



Home Office

Guidance for local authorities on taking action against ‘head shops’ selling new psychoactive substances - *working with local partners.*

Introduction

1. New psychoactive substances, also known as 'legal highs', are an emerging threat, both in the UK and worldwide. New psychoactive substances are drugs, of which the majority are not currently controlled under the UK's Misuse of Drugs Act 1971, but which mimic the effects of illegal drugs. Their effects on humans are often unknown, with a number of cases causing paranoia, psychosis, seizures, hospitalisation and death after ingestion. New psychoactive substances are generally sold online, on the high street in 'head shops', and there are some reports of them being sold in outlets such as newsagents, petrol stations, sex shops and market stalls.

2. A number of local authorities have expressed concern that head shops in their areas are causing increases in anti-social behaviour and health problems. It is commonly believed that because the products sold in these outlets are (mostly) not controlled under the Misuse of Drugs Act 1971, there is nothing that local authorities or law enforcement can do to disrupt head shops and minimise the damage they cause. While there is no simple solution to this issue, there are options for local partners to work together to tackle problems posed by new psychoactive substances. This paper aims to detail the main legal powers available for dealing with head shops. There is no one single agency with the definitive responsibility or tools to tackle this issue. Partnership working will therefore be essential to establishing the best approach to address unique local circumstances.

3. While this paper focuses on the criminal or civil offences that head shops may be committing, it is also important to remember that minimising the harms caused by these outlets requires wider engagement with local partners. The precise nature of this approach will differ depending on the issues caused by particular shops, but could include local community youth groups working to engage young people in alternative activities, schools acting to detect and prevent the use of new psychoactive substances on their premises, and addiction services working with the most problematic users to address the causes of their behaviour. If head shops are a cause for concern in your area, it is advisable to engage with all the relevant partners to identify the issues of most concern, agree the most appropriate tools to tackle the unique local situation and construct a coordinated response. Much of this response may already be incorporated into measures tackling the misuse of more established drugs, and it will be worth considering how your approach to new psychoactive substances can compliment existing work in this area. Public Health England have launched a toolkit to support local areas' response to tackling NPS. The NPS toolkit provides information for substance misuse commissioners on prevention, monitoring and information sharing, responses to acute problems and treatment interventions (<http://www.nta.nhs.uk/uploads/nps-a-toolkit-for-substance-misuse-commissioners.pdf>).

4. Further information about case studies found in this paper including contact details of either trading standards officers or police officers, can be found in the Local Government Trading Standards section of the KnowledgeHub website (<https://knowledgehub.local.gov.uk/group/localgovernmenttradingstandardsfairtradinggroup>).

5. This updates the guidance issued in December 2013.

Types of offences which head shops may be committing

6. There are four main types of offence which a head shop or other outlet, in your area may be committing. The shop may be:

- a) Selling controlled drugs
- b) Selling drugs paraphernalia
- c) Breaching the Intoxicating Substances (Supply) Act 1985
- d) Breaching consumer protection regulations and other legislation

a) Selling controlled drugs

7. New psychoactive substance products often contain a mixture of substances, with the contents of the packets frequently being different from what the labelling suggests. This mixture may include drugs which are controlled under the Misuse of Drugs Act 1971, and the person selling such products may be committing an offence under this Act. 19% of NPS tested by the Home Office in 2013/14 were found to contain illegal substances controlled under the Misuse of Drugs Act 1971. (see

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344551/2014-08-12_-_FEWS_Annual_Report_Aug_2014_-_Final_2_.pdf).

8. Section 23 of the Misuse of Drugs Act provides the power for a police constable to search a premise (subject to a warrant), where s/he has reasonable grounds of suspecting a person is in possession of controlled drugs on that premise. National policing guidance on head shops and new psychoactive substances has been issued to support law enforcement action when reasonable suspicion exists that an offence has been committed.

9. The Home Office publishes and regularly updates a list of commonly encountered drugs subject to permanent and temporary control under the Misuse of Drugs Act 1971, as well as their scheduling under the Misuse of Drugs Regulations 2001, at <https://www.gov.uk/government/publications/controlled-drugs-list>. The list was last updated in January 2015.

