

ABERDEEN CITY COUNCIL

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COMMITTEE	Council
DATE	14 May 2014
LEAD OFFICER	Chief Executive
TITLE OF REPORT	“Legal Highs” – motion by Councillor Thomson
REPORT NUMBER	OCE/14/018
CHECKLIST RECEIVED	Yes

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1. PURPOSE OF REPORT

The report brings before the Council an update on progress in relation to Councillor Thomson’s motion considered at the Council’s meeting on 5 March 2014.

2. RECOMMENDATION

That Council notes the progress made to date in addressing the terms of Councillor Thomson’s motion and instructs officers to report again to Council once a response has been received from the Aberdeen City Alcohol and Drugs Partnership.

3. FINANCIAL IMPLICATIONS

The report has no specific financial implications.

4. OTHER IMPLICATIONS

The attached briefing note details some of the legal implications relevant to the subject matter of the report.

5. BACKGROUND/MAIN ISSUES

At its meeting of 5 March 2014 the Council resolved to agree the motion by Councillor Thomson in the following terms:

That this Council:-

- i. acknowledges the concerns of communities across Scotland regarding the sale of so called “legal highs”;
- ii. notes that in 2012 there were 37 “legal high” related deaths in Scotland;

- iii. further notes with concern that these substances are sold openly from retail premises in locations in Aberdeen; and
- iv. instructs the Chief Executive to write to both the UK and Scottish Governments asking them to ban these substances, take measures to proactively combat their sale and supply in Scotland, or as a potential way forward consider the licensing of premises where “legal highs” are available.

In agreeing the terms of the motion, the Council also resolved:-

- v. to request officers to investigate if the Council had any powers under Trading Standards and Consumer Protection laws to take action against outlets selling “legal highs”; and
- vi. to refer the motion to the Alcohol and Drugs Partnership for detailed consideration and to instruct officers to report back to Council within one cycle.

Following the meeting of the Council on 5 March the Chief Executive wrote as instructed to both Norman Baker MP, Minister of State for Crime Prevention at the Home Office and Roseanna Cunningham MSP, Minister of Community Safety and Legal Affairs at the Scottish Government. Attached at Appendix 3 is the response received from Norman Baker MP. Appropriate officers will make contact with the Home Office Drugs and Alcohol Unit as invited to do so by the Minister. Attached at Appendix 4 is the response received from Roseanna Cunningham MSP.

Attached at Appendix 1 to this report is a briefing note prepared by colleagues in the Council’s Trading Standards team in response to the request to explore what powers the Council has to take action against outlets selling “legal highs”

With regard to the Alcohol and Drugs Partnership (ADP), the matter is to be on the agenda at the next meeting of the Partnership on 12 May 2014. Because of the timing of the meeting relative to the Council meeting, it is proposed that report on behalf of the ADP should be brought to the Council at its meeting on 25 June 2014. An interim statement has been provided by the Team Leader, ADP attached at Appendix 2.

## 6. IMPACT

The subject matter of the report relates to the Council’s policy statement in relation to quality of life in the City.

7. MANAGEMENT OF RISK

The report provides an update on progress in relation to a notice of motion and does not at this time seek a substantive decision of the Council.

8. BACKGROUND PAPERS

None

9. REPORT AUTHOR DETAILS

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## **Trading Standards Legislation & Novel Psychoactive Substances (NPS)**

Novel Psychoactive Substances (NPS) are causing great concern across the country not just in Aberdeen. There has been considerable media interest in this subject, not all of which has been well informed. The common term for NPS is “Legal Highs” which is unfortunate as it is misleading: ‘Legal’ implies proactive steps have been taken to approve or otherwise validate these products which is clearly not the case and they don’t necessarily get you ‘High’.

A more accurate description would be Unregulated Chemicals because that is what they are.

Under the current law, if a drug has been classified as Class A, B or C, it is prohibited under the Misuse of Drugs Act 1971 and is a police matter. If it was a medicine, food for human consumption, a cosmetic or animal feedstuff then specific regulations and controls apply and one agency or another would be able to bring those controls to bear. The problem with NPS is that they are not classified under the 1971 Act and are not ordinarily sold as any other kind of product; they are effectively unregulated. Consequently, there is no age restriction on supply.

One of the few options left open is the General Product Safety Regulations 2005 (GPSR) which is a general catch-all piece of criminal law applying to the safety of consumer goods and is enforced by Trading Standards Services in the UK. The principal requirement of these regulations is that any product supplied to a consumer must be safe. There are other technical requirements under these regulations for Importers into the EU and Distributors in the supply chain which also attract criminal sanctions.

The burden of proof in the 2005 regulations is on the enforcer, i.e. Trading Standards, to prove the principal offence is that the product is not a safe product. The issue with NPS is that they are so new and varied in their chemical construction that there are no tests currently available that will prove that they are unsafe. Consequently, expert witnesses cannot stand up in court and testify that a particular NPS is not a safe product. Some substances are chemically similar to those classified under the 1971 Act but sufficiently different that they are not caught by it. It is also impossible to tell if they are benign or dangerous.

### **Aberdeen City Trading Standards – Current Activities/Investigations**

Aberdeen City TS is acutely aware of the issue in Aberdeen and is one of three Scottish authorities actively looking at ways and means of dealing with NPS under the current legislative framework.

