

APPENDIX 2 – LETTER TO RETAILERS



Dear

The Sale, Possession and Supply of Novel Psychoactive Substances

Novel Psychoactive Substances (NPS) are causing increasing concern amongst healthcare professionals, youth workers, parents, local authorities and the police. Products sold as 'legal' alternatives to drugs which are designed to mimic established drugs are not always legal. 19% of NPS tested by the Home Office in 2013/14 were found to contain illegal substances controlled under the Misuse of Drugs Act 1971. These would therefore be illegal to possess, supply, offer to supply and illegal for the consumer to possess. Results from testing NPS have shown that the chemical composition of the substances in each packet can vary greatly across batches and therefore it cannot be assumed that the same substance is in each packet even if they are labelled the same.

NPS may be labelled as 'plant food' or 'research chemicals' but practically they are being sold for their psychoactive effects on humans. It is clear that these products are being used for human consumption. NPS sold to consumers must satisfy safety legislation like all other products must do.

What you should do now

It is important that you consider the content of this letter carefully. If you are selling NPS you are under a legal responsibility to ensure that they do not pose a risk to consumers and comply with the legislation set out in this letter. You should know what the products you sell contain and what they are going to be used for. It is your responsibility to ensure that these chemicals are not harmful or controlled substances and that you are not enabling the illegal drugs trade in the UK.

If you have any doubts about these products you should remove them from sale. This reduces the risk of legal action under the criminal law by an enforcement agency or a claim under the civil law for personal injury from a consumer who has been injured or becomes unwell from using the product. You should check with your public liability insurer to establish if you would be covered if there was a claim against you for personal injury following a customer's use of an NPS supplied from your premises.

This is also to advise you of an issue relating to a "New Novel Psychoactive Substance," which has now become a national concern.

At least four people in Cheshire have collapsed and have been hospitalised due to the ingestion of a substance known as '**Vertex Space Cadet**'.

Provisional results from the analysis of the VERTEX recovered by Cheshire Constabulary indicate the presence of a substance called, AB-CHMINACA. The substance has been found to be similar to that which is assessed to have caused a number of fatalities in Europe and the US.

We would ask on behalf of the public of Cheshire that you do not offer to sell or supply this product.

We have to inform you that if you do sell or supply this product and this resulted in the injury or death of a consumer then Cheshire Constabulary would investigate whether any criminal offences had been committed.

Potential offences could include:

- Section 24 of the Offences against the Person Act 1861- unlawfully and maliciously administering to or causing to be administered to or taken by any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve or annoy such person.
- Manslaughter by subjective recklessness or gross negligence.

Intoxicating Substances (Supply) Act 1985

The Intoxicating Substances (Supply) Act 1985 makes it an offence to supply, or offer to supply, a substance to a person who you know, or have reasonable cause to believe, is under the age of 18 and if you know, or have reasonable cause to believe, the substance is, or its fumes are, likely to be inhaled by that person to cause intoxication.

NPS which are inhaled, or which are smoked, are covered by this legislation.

Some NPS are described as 'herbal incense' or 'research chemicals', but there is no doubt that their real use is as an intoxicant. Please be advised that we will take formal action when such products are supplied to a person the seller had reasonable cause to believe is under the age of 18, as we will argue that the seller had reasonable cause to believe that the product was to be used as an intoxicant.

An offence also exists where; you supply, or offer to supply, to a person who you know, or have reasonable cause to believe, is acting on behalf of someone under the age of 18 and you know, or have reasonable cause to believe, that the substance is, or its fumes are, likely to be inhaled by a someone under the age of 18 to cause intoxication.

If you are convicted of an offence under the Intoxicating Substances (Supply) Act 1985 the penalty is up to six months' imprisonment and/or a fine of up to £5,000.

General Product Safety Regulations 2005 (GPSRs)

The GPSRs aim to ensure that products offered for sale are safe, with the responsibility for making the product safe falling on the manufacturer. Those that sell products are known as distributors under this legislation. The regulations state that distributors '*shall not expose, possess or supply a product which he knows or should have presumed; on the basis of the information in his possession is a dangerous product*'.

