

PART 1 - PUBLIC

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**Decision Maker:** Public Protection & Safety Policy, Development and Scrutiny Committee

**Date:** 28 June 2011

**Decision Type:** Non-Urgent Executive Non-Key

**Title:** ENFORCEMENT ACTIVITY 1<sup>st</sup> OCTOBER 2010 to 31<sup>st</sup> MARCH 2011 and 2010/2011 PORTFOLIO PLAN PERFORMANCE

**Contact Officer:** Clive Davison, Assistant Director, Public Protection  
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**Chief Officer:** Nigel Davies, Director of Environmental Services

**Ward:** Boroughwide

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1. Reason for report

To advise Members of the activity undertaken by the Public Protection Division (and other relevant divisions in the Environmental Services Department) during the period 1<sup>st</sup> October 2010 – 31<sup>st</sup> March 2011 relating to enforcement under delegated powers as well as annual performance against the 2010/2011 Portfolio Plan targets.

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2. **RECOMMENDATION(S)**

Members are asked to

- comment on the contents of this report.
- agree to receive further reports, every six months, on the activity relating to the Portfolio Plan and enforcement under delegated powers

## Corporate Policy

1. Policy Status: Existing policy.
  2. BBB Priority: Safer Bromley. Quality Environment, Vibrant, Thriving Town Centres
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## Financial

1. Cost of proposal: Estimated cost See Total budget - All services have an enforcement element
  2. Ongoing costs: Recurring cost.
  3. Budget head/performance centre: Public Protection and Safety Portfolio Budgets
  4. Total current budget for this head: £4.7m
  5. Source of funding: Existing revenue budgets 2010/11
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## Staff

1. Number of staff (current and additional): 66ftes
  2. If from existing staff resources, number of staff hours: N/A
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## Legal

1. Legal Requirement: Statutory requirement. Numerous statutes covering Public Health and Safety, Environmental Protection, Licensing, Consumer Protection, Anti Social Behaviour, Food Safety and Control of Communicable Disease etc
  2. Call-in: Call-in is not applicable.
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## Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All of the Council's customers (including council tax payers) and users of the services.
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## Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

- 3.1 At the meeting of the Public Protection and Safety, Policy Development & Scrutiny Committee on 15<sup>th</sup> November 2007 Members agreed they should receive reports of the enforcement activity undertaken by the Public Protection division on a six monthly basis. On the 22nd October 2010 the Portfolio Holder and Chairman of the Public Protection and Safety, Policy Development & Scrutiny Committee requested that this report should also include an update of Portfolio Plan activity.
- 3.2 The enforcement activity for the period 1<sup>st</sup> October 2010 – 31st March 2011 is set out in Appendix A to this report. This covers not only Public Protection enforcement (i.e. Environmental Protection, Food Safety, Public Health & Safety, Licensing, Trading Standards and Anti-social behaviour) but also related enforcement action by the Street Scene and Greenspace division of the Environmental Services Department.
- 3.3 The Public Protection and Safety Portfolio Plan activity for 2010/11 is set out in Appendix B to this report and covers the areas of prevention, reassurance and enforcement.

### 4. POLICY CONSIDERATIONS

- 4.1 Enforcement activity is undertaken in accordance with the agreed Enforcement Policy:
- a. The Public Protection Division undertakes its regulatory functions in accordance with risk assessment criteria ensuring that service resources are focused upon those activities or practices the present the greatest risk to public health, safety or potential economic loss to the consumer.
  - b. Consistency of approach aims to ensure that officers are consistent in the exercise of their discretion to achieve similar ends in similar circumstances, irrespective of which officer deals with the matter.
  - c. It is important to the service that people understand what is expected of them and what they should expect from the Council. This includes making it clear between statutory requirements (what they have to do) and, where relevant, what they do not have to do (advice or guidance on good practice).
  - d. Where enforcement action is necessary, officers will take appropriate action dependent upon the seriousness of any breach of the law. The action that they take will be proportionate to the seriousness of any breach of the law relating to the health, safety, quality of life or economic position of the local and business community.
- 4.2 Portfolio Plan activity in undertaken in accordance with the stated Safer Bromley Partnership's priority areas of reducing anti-social behaviour, nuisance and enviro-crime, delivering effective business regulation and trading standards service, reducing the harm caused by drug and alcohol problems, tackling domestic abuse and elder abuse and reducing acquisitive crime.

