# Local Government Association briefing, Psychoactive Substances Bill, House of Commons, Report Stage and Third Reading, 20 January 2016

Local Government Association

Briefing

## KEY MESSAGES

- The LGA strongly supports the move by the Government to ban the distribution, sale and supply of new psychoactive substances (NPS) in the UK with the Psychoactive Substances Bill.
- 'Legal highs', or NPS, are untested and unpredictable and can often be more potent than the illegal drugs they are designed to mimic.
- Local government sees first-hand the impact of use of NPS in their communities, in terms of causing anti-social behaviour, prompting hospital admissions and the associated impact on health services, and, in the worst cases, fatalities.
- However, existing legislation designed for other purposes is not adequate to protect the public from the potentially devastating consequences of legal highs, with council trading standards teams reporting it is not fit for purpose.
- This Bill will tackle the availability of NPS, address the 'chemical arms race' between legislative responses and the evolution of the NPS market, and make enforcement easier.
- As currently drafted, the legislation provides a clear, simple approach and outlines a range of powers that will enable the police, supported by councils, to take proportionate but decisive action to prevent the production and sale of NPS.
- We support the wide definition of 'psychoactive substance' in clause 2 of the Bill. This will ensure that, as new substances are developed with different chemical compounds, they will continue to be caught by the legislation.
- However, if the definition of psychoactive substances in the Bill could capture unintended materials, like incense, then consideration should be given to adding those substances to the list of exemptions in Schedule 1 of the Bill.
- Once the legislation is in place, we would encourage continued monitoring of the impact of the ban, both in the UK and Ireland, to ensure a solid evidence base is readily available for future reviews of the legislation.
- Local authorities, which have overall responsibility for public health, spend around 25 per cent (£760 million) of their existing health budget on drug and alcohol misuse.
- The introduction of the ban should reduce this expenditure, allowing councils to use the funds to tackle other public health priorities. This is particularly important given the 2015 Spending Review announcement of reductions to public health funding over the next five years.
- Councils recognise the important need for education programmes designed to reduce misuse of all drugs, not just NPS. Further, there has been particular concern in local government about the use of NPS by younger people, particularly teenagers, who in some cases have a mistaken perception that NPS are safe to use.
- The LGA supports new clause 2, in the name of Lyn Brown MP, Andy Burnham MP, Andrew Gwynne MP, Sue Hayman MP and John Woodcock MP, which provides for a



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senior officer or local authority to comply a premises to stop trading while it applies for a premises order. These powers are comparable to closure powers for premises serving alcohol under the Licensing Act 2003, and provide a helpful interim power where a premises notice has been ignored.

## BACKGROUND INFORMATION

### LGA position

The LGA strongly supports the introduction of legislation banning all psychoactive substances. The Home Office's expert panel on NPS, which reported in September 2014, concluded after examining a range of options that the introduction of banning legislation would tackle the availability of NPS, break the link between legislative responses driving the evolution of the NPS market, and make enforcement easier. Once in place, we would encourage continued monitoring of the impact of the ban, both in the UK and Ireland, to ensure a solid evidence base is readily available for future reviews of the legislation.

### Availability of NPS

A growing number of councils are concerned at the increasing availability and use of NPS. This concern has been fuelled by the increasing presence of 'headshops' in town centres and the anti-social behaviour and health problems associated with the use of these substances. There are reckoned to be as many as 250 headshops across the UK, some of which openly sell NPS. Further, NPS have also reportedly been found on sale in garages, market stalls, newsagents, tattoo parlours, off-licences and at festivals.

### Useage of NPS

Useage of NPS is especially common among both vulnerable individuals with existing substance misuse problems and young people not old enough to purchase alcohol or tobacco legally, but able to access and afford the relatively inexpensive cost of some NPS. The increasing availability of NPS has resulted in a rise in the number of deaths since 2009, with 26 deaths registered in 2009[1] and 67 deaths registered in 2014[2], as well as emergency hospital admissions related to their use and an increase in the numbers approaching substance misuse or mental health services. Local authorities have also reported a number of instances where NPS users have engaged in violent or anti-social behaviour.

### Evidence supporting a ban

We note evidence from other countries indicating that bans discourage people from buying and using drugs, especially the young. Anecdotal evidence in Ireland indicates that both the number of hospital admissions linked to NPS and people attending drug treatment services in respect of problematic NPS use have fallen since the introduction of a ban in 2010.

