

National Assembly for Wales

Health and Social Care Committee

Inquiry into new psychoactive substances (“legal highs”)

Evidence from Trading Standards Wales – LH 06

Committee Clerk
Health & Social Care Committee,
National Assembly of Wales
Cardiff Bay
CF99 1NA

National Assembly for Wales’ Health & Social Care Committee

Inquiry into new psychoactive substances (“legal highs”)

Response on behalf of Welsh Heads of Trading Standards (WHOTS)

About WHOTS

Wales Heads of Trading Standards (WHOTS) is a Heads of Service Group under the umbrella of the Directors of Public Protection Wales (DPPW). DPPW represents Local Authority regulatory services that directly affect the health and well-being of communities in Wales.

The WHOTS vision is of ‘A Wales where consumers are confident and protected and honest businesses can prosper in a fair, safe, market place’, and its objectives are as follows:-

- WHOTS promotes inter-authority working and co-ordination to achieve continuous improvement
- WHOTS responds and contributes to the developing consumer agenda of the Government, Welsh Assembly Government and the Welsh Local Government Association
- WHOTS supports the personal and professional development of Trading Standards personnel
- WHOTS works in partnership to encourage fair and consistent enforcement and service provision
- WHOTS works together with others to promote the safety, the health and the economic well-being of communities.

WHOTS welcomes the opportunity to contribute to the inquiry into new psychoactive substances (“legal highs”). Its responses are set out below.

- **How to raise awareness of the harms associated with the use of legal highs among the public and those working in the relevant public services.**

1. It is the opinion of WHoTS that enforcers are not best placed to provide education/awareness regarding the use of new Psychoactive Substances (NPS)/‘legal highs’. Health professionals and medical experts will need to be at the forefront of awareness/education as they will know the real risks.

2. As the use of NPS's is in some cases replacing illegal drugs use, it is thought that alongside public health and local health boards, the large network of organisations in place to help educate against or support drug users and warn of the dangers are best placed to raise awareness of the associated harms of NPS's.
 3. Awareness could be raised through young adult charities, care workers universities, colleges, drop in centres, youth clubs, youth hostels, sexual health clinics, drama groups, substance misuse groups and general public spaces. It is also considered to fit well within the secondary school curriculum, specifically within the PHSE framework, which would also target the age group in which there is increasing use of these products.
 4. As little evidential research has been completed for these products, they are often marketed as 'research chemicals not for human consumption', however users often have the misconception that the products must be safe as they are 'legal'.
 5. Two medicinal products that have recently been found during sampling of such products are Lidocaine & Benzoates (the effects of which can be found online). A publicity campaign similar to those of tobacco warnings should be considered to highlight the real risks of these products. It is thought that any campaign should focus medical research findings and the uncertainty of unknown ingredients of the product and unknown effect of ingesting such products.
- **The capacity of local services across Wales to raise awareness of – and deal with the impact of – the harms associated with the use of legal highs.**
6. With ever reducing budgets across government agencies and in particular local authority Trading Standards Services, the capacity of services to deal with the impact of NPS's and raise awareness is depleting.
 7. It is considered that dealing with the impact will require collaboration of partner agencies e.g. Police/local health boards and local authorities and ultimately be a matter for the Regional Area Planning Boards who have responsibility for substance misuse issues alongside their existing treatment and prevention campaigns.
 8. There is uncertainty whether or not Trading Standards Services should be involved in the enforcement of such products as a safety concern, however if Trading Standards Services are to feature in any enforcement strategy to tackle NPS's funding will be essential as there is no capacity to deal with the matter in a comprehensive manner.
 9. It is considered that a dedicated national resource is needed to tackle the problem with a view to developing a toolkit that be adopted by the relevant enforcement agencies and provide consistency of approach which is currently lacking.

- **The effectiveness of data collection and reporting on the use of legal highs in Wales and their effects.**

10. It is the opinion of WHoTS that data collection and reporting on the use of NPS's, in Wales, is currently poor and inconsistent.
11. The Welsh Emerging Drugs and Identification of Novel Substances Project (www.wedinos.org), does provide a potential platform for data collection, testing and sharing information on harm reduction, it needs better promotion and funding to reflect the scope of the problem.
12. Although some samples have been submitted to WEDINOS for testing for data collection and database development purposes, the analytical results produced cannot be used for evidential purposes.
13. There are many gaps in intelligence as health care professionals, youth and substance misuse workers see the effects on a regular basis but fail to report their concerns. Similarly the Police may deal with antisocial behaviour under the influence but fail to report the root cause, be it misuse of alcohol, drugs or legal highs.
14. Thought must be given to coordination of data collection/reporting and which agencies are best placed to collect, store and act upon the data collected.
15. Increasing data collection and reporting could assist in the identification of the problem areas and enable a collaborative approach of focussed awareness raising campaigns alongside enforcement activity to tackle the problem.