### 5. FINANCIAL & PERSONNEL CONSIDERATIONS

- 5.1 All Portfolio Plan and enforcement activity is undertaken within existing resources and agreed grant allocation

<b>Non-Applicable Sections:</b>	N/A
Background Documents: (Access via Contact Officer)	Portfolio Plan 2010 – 2011, Public Protection Service Plans – Clive Davison

**PUBLIC PROTECTION ENFORCEMENT ACTIVITY - STATUTORY NOTICES**

LEGISLATION	DESCRIPTION	NOTICES	NOTICES	NOTICES
		1/10/09 - 31/3/10	1/4/10 - 30/9/10	1/10/10 – 31/3/11
Environmental Protection Act S.80	Nuisance from premises	1	2	2
Environmental Protection Act S.80	Nuisance from bonfires	4	2	0
Environmental Protection Act S.80	Nuisance from noise (other)	4	13	10
Environmental Protection Act S.80	Nuisance from dog barking	3	1	1
Environmental Protection Act S.80	Nuisance from accumulations	3	14	8
Environmental Protection Act S.80	Nuisance from amplified music (commercial)	1	1	1
Environmental Protection Act S.80	Nuisance – intruder/car alarms	9	8	9
Environmental Protection Act S.80	Nuisance from amplified music (domestic)	3	7	13
Environmental Protection Act S.80	Nuisance - other	-	-	2
Environmental Protection Act S.80	Provision of waste containers	0	0	0
Environmental Protection Act S34	Disposal of waste	8	3	9
Environmental Protection Act S92	Litter clearance	-	1	3
Local Gov. Misc. Prov. Act S.20	Sanitary accommodation	0	0	0
Health & Safety at Work Act	Improvement Notice	5	2	4
Health & Safety at Work Act	Prohibition Notice	3	5	2
Local Gov. Misc. Prov. Act S.16	Requisitions for information	13	2	14
Environmental Protection Act S.71	Requisition for information	8	2	5
Prevention of Damage by Pests Act	Pest infestations	29	20	44
Public Health Act 1936 S78	Cleansing alleyways	26	6	0
Public Health Act 1961 S83	Filthy & verminous premises	4	1	4
Building Act 1984 S 59	Defective Drainage	3	4	0
Food Hygiene Regulations	Improvement Notice	28	6	16
Control of Pollution Act S.60	Noise from building/demolition	2	4	0

**STREET SCENE & GREENSPACE ENFORCEMENT ACTIVITY - STATUTORY NOTICES**

Highways Act - 1980 S154	Overhanging Vegetation	N/A	1287	1259
Highways Act - 1980 S184	Illegal Crossover	N/A	53	1321
Highways Act - 1980 S143 (1)	Removal of Structure	N/A	48	49
Highways Act - 1980 S131	Damage to Highway	N/A	56	66
Highways Act - 1980 S166	Dangerous Forecourt	N/A	19	56
Environmental Protection Act 1990	Fly tipping	N/A	24	48
Refuse Disposal (Amenity) Act 1978, as amended	Nuisance Vehicles	N/A	85	77

**STREET SCENE & GREENSPACE FIXED PENALTY NOTICES ISSUED**

Clean Neighbourhoods and Environment Act 2005 - S19	Deposited Litter	N/A	32	47
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Clean Neighbourhoods and Environment Act 2005 - S22	Failure to comply with Street Littering Control Notice	N/A	1	3
Clean Neighbourhoods and Environment Act 2005	Abandoned Vehicle	N/A	8	7
London Local Authorities Act 1990 (c.vii) - S38(1)	Unlicensed Street Trading	N/A	3	3
Clean Neighbourhoods and Environment Act 2005 - S59	Dog Fouling	N/A	0	4
London Local Authorities Act 2004 - S15/16	Sale of Vehicle on Highway	N/A	0	2