This picture is mirrored by the New Zealand experience with BZP, a type of NPS it was briefly legal to sell in New Zealand before it was made illegal. Evidence presented to the Home Office's legal panel on NPS suggested that other than hardened drug users, those buying BZP in New Zealand when it was legal stopped doing so when it became illegal. Part of the reason people used it was because it was available and there were no criminal consequences for doing so.

The evidence emphasises the importance of the ban, and the need to ensure it is widely publicised. It will be extremely important that government monitors the impact of the Bill, in terms of potential displacement to other substance misuse among different groups of users.

### Action by councils on tackling use of NPS

The simple approach in outlawing NPS, and the creation of new powers specifically intended to tackle the sale of NPS, could help to reduce the impact on trading standards services of using less well suited legislative tools to address this problem.

[1] 2014, Deaths Related to Drug Poisoning in England and Wales 2013, Office for National Statistics, p19

[2] 2015, Deaths Related to Drug Poisoning in England and Wales, 2014 registrations, Office for National Statistics, p8

Due to their concerns about the harm caused by NPS use, councils have used a range of legislation to tackle the sale of legal highs. However, the provisions councils have been using, such as the General Product Safety Regulations 2005 (GPSR), are not designed to deal with the sale of NPS. Although the case law around the use of the GPSRs is developing, councils have to prove both that a substance is psychoactive and that it is harmful. Producers also try to circumvent drug and food regulations by labelling the substances as 'not fit for human consumption' and advertising them as household chemicals, such as plant food.

Successive governments have sought to ban NPS under the Misuse of Drugs Act 1971 but, every time an individual NPS is banned, producers alter the chemical composition of their drugs to evade the legislation. This has fuelled a proliferation in the range of NPS, with those selling NPS able to remain a step ahead of the law.

**Case studies**
Consumer protection provisions have been used alongside new powers designed to tackle anti-social behaviour like public space protection orders, for example:

- City of Lincoln Council became the first local authority in the country to ban people from publicly taking legal highs in the city centre. Within the first month, action was taken against 81 people under the ban, which also prohibits the drinking of alcohol.
- Newcastle City Council has re-commissioned drug and alcohol services to include legal highs. The Council has used new powers under anti-social behaviour legislation and existing licensing legislation to tackle the sales and community impacts of legal highs, revoking the licence of a takeaway and forcing an off-licence to refrain from selling legal highs. The Council has also targeted campaigns across universities and re-designed the drug and alcohol system to ensure a comprehensive response.
- Kent County Council and Medway Council Trading Standards teams, supported by Kent Police, seized 424 samples of legal highs from 20 head shops, leading to the suspended sale of a further 1,443. They used the GPSRs and subsequently obtained forfeiture orders for all products, allowing them to be destroyed.

**Education on NPS**
Councils recognise that banning NPS sales is only one part of a wider strategy to reduce NPS use. The LGA has consistently argued that alongside measures such as the Bill (which tackle production and supply), there is an equally important need for education programmes designed to reduce misuse of all drugs, not just NPS.

This type of education should begin in schools, and focus on both the risks of use and on increasing the resilience of young people to take care of their health, and also their ability to steer away from risky behaviour. Councils have already undertaken awareness raising schemes to deter people from using NPS, and will continue to do so as the new law is introduced. Examples of this include:

- Derbyshire County Council funded a website run by a local voluntary organisation that sets out the risks associated with using a range of NPS.
- Windsor and Maidenhead Borough Council highlight the risks associated with using nitrous oxide through a campaign.
- Leicestershire and Rutland have been running a campaign called Legal Highs Lethal Lows since December 2012 to highlight the risks of NPS and other drug use. Scarborough has also started to implement the campaign in its area.
- Lincolnshire County Council has funded an education programme in 24 of the county's schools delivered by Youth Addaction about the dangers of legal highs, which has involved 5,200 children.

**Support for substance misuse / addictions**
Since the transfer of public health functions to local government councils have continued to invest in services related to substance misuse. In 2014/15 local authorities spent over £763 million on substance misuse services, over a quarter of their existing public health budgets. Of this £69 million was spent specifically on substance misuse services for young people. The education work undertaken by councils supports campaigns such as Rise Above by Public Health England which aim to increase the resilience of young people on issues affecting their health so they lead healthier lives.