10. Should you require a more exhaustive list of named drugs and generic definitions of families of drugs, as well as their derivatives which are controlled, please consult the latest copies of Schedule 2 of the Misuse of Drugs Act 1971, and its Regulations: <http://www.legislation.gov.uk/ukpga/1971/38/contents>.

11. Further information about penalties for drug related offences can be found at http://www.cps.gov.uk/legal/d_to_q/drug_offences/

b) Selling drugs paraphernalia

12. Section 9A of the Misuse of Drugs Act 1971 makes it an offence to supply any article which may be used to prepare a controlled drug for administration if a person believes that the article will be used in circumstances where the administration is unlawful. An article could consist of equipment for using drugs such as bongs, pipes, grinders and other items.

13. Head shops often sell drugs paraphernalia, in particular cannabis-related equipment. In 2009, the then National Policing Improvement Agency and the Association of Chief Police Officers (ACPO) issued a guidance document "*Practice Advice on Tackling Commercial Cannabis Cultivation and Head Shops*" which provides operational advice on enforcement action to tackle the sale of drugs paraphernalia in head shops. This guidance can be accessed here: <http://www.ihsti.com/lacors/ContentDetails.aspx?id=21826>

c) Breaching the Intoxicating Substances (Supply) Act 1985.

14. This Act prohibits the sale of substances to those under the age of 18 which the seller has reason to believe may be inhaled for the purposes of intoxication. It was designed to prevent minors buying glue and similar intoxicating substances. The scope of the Act is limited to sales to minors and to substances which are inhaled. It has historically been quite difficult to prove that the retailer has reasonable cause to suspect that the product was being bought for the purpose of intoxication, although if the substance is being sold in a head shop this may be less of a problem.

Case study – Intoxicating Substances (Supply) Act 1985

In September 2014 a head shop owner was charged with offences under the Intoxicating Substances (Supply) Act 1985. Northamptonshire Police worked with Northamptonshire County Council trading standards officers to conduct test purchases using 16 years olds, as they had received reports that the shop was repeatedly selling synthetic cannabinoid products to school children. Five test purchases were carried out, in which the 16 year olds were instructed to make it clear to the owner that they wanted to purchase a 'legal high' product and to ask how they should consume that product. The children were sold the products each time, and were told that the products should be smoked. The defendant was sentenced to a three month custodial sentence (suspended for two years), given an 18 month Supervision Order and 120 hours of community service. The head shop is no longer trading.

The Intoxicating Substances (Supply) Act 1985 can be found here:

<http://www.legislation.gov.uk/ukpga/1985/26>.

d) Breaching consumer protection regulations and other legislation

15. There are a number of consumer protection regulations which may be relevant. Each has its limitations, but may be useful in some circumstances:

- General Product Safety Regulations 2005 (GPSR)
- Consumer Protection from Unfair Trading Regulations 2008 (CPUTR)
- Other regulations and legislation detailed below

General Product Safety Regulations 2005

16. The GPSR are the consumer protection regulations which have proved of most use to local authorities in tackling new psychoactive substances. These regulations broadly seek to ensure that products being sold are 'safe', where a safe product is one which presents minimal or no risk 'under normal or foreseeable conditions of use'. There are a range of tools within these regulations which can be used to disrupt the trade in new psychoactive substances:

- Regulations 5 and 8: Regulation 5 concerns 'producers' (which may include those who package new psychoactive substances), while Regulation 8 concerns 'distributors' (which may include head shop owners or other retailers). Both regulations require that only safe products are put on the market. Breaching these regulations carries a high penalty - a maximum of 12 months in prison - although proving the breach presents a number of challenges. The prosecution will need to prove to the criminal standard that the producer or distributor knew or had reason to believe the products were going to be consumed, and would also need to show that the products in question were dangerous. This second requirement can be difficult given the limited amount of evidence available on some of these emerging chemicals, and the speed at which the particular chemicals on the market change.

