

**APSE Seminar  
Economy, Efficiency and Effectiveness  
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**Environmental Powers**

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**ISSUES CONSIDERED**

- People Power – how can you act to improve the environment?
- Housing land – who is responsible? What can you enforce?
- Using receipts from enforcement

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**PEOPLE POWER –  
HOW CAN YOU ACT TO IMPROVE  
THE ENVIRONMENT?**

- Context and Environmental Nuisances
- Type and nature of powers
- Achieving effective use for powers
- Future of Environmental Crime
- National Indicators

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### CONTEXT

- ❖ Wide range of services which council may be responsible for carrying out directly or indirectly which can be affected by environmental issues, including:
  - ❖ housing,
  - ❖ education,
  - ❖ social services,
  - ❖ highways,
  - ❖ planning,
  - ❖ leisure.

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### WASTE/ENVIRONMENT

- ❖ Frontline/noticed/makes the news for good and bad reasons
- ❖ The way we chose to exercise the powers may impact on perception of excellence

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### PALETTE OF ENVIRONMENTAL POWERS

❖ Legislative Action <ul style="list-style-type: none"><li>▪ Orders</li><li>▪ Byelaws</li></ul>	❖ Enforcement Action <ul style="list-style-type: none"><li>▪ Prosecution<ul style="list-style-type: none"><li>▫ FPN</li></ul></li><li>▪ Civil Action<ul style="list-style-type: none"><li>▫ Notice/injunction</li><li>▫ Possession</li></ul></li><li>▪ ASBO</li><li>▪ Parenting Contract</li></ul>
❖ Executive Action <ul style="list-style-type: none"><li>▪ Various</li><li>▪ Joint ventures</li><li>▪ Procuring</li></ul>	
❖ Quasi judicial Action <ul style="list-style-type: none"><li>▪ Planning</li><li>▪ Licensing</li></ul>	

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### ENVIRONMENTAL NUISANCES

- ❖ Offence of throwing, dropping or depositing litter in the open
- ❖ Litter clearing notice on owner/occupiers (fine/FPN)
- ❖ Printed matter distribution on Designated land without Authority consent (fine/FPN)
- ❖ Street litter control notices (fine/FPN)
- ❖ Power to charge person believed to be the owner of abandoned shopping trolley for removal storage and disposal
- ❖ Graffiti removal notices (but not parks open spaces or privately owned buildings)
- ❖ Graffiti FPNs

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### ENVIRONMENTAL NUISANCES (CONT'D)

- ❖ Duty to enforce and review enforcement of aerosol paints to minors
- ❖ Removal of abandoned motor vehicles
- ❖ Nuisance parking (Sale or repair on the road) (fine/FPN)
- ❖ Gating orders to prevent crime or anti-social behavior
- ❖ Various Highways and traffic powers e.g. stopping up, obstruction
- ❖ Alcohol - Designated Public places order
- ❖ Dog Control Orders - Faeces, use of leads, exclusion from certain areas, number limitations (level 3 fine/FPN)

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### BYELAWS

- ❖ Simplified procedure introduced under Local Government and Public Involvement in Health Act 2007
- ❖ FPNs
- ❖ Community Support Officers

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### INJUNCTIONS

- ❖ LA may apply for injunction - expedient for promotion or protection of the interests of the inhabitants of the area
- ❖ Power of arrest attached to the injunction

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### LEGISLATION

- ❖ Anti-Social Behaviour Act 2003
- ❖ Clean Neighbourhoods & Environment Act 2005 (CNEA)  
Consolidates and Amends various legislation
- ❖ Local Government and Public Involvement in Health Act 2007/Statutory Guidance
- ❖ Sustainable Communities Act 2007

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### CLEAN NEIGHBOURHOODS & ENVIRONMENT ACT 2005 (“CNEA”)

- DEFRA perceived link between dirty streets, neglected public space, anti-social behaviour and crime.
- CNEA brought together legislation that had derived piecemeal previously, but not totally consolidated – still need to be familiar with existing legislation, in order to produce comprehensive suite of powers.
- Flexibility for Local Authorities – introduces new powers and amends and extends existing powers.
- Entire Act in force by April 2006.
- Considered a major tool to ensure services actually improve.

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“The new rules will give Local Authorities more power to tackle environmental crime, and make everyone think about the environment around them. People want to live in a clean, pleasant environment, but we all have to play our part in ensuring that is what we achieve. Hopefully the new Act will see a change in mindset, improvements in our local environment, and pride restored to our communities.”

Former Local Environment Minister, Ben Bradshaw

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**POWER TO ISSUE FPNS UNDER CENA**

- CNEA extends ability to use FPNS
- Local Authorities given flexibility to set fine subject to maximum and minimum set out in Regulations
- Parish Councils and Community Councils have power to issue FPNS
- Check specific section of relevant legislation for power to issue FPN.

