

**Committee: PERFORMANCE SELECT**

**Agenda Item**

**Date: 21 September 2010**

**9**

**Title: ENFORCEMENT WITH REGARD TO ENVIRONMENTAL CRIME**

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Item for information

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### Summary

1. This report has been brought forward at the request of members to give members an insight as to the main offences and penalties that fall within the remit of environmental crime and to draw members' attention to some of the difficulties involved with enforcement.

### Recommendations

2. That members note this report.

### Financial Implications

3. Enforcement against environmental crime is carried out by the Enforcement Team which has limited budget and resources.

### Background Papers

4. None.

### Impact

- 5.

Communication/Consultation	The Council is currently engaged in an anti-litter campaign.
Community Safety	Some environmental crimes can have impacts upon community safety.
Equalities	None.
Health and Safety	Some environmental crimes can adversely impact upon health and safety.
Human Rights/Legal Implications	As set out in the body of this report.
Sustainability	None.

Ward-specific impacts	None.
Workforce/Workplace	None.

## Situation

6. Environmental crime is comprised of a number of different offences under various items of legislation. Environmental crimes are generally taken as including litter, fly-tipping, graffiti and fly-posting, abandoned vehicles and nuisance parking. This report will consider each of these environmental crimes in turn.
7. The deposit of litter is an offence under section 87 Environmental Protection Act 1990. On a prosecution before the court the offence attracts a fine of up to £2,500. As an alternative to prosecution a fixed penalty notice may be offered. The default penalty for a fixed penalty notice is £75. As drafted the legislation relating to fixed penalties for litter truly does create an 'on the spot fine'. Legislation requires the notice to be served at the time the offence is committed. 'Litter' is not fully defined but does include cigarette and cigar ends and chewing gum.
8. Fly-tipping is the offence of disposing of waste otherwise in accordance with an environmental permit under s.33 Environmental Protection Act 1990. The offence is triable either before Magistrates or the Crown Court. In the former event the penalty is limited to 12 months imprisonment, a fine of up to £50,000 or both. In the Crown Court the penalty is up to 5 years imprisonment, an unlimited fine or both. In addition the local authority may recover any clean up costs and if a vehicle has been involved in the commission of the offence a court may order its forfeiture. As an alternative a prosecution may be brought under s.2 Refuse Disposal (Amenity) Act 1978 for abandoning anything other than motor vehicles and vehicle parts (as to which see abandoned vehicles below) on land in the open air. This offence may only be tried by magistrates and carries a term of imprisonment of up to 3 months, a fine or up to £2500.00 or both. Unlike Scotland there is no alternative of a fixed penalty notice in respect of fly-tipping.
9. Graffiti and Fly-Posting can be dealt with either as criminal damage under the Criminal Damage Act 1971 or as an unlawful advertisement under the Town & Country Planning Act 1990. Both carry a maximum fine of £2500.00 but in addition an offence under the 1971 Act carried the possibility of a prison term of up to 3 months instead of or in addition to the fine. Under the 1971 Act only the offender can be prosecuted. Under the 1990 Act in addition to the person posting the advertisement the person whose goods or services are being advertised and the land owner upon whose land the advertisement is placed are also liable to prosecution. There are provisions for fixed penalty notices for both offences (although in the case of the 1990 Act these do not extend to the person whose goods etc are being advertised or the landowner). The default fixed penalty is £75.

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10. Abandoned vehicles are dealt with under the Refuse Disposal (Amenity) Act 1978. The Council has a duty to remove any vehicles which are abandoned in the open air. If the vehicle is abandoned on private land the Council must first serve the occupier with notice of its intention to remove the vehicle and may not remove it if the occupier objects. Further the Council may decline to remove a vehicle if in its opinion the costs involved in moving the vehicle from its location to the public highway would be excessive. Abandoning a motor vehicle is an offence which attracts a fine of up to £2500. In addition the Council may recover the costs of removal, storage and disposal. These costs can be awarded by the magistrates' court if there is a conviction or may be recovered by a civil debt action. There are provisions for a fixed penalty notice. The fixed penalty is £200. There can be difficulties in determining whether a vehicle has been abandoned and under the legislation unless the vehicle is in a dangerous condition it cannot be disposed of until the road fund licence has expired for at least 14 days which would incur storage charges.
11. Under the Clean Neighbourhoods and Environment Act 2005 there are 2 categories of nuisance parking, parking vehicles on the road and repairing or maintaining vehicles on the road. The former offence is committed where a person leaves 2 or more vehicles exposed or advertised for sale on the highway within 500 metres of each other. The latter offence occurs where any repairs maintenance or servicing of a vehicle takes place on the road. It is a defence in either case for the defendant to prove that he was not acting in the course of a business nor (in the case of repairs etc) for gain or reward. The defence is also not available in the case of repairs if carrying out the work gave reasonable cause for annoyance to people in the vicinity. Emergency repairs after an accident or a breakdown are not an offence under the Act. The penalty for each offence is a fine of up to £2500. There are provisions for fixed penalty notices. The fixed penalty is £100.
12. Fixed penalties have benefits for enforcing authorities. They avoid the time and work necessary to bring a prosecution and the enforcing authority may retain the fixed penalties. Currently fixed penalty receipts are ring fenced to be used for environmental enforcement but proposals by the coalition may relax this requirement. In the cases of litter, graffiti and fly posting the Council may specify a penalty which is different from that laid down by the legislation although it would need to have good reason to do so. Other penalties are fixed by the legislation and the basic penalty may not be varied though in all cases the authority may make provision for a reduced payment for prompt payment.
13. However fixed penalty notices do pose problems. The first issue is that a fixed penalty notice is not capable of enforcement, unlike a court fine. The notice is an invitation to pay the penalty rather than face a prosecution. If the penalty is not paid then the Council must either employ the resources necessary to prosecute or take no further action.
14. The second problem is that fixed penalty notices may only be issued to the offender. This means the person disposing of litter; applying graffiti or posters; abandoning a vehicle; offering 2 or more cars for sale or carrying out repairs etc to a vehicle. Where the offence involves a vehicle (e.g. litter being thrown from a car, abandoned vehicles etc) the registered keeper of the vehicle is not

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liable for the offence. Further there are no legislative powers (unlike certain types of motoring infringements) to require the registered keeper of a vehicle to disclose the identity of the driver on a specified occasion.

15. The fact that only the offender can be issued with a fixed penalty also causes problems with identification. Whilst authorised officers have power to request a suspected offender's name and address they have no power to require verification of such. It is an offence to fail to answer or to provide a false name and/or address. However such an offence carries a lower penalty than the substantive offences (£1000 maximum fine as opposed to £2500) and it begs the question as to how we could prosecute if we do not know the offender's real name and do not have an address for service of proceedings.
16. Finally in the case of litter where the notice should be issued at the time of the offence, to issue a fixed penalty notice in such circumstances (where the offender has refused to pick up the offending item) is a high risk course of action. At least one Essex authority issues anti-stab vests to those engaged in this work. Specialist training would be required before staff could be allowed to undertake this work.

### 17. Risk Analysis

This report being for information only there are no risks arising from the report.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

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