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- ***Forfeiture Orders***: these are civil orders which require a lower burden of proof than breaches of Regulations 5 and 8, and can allow a local authority to apply to the magistrates court for an order of the forfeiture of the new psychoactive substance products a shop is selling on the grounds that they are dangerous products (see Belfast and Kent case studies below). The Order will only apply to the specific products which have been seized, and therefore may not be sufficient by themselves for a sustainable enforcement response. See Appendix A for a sample template notice you may issue to shops selling NPS. In many cases, the issuing of the notice could be enough action in itself for shops to cease trading in NPS.
- ***Suspension notices***: where an enforcement authority has reasonable grounds for suspecting that a breach of the GPSR has taken place, it can issue a suspension notice. This notice prevents the trader from selling the products in question pending the outcome of proceedings to establish whether the breach did in fact take place. These proceedings might include a prosecution under Regulations 5 and 8, or an application for a Forfeiture Order.
- ***Requirements to mark***: this tool can be used to require a trader to label products in a particular way, such as including health warnings. There is a risk that if traders comply with the requirements their products will appear to be sanctioned by a public authority. However, many traders will not be able to comply with requirements that would be expected for other chemical products, such as accurate ingredient lists, and therefore requirements to mark may provide grounds for seizing new psychoactive substance products (see Norfolk case study below).

Case Study – Requirement to Mark

Two Great Yarmouth traders pleaded guilty to contravening a GPSR Safety Notice (in this case a requirement to mark) at Great Yarmouth Magistrates Court on 21 May 2013. In these two cases the traders were visited by trading standards officers investigating the sale of new psychoactive substances. Both traders were advised that as the products might pose a risk to users they should be labelled with proper warnings and were issued with 'requirements to mark', making it clear that any similar products had to be labelled too. When the officers later revisited both premises and found that their instructions had not been followed, the products were seized. Both traders were fined, the seized products were forfeited and the court imposed a conditional discharge for 12 months.

Case study – Forfeiture Order

In February 2014, Belfast City Council was granted a Forfeiture Order under the GPSR for new psychoactive substance products seized from a shop, on the ground that the products did not meet the required safety standards under these regulations. This followed a coordinated operation between the council and the Police Service of Northern Ireland targeting the five shops identified as selling these products in Belfast. Three of the five shops voluntarily agreed to stop selling them. The shops were believed to be contributing to increased reports of anti-social behaviour connected with individuals ingesting these products in public places in the city centre. The work of Belfast City Council has informed the efforts of other local authorities across the country.

Case study – Forfeiture Order

In July 2014, Trading Standards officers from Kent Council seized over 800 products from five Skunkworks shops in Gravesend, Maidstone, Canterbury, Ashford and Sheerness. In January 2015, the court agreed that these products were unsafe for human consumption and granted a Forfeiture Order under the GPSR for new psychoactive substance products seized from these shops. The owners did not offer any defence of these products.

The GPSR can be found here: http://www.legislation.gov.uk/ukxi/2005/1803/pdfs/ukxi_20051803_en.pdf.

Consumer Protection from Unfair Trading Regulations 2008

17. The Consumer Protection from Unfair Trading Regulations (CPUTR) 2008 seek to protect consumers from commercial practices which are misleading by action (claiming something to be the case when it is not) or omission (failing to mention something important). These actions/omissions must pass a 'transactional decision test' for the commercial practice to be considered misleading. That is, the action/omission must be likely to lead to the average consumer of the product (the type of person at whom the product is targeted) making a different transactional decision to that which they would have otherwise made.

18. It can be difficult to bring CPUTR to bear on head shops selling new psychoactive substances, as the 'average consumers' of these products – substance abusers – are not likely to make a different transactional decision based on the packaging of the products. Head shop customers are likely to buy these products whether they are labelled as bath salts, plant food or anything else.

19. However, CPUTR can be used in some instances to disrupt head shops. Some outlets describe themselves as 'licensed head shops'. It is against the CPUTR to give the impression that a shop or product "has been approved, endorsed or authorised by a public or private body" when it has not. It is also a breach of the CPUTR to give the impression that an item can be legally sold when it cannot. These are breaches contained in Schedule 1 of the CPUTRs and do not have the same evidential requirements as Regulations 5 and 6 CPUTRs. In most cases where new psychoactive substances contain controlled drugs, the police will deal with the matter using the Misuse of Drugs Act 1971. However, in circumstances where the police are not pursuing the prosecution, this provision in the CPUTR may be of use.

