



Home Office

# **Guidance for local authorities on taking action against 'head shops' selling new psychoactive substances (NPS)**

## 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 which 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 of hospitalisation and death after ingestion. New psychoactive substances are generally sold online or on the high street in 'head shops'.
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) legal, 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.

## Types of offences which head shops may be committing

4. There are four main types of offence which a head shop 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

### a) Selling controlled drugs

5. New psychoactive substance products often contain a mixture of substances – including controlled drugs under the Misuse of Drugs Act 1971 – which are rarely consistent and are often different to those advertised on the packet or at the point of sale.
6. Test purchasing activity on the internet shows that a significant proportion of products sold as 'legal highs' contain controlled drugs. We are also aware that suppliers usually do not know what is contained within their products and that the majority of new emerging substances seen in the EU are already illegal here in the UK.
7. 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, including temporary class 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. The document can be found at <http://www.acpo.police.uk/documents/crime/2012/CBADrugsPsychoactiveNov2011.pdf>. It also contains further detail on temporary class drugs.

8. 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, 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 August 2013.

9. 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, and its Regulations, as well as the latest temporary class drug order (SI 2013/1294) at <http://www.legislation.gov.uk/ukpga/1971/38/contents>.

## b) Selling drugs paraphernalia

10. Section 9A of the Misuse of Drugs Act 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 paraphernalia or equipment for using drugs such as bongs, pipes and other items, though this is not defined in the Misuse of Drugs Act.

11. We are aware that head shops are selling 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 "*Practical Advice on Tackling Commercial Cultivation and head shops*" which provides operational advice in relation to enforcement action to tackle the sale of drug paraphernalia in head shops.

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

12. 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 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

In January 2013 West Yorkshire police conducted surveillance on a market stall within Kirkgate market and saw purchases of synthetic cannabinoids to a 16 year old boy. Both the seller and stall holder were arrested and charged with the offence under the Intoxicating Substances (Supply) Act 1985. The seller admitted the offence, however the stall owner denied the offence on the grounds that he had not actually sold the item to the boy. He was subsequently convicted on the basis that he bore legal responsibility for the actions of his staff. Both were given a conditional discharge.

## d) Breaching consumer protection regulations

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

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

## Consumer Protection from Unfair Trading Regulations 2008

14. The CPUTR 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

## Not protectively marked

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.

15. 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.

16. 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.

17. Moreover, many head shops also run websites which may be breaching the CPUTR by using a tactic called 'bait and switch'. 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](http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf)

## General Product Safety Regulations 2005

18. 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. The burden of proof is on the local authority to prove that the product is a dangerous one, which can be a challenging task when so little is known about many of the substances being sold. It is also probable that the 'not for human consumption' labels which appear on many packets will make a successful prosecution under GPSR difficult.

19. Having said this, it is possible to disrupt head shops by issuing a notice known as a 'requirement to mark' under the GPSR. This measure allows a local authority to require a retailer to put a warning on a product which the local authority believes is dangerous. This runs the risk of making new psychoactive substances appear to be sanctioned by public authorities, but may be an appropriate action as a short term tactical response. The GPSR also require retailers to keep documentation of their products and to cooperate with enforcement authorities. Failure to do so may constitute further grounds for prosecution.

### Case Study

Two Great Yarmouth traders pleaded guilty to contravening a Safety Notice 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.

Further guidance on the GPSR, produced by the Department for Business, Innovation and Skills, can be found here: <http://www.bis.gov.uk/files/file37017.pdf>

## Other regulations

20. E-commerce websites also need to comply with the Consumer Protection (Distance Selling) Regulations 2000 (DSR) 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 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.

21. The Electronic Commerce (EC Directive) 2002 also requires disclosure of certain information on websites, such as a supplier name and geographical address. While there are no criminal offences under DSR or the E-Commerce Regulations, failure to provide the information might be considered a 'misleading omission' for the purpose of the CPU TR. This would be subject to the transactional decision test, which, as mentioned above, can be problematic.

22. 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](mailto:drugsearlywarning@homeoffice.gsi.gov.uk).