have a detrimental effect on the quality of life of those in the locality;
- are persistent or continuing in nature;
- are unreasonable, and
- justifies the restrictions imposed.

Before a PSPO is made, the council must consult with the local police, whatever community representatives it thinks appropriate and the owner or occupier of land within the restricted area.

Breach of the order is a criminal offence punishable by up to a level 3 fine.

CPNs can be issued to individuals over 16 or a business or organisation if the issuing agency is satisfied on reasonable grounds that their conduct is having a detrimental effect on the quality of life of those in the locality, is persistent or continuing nature and is unreasonable. Before a CPN can be served, a written warning must be issued informing the perpetrator of the problem behaviour, requesting them to stop, and the consequences of continuing. Enough time should be left between the issue of a written warning and the issue of a CPN to allow the individual or body to deal with the matter.

The notice can require the individual to stop doing specified things, and failure to comply with a notice is a criminal offence. A fixed penalty notice of no more than £100 can be issued if appropriate or an individual could receive up to a level 4 fine (a business could receive a fine of up to £20,000). A CPN or PSPO may provide further means by which the use of nitrous oxide can be restricted. If a CPN or PSPO is appealed it will be for a court to decide whether the statutory test has been met.

(4) General Product Safety Regulations 2005 (GPSR)

As they apply to retailers, these regulations require that a seller does not supply a product which they know to be, or should reasonably have presumed to be, dangerous under normal or reasonably foreseeable conditions of use. The GPSR are 'general' regulations designed for products where product-specific regulations do not exist, and have therefore been used in some areas to disrupt the supply of new psychoactive substances (so-called 'legal' highs).

Product-specific regulations do currently exist for nitrous oxide, for instance the Human Medicines Regulations and food additives legislation described above. However, it may be argued that the GPSR can be used to restrict the sale of nitrous oxide despite product-specific regulations being in place, provided that the purpose of the sale is not one which is covered by the product-specific regulations.

For instance, nitrous oxide being sold for recreational inhalation from canisters labelled 'whipped cream ingredient' is not a scenario either medicines or food additives legislation is designed to cover. In such cases, and if it can be shown that the sale of nitrous oxide for recreational inhalation makes it an 'unsafe product' as defined by the GPSR, then these regulations may be useful for restricting such sale.

Whether the GPSR are of use will depend on the circumstances of each case. Your council's trading standards officers should be able to provide further advice on whether the GPSR can be utilised in a particular case of nitrous oxide sale.

For further information on the GPSR, and details on their use in disrupting the supply of new psychoactive substances, please refer to the Home Office's guidance on tackling the sale of new psychoactive substances in 'headshops' at: <https://www.gov.uk/government/publications/action-against-head-shops>. The regulations themselves can be found here: http://www.legislation.gov.uk/uksi/2005/1803/pdfs/uksi_20051803_en.pdf.

If you have any questions about this document please contact the Home Office Drugs Unit at: drugsearlywarning@homeoffice.gsi.gov.uk.

(5) Human Medicines Regulations 2012

Please note: the Medicines and Healthcare products Regulatory Agency (MHRA) have advised that nitrous oxide sold from the small canisters is not subject to the Human Medicines Regulations. If nitrous oxide is being sold from these canisters in your local area, please refer to the alternative enforcement options described below.

When sold as a medicinal product (typically in the large cylinders used in hospitals), nitrous oxide is governed by the provisions of the Human Medicines Regulations 2012, which place restrictions on who can supply and administer a medicinal product. Selling nitrous oxide which is classed as a medicinal product without MHRA authorisation breaches medicines legislation, which is a criminal offence. The decision on whether nitrous oxide falls within the definition of a medicinal product must be made on a case-by-case basis, depending on the particular circumstances of sale.

Decisions on how any substance of abuse is treated under medicines legislation is likely to be impacted by a July 2014 European Court of Justice judgement, which concluded that a substance being used solely for recreational purposes should not be classified as a medicinal product. You will need to discuss with your legal team the implications of this judgement for bringing a prosecution under medicines legislation in each case.

For further details about the Human Medicines Regulations and previous advice given under the Medicines Act 1968 please contact the MHRA at casereferrals@mhra.gsi.gov.uk, or to view the regulations go to <http://www.legislation.gov.uk/uksi/2012/1916/contents/made>.

(6) Misuse of Drugs Act 1971

Nitrous oxide is not a controlled drug.