20. Moreover, many head shops also run websites which may be breaching the CPUTR by using a tactic called 'bait and switch' which is also a Schedule 1 breach. This is where the seller advertises a large number of products which they do not stock, with the intention of inducing the customer to buy a different product which is in fact stocked. A number of websites selling new psychoactive substances advertise a large range of products when in fact they only sell a few. If it can be proved that this is done in order to direct customers towards the few products which are in stock, the seller can be prosecuted under the CPUTR.

Further guidance on CPUTR, produced by the Office of Fair Trading, can be found here: http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf

The CPUTR can be found here: http://www.legislation.gov.uk/ukdsi/2008/9780110811574/pdfs/ukdsi_9780110811574_en.pdf.

Other regulations and legislation

21. Chemical (Hazard Information and Packaging for Supply) Regulations 2009 (CHIP)

These regulations place requirements on those selling chemical products, such as ensuring safe packaging and alerting customers to the risks the products pose. They may be used to seize new psychoactive substance products, which will often not be CHIP compliant. If a trader continues to sell non-compliant products, the local authority may prosecute in either a magistrate or Crown Court. These regulations do not apply to some types of product, such as cosmetics, food and medicines, but do apply to 'research chemicals' (as many new psychoactive substance products are described). From 1 June 2015 the CHIP regulations will be replaced by Classification, Labeling and Packaging Regulations, which will place similar requirements on chemical traders.

The CHIP Regulations can be found here: <http://www.hse.gov.uk/chemical-classification/legal/chip-regulations.htm>.

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The following three notices are available under Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014, and came into effect on 20 October 2014.

22. Community Protection Notices (CPNs)

CPNs can be issued by police, local authorities and police community support officers (if designated by their Chief Constable).

CPNs can be issued to individuals, organisations or businesses 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 in 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 warning them of the consequences if they continue. 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 punishable with a level 3 fine (or up to £20,000 for a business). Breach may also be dealt with by way of a fixed penalty notice (of up to £100), payment of which discharges liability to conviction for the offence. If a CPN is appealed, it will be for a court to decide whether the statutory test has been met. See **Appendix B** for a sample CPN notice.

Case Study – Use of CPN in Blackpool

On 5th February 2015, five shops in Blackpool were served CPNs by Blackpool Trading Standards Officers, demanding that they cease the sale of NPS. This is the first time CPN have been used to tackle NPS sales. The officers made frequent return visits to the shops and have had complete compliance with the notice. None of the shops appealed against the notice.

23. Public Space Protection Orders (PSPOs)

PSPOs were introduced to tackle Anti-Social Behaviour in a specific area. Their aim is to gradually replace the existing Designated Public Place Orders (DPPOs) but have much wider scope to tackle a broader range of issues and can make requirements, prohibitions or both within the area. The order can be made so as to apply to specific people within an area, or to everybody within that area. It can also apply at all times, or within specified times and equally to all circumstances, or specific circumstances. These requirements could include preventing individuals from taking intoxicating substances including NPS.

The Act requires local authorities to consult with the Chief Officer of Police for the local area, Police and Crime Commissioner, any land owners in the area and any community representatives the local authority feels appropriate.

Failure to comply with either a prohibition or requirement within the order is an offence and individuals could receive a fine from a court or a Fixed Penalty Notice.

Case Study – Use of PSPO in Lincoln town centre

In February 2015, Lincoln Council became the first in the country to impose a PSPO in an area in the city centre. The wording of the order is as follows:

“Person(s) within this area will not ingest, inhale, inject, smoke or otherwise use intoxicating substances. Intoxicating substances is given the following definition (which includes alcohol): substances with the capacity to stimulate or depress the central nervous system. Anyone in breach of the order could receive a fine in court or a Fixed Penalty Notice. Exemptions shall apply in cases where the substances are used for a valid and demonstrable medicinal use, given to an animal as a medicinal remedy, are cigarettes (tobacco) or vaporisers or are food stuffs regulated by food health and safety legislation.

Persons within this area who breach this prohibition shall: surrender intoxicating substances in his/her possession to an authorised person (an authorised person could be a Police Constable, Police Community Support Officer or Council Officer, and must be able to present their authority upon request).”

A consultation was held with the public and local business and over 200 responses were received, with 97% supporting the proposed PSPO.

