

3 March 2014

## **New Psychoactive Substances**

### **Purpose**

For discussion and direction.

### **Summary**

New psychoactive substances or 'legal highs' are attracting increasing media and political attention. Guidance was issued to councils by the Home Office at the end of last year on tackling the sale of new psychoactive substances, and the Home Office has commissioned a review into the UK's response to this issue, to which the LGA has been invited to contribute. This paper sets out some of the issues faced in tackling new psychoactive substances.

### **Recommendations**

Members are asked to:

- i. Note the guidance provided by the Home Office to councils on tackling new psychoactive substances, and the review of the UK response to tackling these substances.
- ii. Comment on how councils and trading standards in particular can contribute to tackling new psychoactive substances, and whether changes to consumer protection legislation could assist or new legislation is needed.

### **Action**

Officers to progress as directed.

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## **New Psychoactive Substances**

### **Background**

1. New psychoactive substances (NPS), which are also commonly referred to as 'legal highs' are an increasing threat within the UK at a time when 'traditional' drug use has been declining. This picture is also being seen elsewhere in the world. The number of deaths in the UK involving new psychoactive substances increased by 79 per cent from 29 in 2011 to 52 in 2012, and the number of new substances reported by member states to the United Nations Office on Drugs and Crime increased by 51 per cent between 2009 and mid-2012. The European Monitoring Centre for Drug and Drug Addiction's annual report in 2012 estimated that around 10 per cent of young people in the UK had used 'legal highs'.
2. NPS are drugs that are not currently controlled under the Misuse of Drugs Act 1971, but which mimic the effects of illegal drugs. As the substances are newly created they are not automatically controlled under the 1971 legislation, and in general can be bought and sold legally, although a number of NPS contain chemicals that are controlled drugs. Charities working in the substance misuse field report that NPS are widely and freely available and have been found for sale at petrol stations, takeaways, tattoo parlours, newsagents, car boot sales, pet shops, market stalls and head shops, and are also easily accessible over the internet.

### **Issues**

3. With use of NPS increasing the government published an action plan to tackle them in 2012 as part of its annual review of the 2010 Drug Strategy. There are three strands to the action plan: reducing demand through education about the risks; restricting the supply of NPS; and providing effective treatment for those people who have been using these substances.
4. Restricting supply relies on drugs being designated as controlled substances under the Misuse of Drugs Act as the marketing and sale of NPS is often designed to avoid medicines' legislation by being sold with labels such as 'not fit for human consumption'. One NPS, mephedrone, has already been banned as a controlled drug under the Act, and two have been recommended for banning, but the difficulty the government faces is that it is relatively easy and quick to subtly change the chemical make-up of a controlled substance so it is no longer in the controlled definition under the 1971 Act. In comparison the designating of drugs as controlled substances requires the Advisory Council on the Misuse of Drugs to make a recommendation to the Home Office that the substance is controlled, a process that takes time.
5. As a result the Police Reform and Social Responsibility Act 2011 introduced temporary class drug orders into the Misuse of Drugs Act regime. The Home Secretary can make a temporary class drug order where a drug is not already controlled under the 1971 Act and the Advisory Council has been consulted or recommends the order is made. The order then makes the drug a controlled drug under the Misuse of Drugs Act for up to a year. During that time importing, producing or supplying the drug is banned, although

possession is not an offence. Where a police officer stops someone suspected of having a temporary class drug in their possession the drug can be seized and disposed of.

6. The action plan also highlights the potential role trading standards could play in tackling the sale of NPS through the use of consumer protection legislation. A Home Office background note for trading standards officers on tackling NPS was circulated by the LGA and Association of Chief Trading Standards Officers in December and the Home Office also published guidance in the same month for local authorities on tackling head shops selling NPS in their area:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/264887/Tackling\\_action\\_against\\_head\\_shops.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264887/Tackling_action_against_head_shops.pdf). Both the background note and the guidance outlined the legislation and regulations that could be used including the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the General Produce Safety Regulations 2005 (GPSRs).
7. There are problems with using these regulations as the Trading Standards Institute has pointed out. The CPRs seek to protect consumers by making it an offence for traders to use unfair commercial practices involving misleading actions or omissions. Falsely describing a NPS as 'bath salts' or 'plant food' or failing to provide information on dosages would on the face of it be a breach of the regulations. However the misleading act or omission has to be one that causes or is likely to cause the average consumer to take a transactional decision they would not have otherwise taken. Average consumers purchasing NPS are fully aware that they are not buying bath salts so their decision to buy is not affected by the misleading description or omission. This makes bringing a prosecution difficult.
8. The GPSRs are designed to ensure that products offered for sale are safe, with the requirement for ensuring they are safe falling on the producer (but can also include the distributor and trader). This creates issues for trading standards as they have to establish the NPS is unsafe. The product therefore has to be tested, a process requiring expert toxicology reports analysing the chemical composition with their associated cost, and even once an identification is made there is often a lack of clinical testing showing the harm it can cause. The fact many NPS are sold as 'not fit for human consumption' is also likely to make successful prosecutions difficult.
9. These difficulties in tackling NPS led the Minister for Crime Prevention, Norman Baker MP, to announce in December that there would be a review to look at how the UK's legislative response could be enhanced (<https://www.gov.uk/government/publications/terms-of-reference-for-new-psychoactive-substances-taskforce>). The review will analyse the issues around NPS including the effectiveness of the current response and identify legislative options for change, and will make clear recommendations on what should be done next. Part of the review will consist of examining the responses from other countries like the United States and New Zealand. The US has had legislation in place since 1986 which covers not only controlled substances but also their analogues (which are chemically similar or has a similar effect of controlled substances), while New Zealand introduced legislation last year prohibiting the sale, import, production and possession of psychoactive substances unless it is licensed for use. The burden will be on the manufacturer to prove their product is safe.
10. The LGA has been asked to contribute to the Home Review and members' views are therefore sought on how councils and trading standards in particular can contribute to

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tackling the use of NPS. It would also be helpful to have members' views on whether changes can be made to existing consumer protection legislation to restrict the supply of NPS or if new legislation, like that in New Zealand, is needed to address the specific issue of NPS.

### **Next steps**

11. Members are asked to:

- 11.1. Note the guidance provided by the Home Office to councils on tackling new psychoactive substances, and the review of the UK response to tackling these substances.
- 11.2. Comment on how councils and trading standards in particular can contribute to tackling new psychoactive substances, and whether changes to consumer protection legislation could assist or new legislation is needed.

### **Financial Implications**

12. There are no financial implications arising from this work.