A safe product is one that presents no or minimal risk '*under normal or reasonably foreseeable conditions of use*' and a dangerous product means '*a product other than a safe product*'.

Given the potentially dangerous nature of NPS and how they are used, these regulations require certain information to be marked on the NPS. This information is:

- Description of the product, as a producer has to provide consumers with relevant information to enable them to assess the risks inherent in a product where such risks are not immediately obvious without adequate warnings
- Manufacturer's details, including a geographic address
- A batch code or product reference

In addition, other trading standards authorities have utilised the 'requirements to mark' and 'requirements to warn' aspect of these regulations in respect of some NPS in situations where the authority has had reason to believe that the NPS concerned was a dangerous product. For these products there is an additional legal requirement for extra information about the product and warnings to appear on the packaging.

As the distributor it is your responsibility to ensure that products you expose, possess or supply are compliant with these marking requirements. Furthermore as the distributor you are required to keep documentation that allows for the tracing of a product through the supply chain, this should be in an easily accessible format for enforcement agencies. In simple terms – you must be able to provide genuine invoices from legitimate suppliers for your products.

You cannot rely on the packet being marked 'not for human consumption' as a defence under this legislation if you knew or suspected that the purchaser was going to consume the product.

If you are convicted of supplying or possession for supply of a product which breaches this legislation, in other words if dangerous it is an offence punishable by a £20,000 fine and/or 12 months' imprisonment.

European Regulation No 1272/2008 on Classification, Labelling and Packaging of substances and mixtures (CLP).

These regulations are designed to protect people and the environment from the harmful effects of chemicals. Under the regulations suppliers are required to identify the hazards of the chemicals they supply, package the chemicals safely and give information about the chemical's hazards to their customers. The requirement to identify the hazards of chemicals means products have to be labelled correctly and carry warning symbols.

The regulations require products to be labelled with appropriate warning symbols and a telephone number of the EU importer or EU manufacturer. This number is to be used by medical staff in the event of an emergency, to enable them to identify the exact constituents of a product that may have caused illness. For this reason the number given must allow 24 hour access, an answering machine does not satisfy this requirement. You must ensure that any NPS you supply or have in possession for supply can satisfy the requirements of this legislation.

If you are convicted of supplying or are found to be in possession for supply of a product which breaches this legislation then it is an offence punishable by up to 3 months' imprisonment and/or a £5000 fine.

Impact of other Legislation

The Anti-social Behaviour, Crime and Policing Act 2014 provide a new set of tools and powers to the council and the police to tackle anti-social behaviour. Where the sale of NPS is associated with anti-social behaviour that is having a nuisance and detrimental effect on a community then consideration will be given to using community protection notices (CPNs),

public spaces protection orders (PSPOs), and the powers to close premises selling NPS. This legislation has already been used by other Council's to ensure the safety of residents and reduce the impact of anti-social behaviour on communities.

Revised guidance issued under section 182 of the Licensing Act 2003 by the Home Office now allows licensing authorities to impose conditions that prevent the sale of NPS on licensed premises which includes off-licences. If your premises have been issued with a licence under this Act, it is important that you consider the implications the sale of NPS may have on your licence conditions in light of the new guidance from the Home Office.

Legislation specifically banning the sale, possession and supply of NPS has been drafted and is expected to be made law before April 2016, although recent updates suggest this will be brought forward to this year following recent incidents throughout the country.

This letter is not an authoritative interpretation of the law and is intended only for guidance to assist you. Any legislation referred to, while still current, may have been amended from the form in which it was originally enacted. The legislation quoted in this leaflet is not exhaustive; there may be other legal provisions which have relevance to the sale of NPS, for example, pricing legislation and fair trading legislation.

This letter may be used in evidence to demonstrate that you were given advice on the risks of selling NPS and the duties that the legislation mentioned within this letter places on you. Officers will be undertaking market surveillance work, test purchasing and follow up visits to premises selling NPS to ensure compliance with the law.

If you require any further advice or information please contact us on ** and provide your full contact details where upon an officer will be back in contact with you.

Yours sincerely

****Multi Agency Sign Off****