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24. Closure of premises associated with nuisance or disorder etc

The police or council can issue a closure notice if the use of a particular premises has resulted or is likely to result in nuisance to members of the public, or there is likely to be or has been disorder near the premises which is associated with the use of that premises. The closure notice can be used to prohibit access to premises by anyone other than the owner or someone who lives there for up to 24 hours. The closure notice can be extended to 48 hours where the chief executive or superintendent signs the closure notice. Whenever a notice has been issued the council has to apply to the magistrates court for a closure order (unless the notice has been cancelled), with the application heard within 48 hours of the notice being served.

The court can then make a closure order which can prohibit access to the premises for up to three months. The original applicant for the closure order may apply for an extension to the magistrates court which can last for no more than six months in total.

Anyone appealing against a closure order must do so within 21 days of the order being issued and the appeal would be held in a Crown Court.

Case Study – closure of ‘head shop’ in Exeter

In November 2014, the neighbourhood team from Exeter Council issued a closure notice against a ‘head shop’ that had been selling NPS and had complaints from the public of nuisance, ASB and disorder from the premises and outside it. Evidence showed that ASB within 200 metres of the shop was up from 165 incidents from March 2013 to August 2013, to 251 incidents between March 2014 to August 2014. The team obtained statements from nearby businesses, the City Centre Manager, and staff at homeless charities to explain the effect that the nuisance and disorder was having on all groups of the public. When, 48 hours later, the team successfully applied to Exeter magistrates for a closure order, the shop did not challenge the order and ceased trading the following day. This is the first time the legislation has been used to close a head shop.

Case Study – closure of ‘head shop’ in Taunton

In December 2014, local police issued a closure notice against Hush head shop that had been selling NPS based on the amount of serious nuisance and disorder caused by the store. The police applied for a closure notice for three months from Taunton magistrates.

In February 2015, the owner of Hush appealed against the closure notice to the Crown Court. The judge upheld the original decision and agreed that the shop was creating a serious nuisance to the public. He did not agree with the owner when he said that he was not aware customers were consuming them because they were labelled ‘research purposes’ saying it was “...purely fanciful to suppose they were used for anything other than human consumption.”

Case Study – closure of ‘head shop’ in Doncaster

At the beginning of December 2014, South Yorkshire Police applied for a 24hr closure notice against a ‘Heads of Donny’ in Doncaster. They applied for a further two week closure notice followed by a three month one being granted on 23rd December 2014.

The police had received complaints from a number of businesses and members of the public that the shop had been the catalyst of antisocial behaviour and disorder.

The district judge noted that the closure order was deemed necessary to prevent the nuisance or disorder from occurring, continuing or recurring.

Case Study – closure of ‘head shop’ Bolton

In February 2015, Bolton council worked closely with Greater Manchester police to close down a head shop that was creating a great deal of anti-social behaviour in the vicinity of the shop, with large groups gathering and waiting for the shop to open. After repeated attempts to work with the owner of the shop to address the anti-social behaviour and disturbances, the police and council served the shop with a temporary closure notice and applied to the courts for a closure order. The owner voluntarily closed the store before the hearing at the magistrates court.

Case Study – closure of ‘head shop’ Newport

Newport Trading Standards officers tested some NPS from a head shop in Newport but forensics did not find any controlled substances. Gwent police worked with local residents and businesses to collect evidence of anti-social behaviour that the head shop was causing, ready to take to the magistrates as part of the case for a closure notice to be issued. Since the head shop had opened in June 2014, there had been over 36 incidents of anti-social behaviour, criminal or drug use in or around the vicinity of this head shop.

Gwent police applied to the magistrates in February 2014 and were successful. The landlord was also informed and asked the tenant to vacate the premises immediately.

Case Study – closure of ‘head shop’ Aldershot

Hampshire police collected evidence of all ASB associated with people using NPS from a head shop, including witness statements, CCTV footage, concerns from service providers and information about hospital admissions. Results from the previous year’s dispersal order, issued during the summer months, indicated that out of 71 people dispersed during the day, 34 of these were related to NPS.

In February 2015, when the police applied for a closure notice they were accompanied by a local hostel manager. The shop owner did not attend the hearing and the closure notice was granted.