- **The possible legislative approaches to tackling the issue of legal highs, at both Welsh government and UK Government level.**

16. It is the opinion of WHoTS that the current legislative approaches are unclear and problematic.
17. The Police are unable to pursue an offence under the Misuse of Drugs Act 1971, due to the product not being a 'controlled drug' and where products have been found to contain a proportion of a controlled drug there are problems proving *mens rea* (*guilty intent*).
18. Trading Standards Services have had to resort to shoe horning circumstances into a variety of Consumer Protection legislation such as; paragraph 9, schedule 1 of the Consumer Protection from Unfair Trading Regulations 2008, or Consumer Protection Act 1987 and multitude of associated Product Safety legislation and associated labelling requirements.
19. There are problems with using both pieces of Trading Standards legislation depending on circumstances of sale, as a result of which current enforcement across

the region is inconsistent. Although CHIP & CLP labelling requirements can be applied there is no real effective way to prevent the sale of these products.

20. Ultimately, trying to shoe horn selling of NPS's into existing Police or Trading Standards legislation is not satisfactory, bespoke legislation is needed to address the problem.
 21. Given the lack of legislative controls there is no current age restriction on the purchase of NSP's, as a result of which they are often marketed to vulnerable minors and school age children. If there is to be no outright ban on such substances, legislation to enforce age restrictions, proxy purchases and steep penalties would be essential to tackle the problem.
 22. It is the opinion of WHoTS that as already demonstrated, a substance to substance ban is ineffective, as manufacturers remain one-step ahead, reformulating products to circumvent the ban.
 23. Any bespoke legislation would need to include stringent requirements, draconian enforcement powers (including entry, test purchasing, seizure etc.) and penalties to make the prospect of manufacturing and selling NPS's unattractive and on a par with other Drugs.
 24. It is considered that the Police, given their experience of dealing with drug related crime, would be best placed to enforce such legislation.
 25. Establishing a licensing regime is an option to control the market along with the make-up and origin of the product. However, this in itself could prove problematic and effectively provide legitimacy to unscrupulous traders.
 26. Any such scheme would need to be accompanied by bespoke legislation for enforcement in addition to licensing conditions which should include CRB checks on sellers and requirement for product technical files.
 27. It is the opinion of WHoTS that greater more appropriate legislative control is needed to tackle these products, through classification of all such products as medicinal and requiring MHRA approval or preferably banning such products completely.
- **How effectively a partnership approach to tackling the issue of legal highs in Wales is being coordinated, both within Wales and between the Welsh and UK Governments.**
28. There currently appears to be no truly coordinated approach to tackling this issue of NPS's/'legal highs'.

29. There are several different partnership approaches involving Police and Trading Standards Services in Wales, however due to the lack of bespoke legislation each involve use of a wide mix of legal controls which fail to address the core issue of 'substance misuse', providing a sticking plaster approach.

30. Although these approaches have had some success in disrupting local supplies, the approach is wholly unsuitable and on a par with using a cancellation rights offence to deal with Serious organised crime/fraud. When legislation is introduced to ban a substance it is quickly circumvented by manufacturers, suppliers and their legal advisors.

- **International evidence on approaches taken to legal highs in other countries.**

31. New Zealand has adopted a licensing regime to provide a level of regulatory control on the market along with bespoke legislation (New Zealand's Psychoactive Substances Act).

32. Ireland have adopted a complete ban on the sale of all psychoactive or "brain altering" drugs, then introduces exceptions for some products such as alcohol and tobacco. In the opinion of WHoTS such an outright ban would be preferable as it would help to allay the message to the public that such products were not legal or safe, and also prevent circumvention by product reformulation.

For further information please contact:

Samantha Greenland
Regional Coordinator, Trading Standards Wales (WHoTS)

[Redacted]

t- [Redacted]

m- [Redacted]