

APPENDIX 1 – LEGAL HIGH CURRENT LEGISLATION OPTIONS (MEETING NOTES PROVIDED BY FORCE SOLICITORS)

LEGAL HIGHS

	Option	Description	Comments
1	General Produce Safety Regs 2005	Applies to the sale of “dangerous products” which is defined as a “product other than a safe product”. Safe product is defined. Discussed in Counsels advice in detail. Doesn’t prevent sale altogether	<p>Warrington TS found that having issued warnings the retailers appeared to have ceased selling. Equally evidence was that the labelling had changed and so clarity around that would be required.</p> <p>This is an option however and one which Andrew Thomas recommended linked with other possibilities.</p>
2	Chemical Hazard Information and Packaging for Supply Regs 2009 Food Safety Act 1990	<p>CHIP - Does not apply if intended for human consumption – note anomaly as prosecution fails under CPUT because clearly say on packet not for human consumption and thus consumer left to decide but for CHIP plainly do intend it for consumption so thus not under CHIP! Anomaly explained by judge that legislation not there to protect consumers from their own reckless attitude to personal safety.</p> <p>Food Safety Act 1990 – means that the substances probably fall within definition of food and thus subject to relevant requirements eg as to food labelling and hygiene regs.</p> <p>These options don’t prevent sale altogether</p>	<p>CHIP – repealed essentially from 01 June 2015. Replaced (note transitional period) with Guidance on Labelling and Packaging from EU – legislation for the chemical industry. Appears that in Warrington the phrase “not fit for human consumption” has been removed from labels and Warrington TS noted that in general packaging appears to comply with new guidance.</p> <p>Food Safety Act – options here re appropriate labelling but the tricky issues associated with being seen to sanction such products.</p>
3	Injunctions : Enterprise Act 2002 or LGA 1972 and 2000	See relevant guidance -	Court process not swift. “5 year plan” – well intentioned piece of legislation and relevant LGA powers but the process is so time consuming and detailed it is not practical for this scenario in the circumstances.
4	Closure Order	The test is that the following has occurred or will occur if the	Considered and discussed re specific premises

		<p>power is not used:-</p> <ul style="list-style-type: none"> • Disorderly, offensive or criminal behaviour; or • Serious nuisance to the public; or • Disorder near the premises 	<p>but not a general option and not relevant at this time. A reactive solution to specific problem premises in the right circumstances.</p>
5	CPN	<p>To stop a person aged 16 or over, business or organisation committing anti social behaviour which spoils the community's quality of life. Behaviour to have a detrimental effect on quality of life of those in the locality, be of a persistent or continuing nature AND be unreasonable.</p>	<p>An option used in Blackpool and now also in Lincolnshire alongside the PSPO. Again likely to be specific problem premises and though could be used re users more likely re suppliers.</p>
6	PSPO	<p>Section 59 ASB, Crime and Policing Act 2014 – test broadly that activities carried on (or likely to be carried on) in a public place within the authorities area have had a detrimental effect on the quality of life of those in the locality AND the effect or likely effect is (or likely to be) of a persistent or continuing nature, such as to make the activities unreasonable and justifies the restrictions imposed by the notice</p>	<p>Actively being considered in some areas and is an option which deals with wider issues but can address legal highs. Depends very much on the locality and the issues within that area. To be progressed in relevant areas.</p>
7	Seizure : Fraud Act and Administering a Noxious Substance OAPA 1861	<ul style="list-style-type: none"> • Fraud Act 2006 – representation which is untrue or misleading, knows it is or that it might be untrue or misleading, thereby acts dishonestly and intends to make a gain for himself or loss to another. Effectively based on the products being marked “not for human consumption”. Issue here though is creative use of offence to ban something parliament could directly legislate against but hasn't. Public interest issue though one would have to argue not seeking to ban just ensure compliance with regulatory requirements including re safety. • Section 23 / 24 OAPA administering poison with intent to endanger life / inflict GBH OR maliciously (s24). Need to prove date and location, unlawfully and maliciously, administer / cause to be administered / cause to be taken, poison / noxious thing and endangering life / inflicting GBH 	<p>Fraud offence an option cited in Andrew Thomas advice and subject to the packaging issue appears to be an option. Need test purchases and subject to that could progress in conjunction with other offers.</p> <p>OAPA – reactive in specific circumstances only and not a preventative measure. Very unique circumstances and not of general application.</p>

		These options don't prevent sale altogether.	
8	Health and Social Care Act – public health communicable diseases		View from Warrington having debated this issue with colleagues is that does not fit within this legislation. Not considered contamination. CWAC had possibly used previously re illegal tattooist but not considered to be suitable here.
9	Intoxicating Substances (Supply) Act 1985	This was designed to address substance abuse in young people. Prohibits sales to customers under the age of 18 years where the seller "knows or has reasonable cause to believe that the substance is, or its fumes are, likely to be inhaled by the person under the age of 18 for the purpose of causing intoxication".	An option to address supply to under 18s in appropriate circumstances.