The Anti-Social Behaviour, Crime and Policing Act 2014 can be found here:

<http://www.legislation.gov.uk/ukpga/2014/12/contents>.

25. The Enterprise Act 2002

This is an enabling Act which permits enforcers to seek very specific types of injunction known as ‘Enforcement Orders’ where breaches of certain other specified legislation has taken place. They are slightly more restrictive than the Local Government Acts because they depend on showing ‘harm to the collective interests of consumers’ which may sometimes be difficult in the context of a discrete group of buyers. However they are an option and, in addition to the E-Commerce and Distance Selling Regulations, may be used where a trader has breached his duty of care to consumers. This is to be found in Part III of The Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003.

26. Local Government Acts 1972 and 2000

These Acts are not consumer protection regulations, but they do allow local authorities to take out injunctions against individuals in their area if doing so would promote the interests and well being of the local population. The court will decide precisely what form the injunction can take, such as enforcing adherence to labeling requirements. A breach of this injunction could amount to contempt of court, which carries a possible penalty of two years in prison. The court would be more likely to grant the injunction if it can be shown that the two parties had previously attempted to reach a solution, and if the new psychoactive substance trader has repeatedly failed to comply with previous advice or rulings, such as rulings under the GPSR.

The Local Government Acts 1972 and 2000 can be found here:

<http://www.legislation.gov.uk/ukpga/1972/70/contents>

and here: http://www.legislation.gov.uk/ukpga/2000/22/pdfs/ukpga_20000022_en.pdf.

27. Distance Selling and Electronic Commerce Regulations

Many head shops sell their products online. E-commerce websites need to comply with the Consumer Protection (Distance Selling) Regulations 2000 which require certain information, such as the supplier’s address, to be given to the consumer in good time prior to the ‘conclusion of the contract’ (regulation 7: <http://www.legislation.gov.uk/uksi/2000/2334/regulation/7/made>), which in practice means before the

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consumer agrees to buy the product. Other information is required in a 'durable medium' (email/writing) before the delivery of the goods (regulation 8: <http://www.legislation.gov.uk/ukxi/2000/2334/regulation/8/made>). This may be an option where a head shop website does not provide a geographical address.

28. The Electronic Commerce (EC Directive) Regulations 2002

This requires disclosure of certain information on websites, such as a supplier name and geographical address. While breaching these measures under the Distance Selling and Electronic Commerce Regulations is not a criminal offence, failure to provide the information might be considered a 'misleading omission' for the purpose of the CPUTR. This would be subject to the transactional decision test, which, as mentioned above, can be problematic. The Electronic Commerce Regulations can be found here: http://www.legislation.gov.uk/ukxi/2002/2013/pdfs/ukxi_20022013_en.pdf.

29. Business ownership regulations

Some head shop owners with multiple outlets may attempt to obscure the ownership structure of their business by, for instance, pretending that the different outlets are not connected to each other. This may help them to minimise the risk to their business if one of their outlets is found to be breaking the law. The Companies Act 2006 (<http://www.legislation.gov.uk/ukpga/2006/46/part/41/chapter/2>) requires sole traders and partnerships, where they trade under a name other than the owner's personal name, to disclose information relating to the ownership of the business on business documentation and on the premises. Similar disclosure requirements apply to limited companies under the Companies (Trading Disclosures) Regulations 2008 (<http://www.legislation.gov.uk/ukxi/2008/495/contents/made>).

If you have any questions about this document or how to tackle head shops in your area please contact drugsearlywarning@homeoffice.gsi.gov.uk.

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APPENDIX A – LETTER TEMPLATE

Dear [Owner, Manager or responsible agent of (name of premises)]

SUPPLY OF NEW PSYCHOACTIVE SUBSTANCES (NPS) IN BREACH OF THE GENERAL PRODUCT (SAFETY) REGULATIONS 2005 AND/OR THE MISUSE OF DRUGS ACT 1971

I have reason to believe that you are a distributor of New Psychoactive Substances (NPS) or 'legal highs' as they are more commonly known and as such, you have obligations under the above Regulations.