1. In recent months we have been working with TS colleagues in these other authorities, Police Scotland, Crown Office & Procurator Fiscal's Service, NHS Grampian and the Home Office to address the issue. This TS service recently test purchased 20 such NPS on sale in the city and had them tested by the Home Office as part of a UK-wide testing programme. All were labelled as 'Not for Human Consumption' and 'Experimental Substance' or similar disclaimers. We have just received the results. First of all, none of the 20 tested positive for Class A, B or C substances. The second step will be to determine if there is any evidence that any of the substances are unsafe.
2. Another investigation currently under way stems from the technical offences under GPSR, particularly those that relate to distributors in the supply chain. They must be able to show where they purchased the goods from so that the goods can be traced back to their source particularly if it becomes evident they are unsafe. Exactly the same rules apply to retailers of every other kind of consumer products - televisions, soft furnishings, golf clubs, etc.

Retailers are distributors for the purposes of the regulations and all NPS retailers in the City have been asked to produce documents that demonstrate the traceability of the NPS they sell. One retailer in particular has failed to produce documentation for the majority of the NPS they were selling. As a result, all of their NPS for which no paperwork could be produced was seized with a view to reporting the matter to the Procurator Fiscal.

Currently, and despite the best efforts of Aberdeen TS, it is becoming apparent that with the current legislative framework there is little that can be done to regulate the supply of NPS. They are not caught by the 1971 Act or any other specific regulation and GPSR is largely ineffective because it is not currently possible to prove that any of the vast array of NPS are not safe products.

### **Interim statement on behalf of Aberdeen Alcohol & Drugs Partnership**

The ADP is aware of the concerns of elected members regarding the impact that New Psychoactive Substances (NPS), commonly referred to as 'Legal Highs', are having on local communities. These concerns are undoubtedly increased when citizens see 'Head shops' opening within Aberdeen City who openly advertise and sell NPS. The ADP has been considering this matter as a priority. The national and local picture is described below.

1. The Misuse of Drugs Act 1971 is the primary legislation which controls the sale or supply of illegal drugs. This is not a devolved issue and as such the Scottish Government cannot directly legislate on this matter.
2. Under certain conditions, the UK Parliament, through the Home Secretary, has the power to invoke temporary banning orders for new drugs.
3. 'Head shops' and on-line retailers avoid legislation by labelling their products as 'Not for human consumption' and selling them as: plant food, bath salts, research chemicals, etc.
4. The UK Parliament and the Scottish Government are aware of the global growth of NPS and the effects that they are having across the UK. In response to this, the Home Office is currently carrying out a review on the legislation with a view to improving it so that the risk posed by NPS to the population is reduced.
5. The Home Office has, in the interim, produced an advice document: Guidance for local authorities on taking action against 'head shops' selling new psychoactive substances.
6. Intelligence indicates that although there are a number of 'Head shops' across the UK selling NPS, the majority of these type of drugs are purchased on-line via the internet.
7. There is a misconception that it is mainly the younger, inexperienced, experimental drug using population who are purchasing NPS. Intelligence would tend to indicate that these drugs are being purchased by a mix of people across a wide age range group and previous drug use experience.
8. The Scottish Government has made NPS a priority for ADPs, with an expectation that they are monitored and appropriate action taken in response to identified local need.
9. In June 2013, the Aberdeen City ADP was instrumental in setting up a pan-Grampian NPS group along with partners from Aberdeenshire and

Moray ADPs. The pan-Grampian group has a wide membership, which includes the Police and Trading Standards.

10. To date there have been two meetings of the pan-Grampian group, with a third scheduled to take place on 28<sup>th</sup> April 2014.
11. Aberdeen City Police and Trading Standards have been proactive in using all available legislation to address NPS sales from local 'Head shops'. Though constrained in their actions by the limitations of current legislation they have also been involved in the 'test purchasing' of specific items in order to help clarify contents of the products sold and highlight potential issues regarding consumer protection.
12. The ADP is trying to build up local picture based upon information from partners. The ADP therefore appreciates any intelligence from local partners on the impact of NPS. This includes anything that ACC Education service collects from schools. To this end, a number of detailed questionnaires on NPS have been recently circulated by the ADP to Primary and Secondary Schools as well as to Further Education establishments and ACC Youth Work teams.
13. The ADP works with NHS Grampian Public Health to ensure that health alerts are promptly circulated as soon as a known dangerous drug is identified. This information is cascaded widely through the partnership to specifically include non-NHS staff.
14. Over the last year, ADP and its partners have been instrumental in providing training and hosting public events in order to inform a range of stakeholders on NPS matters. Examples include:
  - Awareness session on 11<sup>th</sup> Dec 2012 in Aberdeen, hosted by CREW 2000 (a leading Edinburgh based drug charity) to update on NPS. 152 attended representing a wide section of services and interested parties across the city.
  - In 2012 and 2013, CREW 2000 held 'Train the Trainers' sessions on NPS, hosted by Aberdeen Foyer (2012) and ACC Social Work Department (2013) with 30 people in attendance.
  - ACC Social Work Dept is rolling out NPS training for their staff.
  - In 2013, ADP staff updated the Curriculum for Excellence (Substance Misuse) guidance pack for Education allowing teaching staff more detailed input and information on NPS. A number of training sessions took place for all secondary and primary schools.
  - For 2014, the three Grampian ADPs areas have identified NPS as the subject matter for their annual awareness raising media campaign and are in the early planning stages for this project.

The matter of 'legal highs' (NPS) will be on the agenda for the next ADP meeting, which takes place on 12<sup>th</sup> May 2014.