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**BENEFITS OF EXTENDED POWERS TO ISSUE FPNS**

- Effective and visible way of responding to low-level environmental crimes
- Public welcome use of fixed penalties, provided they are used sensibly, enforced even-handedly and used in response to genuine problems
- Ability to use FPNS means can avoid court (and costs involved)

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### OFFENCES FOR WHICH FPNS CAN BE ISSUED

- Nuisance Parking (s6 CNEA) - £100
- Abandoned vehicles (s2A Refuse Disposal (Amenity) Act 1978) - £200 (lower if paid early)
- Litter related offences (s88 EPA) - £75 or local level
  - S18 CNEA defines offence as dropping litter anywhere in the open air – includes into bodies of water
- Street Litter Control Notices (s94A EPA) - £100 or local level
- Unauthorised distribution of literature (Sch 3A EPA) - £75 or local level
- Failure to produce authority for transporting controlled waste (s5B(2) Control of Pollution (Amendment) Act 1989) - £300 (collected by Environmental Agency or waste collection authority)

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### OFFENCES FOR WHICH FPNS CAN BE ISSUED CONT.

- Graffiti or fly-posting (s43 Anti-social behaviour Act 2003)) - £75 or local level
- Failure to produce waste transfer note documentation describing waste (s34A EPA) - £300 (lesser if paid early)
- Failure to comply with waste collection arrangements and receptacles specified by waste collection authority (s47ZA EPA) - £100 or local level
- Offences under Dog Control Orders (s59 CNEA) - £75 or local level
- Failure to nominate key holder (within alarm notification area) (s73(2) CNEA) - £75 or local level
- Noise from licensed premises - £500 or local level and noise from dwellings - £100 or local level (s8 Noise Act 1996)

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### PRACTICALITIES OF ISSUING FPNS

- Form of notice needs to comply with CNEA
  - Refer to relevant offence
  - Correct time period specified
  - Specify lesser amount and earlier payment period
  - Need for guidance – proforma?
- Can now require name and address of offender
  - Offence if do not provide information or give false information
  - Right to detain

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### EFFECTIVE USE OF FPNS

- Develop standardised fixed penalty procedures and guidance to be followed by those with the powers to issue
- Use as part of a wider environmental strategy
- Consult the public regarding strategy and use of FPNS
- Create strong inter-agency relationships with other agencies dealing with environmental enforce in the area – agree working protocols
- Ensure FPNS only issued where adequate evidence to support a prosecution if a notice is not paid
- Follow up all unpaid notices and prosecute every offender?

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### USING ALL POWERS EFFECTIVELY

- ❖ Perceptions
- ❖ Tolerance levels
- ❖ Surveillance - Necessary and proportionate
- ❖ Getting the public, Magistrates, media etc on board
- ❖ On-going Communication/education
- ❖ Examples of good and bad

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### FUTURE OF POWERS RELATING TO ENVIRONMENTAL CRIME

- EU Directive on the protection of the environment through criminal law (2003/86/EC) adopted on 17 Nov 2003
- Member states have until 26 Dec 2010 to implement
- Requires member states to impose criminal penalties for certain breaches of EU environmental legislation
- Does not specify the type and level of criminal penalties that must be imposed – merely "effective, proportionate and dissuasive"
- Specifies specific crimes included and qualifying criteria (e.g. breach intentional or seriously negligent)

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### IMPLICATIONS OF EU DIRECTIVE ON CURRENT UK ENVIRONMENTAL LAW

- Many of the activities covered by the Directive are already treated as criminal offences and punishable by imprisonment and/or a fine
- The majority of environmental offences are "either way" offences (determines level of penalty), but under the Directive, level of penalty will be set out for certain offences
- The Regulatory Enforcement and Sanctions Action 2008 (RESA) gave regulators (including the Environment Agency) new powers to impose civil penalties on businesses, as an alternative to prosecution. No indication has been given as to how the Directive will interact with the RESA.

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### NATIONAL INDICATORS

- November 2007 the Government identified a set of 198 national indicators that can be used to measure service outcomes
- National Indicators that focus on environmental issues:
  - NI 195 - Improved street and environmental cleanliness – (levels of graffiti; litter; detritus; and fly posting)
  - NI 196 - Improved street and environmental cleanliness – fly tipping

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### NI 195 - GRAFFITI; LITTER; DETRIUS; AND FLY POSTING

- Developed to measure the cleanliness of the local environment, as a member of the public would see it
- Data from NI 195 will provide valuable information on the extent of litter, detritus, graffiti and flyposting and success of their cleansing regimes, over a variety of different land uses within their authority
- 4 monthly surveys to be undertaken (as set out in NI) to grade land in five 'target' wards within Authority boundaries
- Local Authorities must comply with procedures set out in NI 195

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### NI 196 - FLY TIPPING

- Designed to help local authorities tackle fly tipping
- Draws upon the fly-tipping data provided monthly by Local Authorities to the Flycapture database (database launched in April 2004 as a legislative requirement under Anti-Social Behaviour Act 2003)
- All waste collection authorities and the Environment Agency submit monthly returns (via the Flycapture database) for their reported fly-tipping incidents, so national statistics can be compiled, to provide an accurate picture of size of the problem
- Includes data relating to number, size, waste type, location type, plus enforcement actions and outcomes taken by Local Authorities

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### NI 196 - FLY TIPPING CONT.