Products sold as 'legal' alternatives to drugs which are designed to mimic established drugs are not always legal. 19% of NPS tested by the Home Office in 2013/14 were found to contain illegal substances controlled under the Misuse of Drugs Act 1971. These would therefore be illegal to possess, supply, offer to supply and illegal for the consumer to possess. Chemical composition can vary greatly across batches and therefore it cannot be assumed that any NPS you sell are legal.

There are no clear uses for these products other than human consumption. Although they may be labeled as plant food or research chemicals they are actually being sold for their psychoactive effects. It is not a defence if they are labeled 'not for human consumption'.

Human consumption of NPS can result in serious physical harm and even death. In 2013 in England and Wales, there were 60 deaths where NPS was mentioned on the death certificate.

It is therefore critical that you apply due diligence to your transactions. You should know what the products you sell contain, what they are going to be used for, where they are going to be delivered and methods of customer contact (e.g. not just mobile phone numbers). If asked, you should be in a position to provide adequate business records.

It is your responsibility to ensure that these chemicals are not harmful or controlled substances, and that you are not enabling the illegal drugs trade in the UK. You are responsible for establishing exactly what is contained within the products you are selling. Should someone suffer ill effects or death as a result of ingesting chemicals you have sold them, you can be held accountable.

This letter may be used in evidence to demonstrate that you were given a warning about potential breach of the General Produce (Safety) Regulations 2005 when applying to the courts for a Forfeiture Order to remove the NPS from your shop or prosecution under the Misuse of Drugs Act 1971.

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APPENDIX - B

COMMUNITY PROTECTION NOTICE

Notice pursuant to Section 43 of the Anti-Social Behaviour Crime and Policing Act 2014

To:
Of:

THIS IS A FORMAL NOTICE issued by (NAMED OFFICER) a person designated by [authorised person], pursuant to section 43 of the Anti-Social Behaviour Crime and Policing Act 2014

(NAMED OFFICER) of [name of organisation], is satisfied that your conduct* is having a detrimental effect on the quality of life of others in the locality insofar as:

- You are responsible for the supply of New Psychoactive Substances, also known as Research Chemicals or 'Legal Highs' (referred to hereafter as NPS)
- The availability and supply of NPS is having a detrimental effect on the quality of life of persons in [district/borough/town], please refer to Appendix 1 for examples of detrimental effects.

**Note that "conduct" in this instance is defined as including a failure to act.*

** "Conduct" on, or affecting, premises that a person owns, leases, occupies, controls, operates, or maintains, is treated as conduct of that person.*

AND THIS NOTICE NOW REQUIRES you to stop selling, offering or exposing for sale any NPS by no later than [time] on [date].

All such items must be removed from display by no later than [time] on [date].

If you are unsure as to whether a product falls into these categories, please contact (NAMED OFFICER) on (TELEPHONE NUMBER) or at (EMAIL ADDRESS)

YOUR RIGHT OF APPEAL

An appeal against this notice may be made to a magistrates' court within 21 days from the date on which it is served, on the grounds that:

- I. The conduct specified in the community protection notice—
 - a. did not take place,
 - b. has not had a detrimental effect on the quality of life of those in the locality,
 - c. has not been of a persistent or continuing nature,
 - d. is not unreasonable, or
 - e. is conduct that the person cannot reasonably be expected to control or affect.
- II. Any of the requirements in the notice, or any of the periods within which or times by which they are to be complied with, are unreasonable.
- III. There is a material defect or error in, or in connection with, the notice.
- IV. The notice was issued to the wrong person.

IMPORTANT NOTE

In the event of an appeal, any requirement imposed by this Notice to stop doing any specified thing(s) shall remain in effect pending the appeal hearing and action may be taken for non-compliance.

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WARNING

If you fail without reasonable excuse to comply with the requirement(s) of this Notice:

1. you may be prosecuted. If you are prosecuted and convicted the maximum penalty for an individual is a fine not exceeding level 4 on the standard scale (currently £2500) and in the case of a body up to £20,000;
2. you may, in the alternative, be given the opportunity of accepting in lieu of prosecution a fixed penalty, of not more than £100.

In addition to the above, the local authority may enter any of your land in the open air without Court order to remedy the problem and charge you for the costs incurred. The Court may also order works to be carried out and / or seizure / forfeiture of relevant items.

DATE:

SIGNED:

(NAMED OFFICER), authorised by [organisation]

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