

# **Report to the Tyne and Wear Trading Standards Joint Committee**

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## **Update on the Safety of Nitrous Oxide**

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### **Purpose of the report**

To inform the Committee of the latest developments with the marketing of and alleged abuse with the supply of products containing Nitrous Oxide. This update follows on from the Report received by the Committee on the 22 June 2015.

### **The Position with Nitrous Oxide**

1. Nitrous oxide is a substance with a number of legitimate uses in medicine and catering. It is also the second most popular recreational drug amongst young people, with 7.6% of 16-24 year olds responding to the 2013/2014 Crime Survey for England and Wales reporting nitrous oxide use in the last year. When inhaled, the substance can make users feel euphoric and relaxed, with some reporting hallucinations.

### **Legitimate Uses**

2. Nitrous Oxide is a medicinal product and, when mixed with oxygen, it is used to treat analgesia and as an anaesthetic. Use as a medicinal product typically involves large cylinders containing the gases, which are administered to the patient using a face mask in a variety of settings such as hospitals, dental surgeries and by ambulance crews.
3. Nitrous oxide is also an approved food additive (E942) when used as a propellant for whipped cream. Nitrous oxide is also used in vehicle engines.

### **Recreational Uses**

4. Nitrous oxide is now being used recreationally in a number of settings such as clubs, private residences and is particularly prevalent at festivals. It is commonly sold in small metal canisters containing the gas, which is then transferred into a balloon for inhalation using a dispenser or a 'cracker'. These small metal canisters are sold in bulk online presented for use as a whipped cream propellant.

### **The Risks**

5. Inhaling nitrous oxide can be dangerous, and can lead to loss of blood pressure, fainting and even heart attack. Prolonged exposure to nitrous oxide may result in bone marrow suppression and poisoning of the central nervous system. These

risks are likely to be increased if the exposure to the gas is combined with alcohol or other drugs.

## **Legislative Position**

6. The Psychoactive Substances Act 2016 came into force on the 26 May 2016.
7. The Act creates a number of criminal offences covering the supply of a psychoactive substance. These apply across the UK including:
  - Section 4 - Producing a psychoactive substance
  - Section 5 - Supplying, or offering to supply, a psychoactive substance
  - Section 7 - Possession of a psychoactive substance with intent to supply it
  - Section 8 - Importing or exporting a psychoactive substance
  - Section 9 - Possessing a psychoactive substance in a custodial institution
8. The Misuse of Drugs Act 1971 continues to be the main piece of domestic drug legislation in the UK and controls over 500 psychoactive substances (as well as other harmful drugs such as heroin and cocaine). Substances controlled under the 1971 Act will not be covered by the Psychoactive Substances Act 2016.

## **What is a Psychoactive Substance?**

9. The new Act captures psychoactive substances not previously covered by the drugs framework, such as nitrous oxide. Unlike previous drugs legislation, this Act does not list substances that are affected, but covers any that fit its definitions (much like the Intoxicating Substances Act 1985).
10. There is a general understanding of so-called 'legal highs' as replacements for controlled drugs, but the Act provides a specific definition based on their effect on people. A substance must be capable of having a psychoactive effect (as defined in the Act) in order to be covered by the new legislation. A psychoactive substance is defined as one which affects a person's mental functioning or emotional state by stimulating or depressing their nervous system.
11. In practice this includes the kind of effects that we associate with controlled drugs, such as the following:
  - hallucinations
  - changes in alertness
  - perception of time and space
  - mood or empathy with others
  - drowsiness
12. This wide definition is intended to pre-empt new substances emerging onto the drugs market because it defines them by their effects, rather than by their chemical structure. This means that it may be difficult for retailers to know if a substance is affected by the PS Act or not.
13. A large range of substances are completely exempted from the Act because they are fully regulated by existing laws. This means that nothing need change in the way that they are sold. The exempted substances are:
  - Food
  - Any Medicinal products (defined by Human Medicines Regulations 2012)

- Alcohol
- Controlled drugs
- Nicotine and tobacco products
- Caffeine

## **General Product Safety Regulations 2005**

14. These Regulations state that in order to assess the safety of a product will be assessed having regard to a number of matters and, in particular:
- The product's characteristics,
  - packaging,
  - instructions for assembly and maintenance, use and disposal,
  - the effect on other products with which it might be used,
  - labelling and other information provided for the consumer,
  - the categories of consumers at risk when using the product, particularly children and elderly.
15. Very importantly the term "Normal or Reasonably foreseeable conditions of use" is defined within the legislative provisions.
16. The majority of the products identified as containing Nitrous Oxide are being categorised as "for catering purposes only". The critical test to then cite and declare the product as unsafe would be the end user test around normal or reasonably foreseeable conditions of use which is obviously a practical issue for the Courts to rule on.

## **Case Study**

17. Following a recent conviction of a company of a company operating across Newcastle supplying nitrous oxide to residential properties, officers are now in a position to provide the following update:
- Undercover investigation conducted by BBC Inside Out in February 2016, found that Toon Whip a Newcastle catering company, selling nitrous oxide as a recreational drug, rather than for whipping cream as advertised.
  - Toon Whip appeared to target students with its online marketing. Website warned buyers not to inhale, but on the 3 February 2016 a BBC reporter was shown how to use it that way when a delivery arrived.
18. Business had been previously advised by City Council Trading Standards in 2015 of its alleged illegal business activities and following an undercover investigation by Metro radio.
19. New allegation brought to attention of Trading Standards by the BBC. Criminal investigation commenced into selling of unsafe product under General Product Safety Regulations 2005.
20. Following the investigation prosecutions were initiated by the City Council against Out the Kitchen Limited and its 2 Directors.
21. Trial set at Newcastle Magistrates Court on the 5 January 2017. Guilty Plea entered on behalf of company. Fined of £7000 plus costs of £500 and court surcharge of £120.

22. Extensive Press coverage of the conviction of the company on the BBC, Tyne Tees and in the Chronicle.

### **Recommendation**

23. The Committee is asked to note the information.

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