- A Local Authority's 'score' is determined by assessing the progress made by that Local Authority by comparing its present level of fly-tipping and enforcement activity with that of the previous year.
- No 'national benchmark' because the nature of fly-tipping varies greatly according to the type of area (urban, rural, etc)
- Statistics demonstrate the cost of dealing with fly-tipping and enable Local Authorities to allocate existing resources more effectively
- Focusing on enforcement; deterrence and prevention rather than just clearing up illegally dumped waste should lead to a more effective use of existing resources

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### HOUSING LAND – WHO IS RESPONSIBLE? WHAT CAN YOU ENFORCE?

- Problems Local Authorities can face
- Responsibility
- Enforcement Powers
  - Authority Responsibility
  - Landlord Responsibility

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### PROBLEMS LOCAL AUTHORITIES CAN FACE

- Transfer of housing stock under LSVT to RSL or Housing Association to act as Landlord
- Open space/common land/park land within the area of housing stock transferred
- Neither Local Authority nor Landlord takes responsibility for area
- Becomes neglected, fly-tipping occurs, results in potential environmental issues

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### RESPONSIBILITY

- Responsibility for the area will depend on the whether the area was transferred with the housing stock
- Should be included in contractual documentation
- If common land not dealt with within contract and not transferred as part of LSVT, Local Authority remains responsible
- If common land is included, Landlord responsible

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### ENFORCEMENT POWERS – AUTHORITY RESPONSIBILITY

- Needs to clean and maintain area as per its statutory obligations
- All powers addressed in previous slides available to Authority
- Can delegate its powers and appoint Landlord to act on its behalf in relation to area (may require further payment/contract)

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### ENFORCEMENT POWERS – LANDLORD RESPONSIBILITY

- Needs to clean and maintain area as per any contractual obligations and in order to meet statutory requirements
- Authority could delegate powers to the Landlord to allow it to enforce/collect FPNs
- If Landlord fails to comply with obligations, Authority should have contractual rights to force action and/or compensation, alongside powers set out in legislation – serve notice under s59ZA EPA requiring the removal of waste
- Authority may also have powers to enter land to clean/maintain if Landlord fails to do so and charge for any work undertaken

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### HOW TO AVOID PROBLEM ARISING AGAIN

- Ensure that when any future transfer of housing stock is undertaken, the contractual documents correctly reflect obligations as to the transfer of any open space, including whether land is to be retained and maintained by the Local Authority
- Assess and establish responsibility for any open space which may have been transferred previously and ensure that, if it is the case, the Landlord knows it is responsible for such land

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### USING RECEIPTS FROM ENFORCEMENT

- CNEA allows for the retention of receipts and charges by Local Authorities
- CNEA broadens the range of functions upon which receipts can be used
- Environmental Agency can not keep receipts (Duty of Care) – must send to SoS
- Where Waste Collection Authority claims receipts it can retain and use for specified functions

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### USING RECEIPTS FROM ENFORCEMENT CONT.

- Receipts obtained with regards to different offences may be used in different ways as specified in CNEA:
  - Nuisance parking offences (s8)
  - Deposit and Disposal of Waste (s52)
  - Noise (s75)
  - General:
    - Use of fixed penalty receipts: higher tier authorities (s96)
    - Use of fixed penalty receipts: lower tier authorities (s97)
- Receipts can only be used as specified by legislation – FPNs cannot be used to create general revenue by Local Authorities

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### TIERED AUTHORITIES USE OF RECEIPTS

- S.96 CNEA – enables higher tier authorities to use for certain functions money received from FPNs:
  - Litter
  - Graffiti and fly-posting
  - Dog control offences
- S.97 CNEA – lower tier authorities (parish council and community councils):
  - The Environmental Offences (Use of Fixed Penalty Receipts) Regulations 2007 apply

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### THE ENVIRONMENTAL OFFENCES (USE OF FIXED PENALTY RECEIPTS) REGULATIONS 2007

- If an Authority (to which s 96 CNEA applies) is categorised as “4 stars”, “3 stars” or “2 stars”, any functions of that Authority are “qualifying functions” for which it may use its fixed penalty receipts.
- A Parish Council may use any amounts it receives in pursuance of notices issued under:
  - (a) section 88 of the EPA (relating to litter)
  - (b) section 43(1) of the Anti-Social Behaviour Act 2003 (relating to graffiti and fly-posting)
  - (c) section 59 CNEA (relating to dog control orders)
- A Parish Council that is approved as a Quality Parish Council may use such amounts it receives for the purpose of any other of its functions. A Quality Parish Council is approved as such by the Secretary of State.

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