#### **ANTI-SOCIAL BEHAVIOUR ENFORCEMENT ACTIVITY**

Anti Social Behaviour Act	ASBOs	8	0	2
Anti Social Behaviour Act	ABCs	41	29 issued	27 issued

#### **REGULATION OF INVESTIGATORY POWERS ACT 2000**

Fraud Act & Doorstep Selling Regulations	Collection of evidence - Rogue Traders	4	27	1
Anti Social Behaviour Act	Collection of evidence	21	23	21
Age related sales legislation (E.g. Licensing Act)	Age related sales – test purchasing	5	5	6
Environmental Protection Act	Collection of evidence – fly-tipping	5	5	8

#### **PROSECUTIONS (All heard at Bromley Magistrates Court unless otherwise stated)**

<b>LEGISLATION</b>	<b>DESCRIPTION</b>	<b>PENALTY</b>
Env. Protection Act 1990 & Control of Pollution Act 1989	S33 (5) Being in control of the use of a vehicle used for flytipping & not being a registered waste carrier	£500 fine + £1,100 costs
Env. Protection Act 1990	S33 – Illegal deposit of waste	£150 fine + £282.50 costs
Env. Protection Act 1990	S33 – Submitting controlled waste on land not in accordance with an environmental permit	£400 fine + £723 costs
Env. Protection Act 1990	S33 – submitting controlled waste on land not in accordance with an environmental permit	£1500 fine + £720 costs
Env. Protection Act 1990	S80 – Failure to comply with an abatement notice (amplified music)	£180 fine + £200 costs
Env. Protection Act 1990	S80 – Failure to comply with an abatement notice (amplified music)	£150 fine + £843 costs
Env. Protection Act 1990	S80 – Failure to comply with an abatement notice (amplified music)	£900 fine + £506 costs + forfeiture order awarded for seized noise generating equipment
Children & Young Persons Act 1933, Firework Safety Regs. 1997	Sale of tobacco and fireworks to a person under the age of eighteen	2/2/11 £650 fine + £15 victim surcharge
Fraud Act	Misrepresentation of building work at a consumer's house	3/3/11 three years imprisonment
Consumer Protection from Unfair Trading Regulations 2008	Failure to give statutory information to a consumer	16/2/11 £3500 fine + £15 victim surcharge + £300 costs

Weights and Measures Act 1985	Illegal use of an unstamped weighing machine; selling a short weight to a consumer	19/01/11 £4175 + £1,166 costs
Trade Marks Act 1994	Sale and supply of counterfeit goods	22/5/11 1 x 8 week curfew between 7pm and 7am + £100 in costs. 22/11/10 1 x 150 hours unpaid work and to pay £400 in costs. All items seized forfeited.

### **STREET SCENE & GREENSPACE PROSECUTIONS**

<b>LEGISLATION</b>	<b>DESCRIPTION</b>	<b>PENALTY</b>
London Local Authorities Act 1990 (c.vii) S38(1)	Vehicle For Sale on Highway	Fine £400, £15 victim surcharge, £300 costs
Highways Act 1980 - S137	Illegal Advertising Board	Fine £350, £15 victim surcharge, £420 costs
Environmental Protection Act 1990 - S34 (2A)	Fly Tipping	Fine £100, £15 victim surcharge, £150 costs.
Environmental Protection Act 1990 - S33	Fly Tipping	Fine £116, £15 victim surcharge, £200 costs
Highways Act - 1980 S139	Illegal Skip on Highway	Fined £250, £15 victim surcharge, £300 costs and £150 re removal of skip
Refuse Disposal (Amenity) Act 1978, s. 2a(1)	Abandoned Vehicle	Fined £270, £15 victim surcharge, £300 costs.
Highways Act - 1980 S139	Illegal Skip on Highway	Fined £100, £15 victim surcharge, £100 costs & another £420.
Highways Act - 1980 S139	Illegal Skip on Highway	Fine £250, £15 victim surcharge, £300 costs.
Highways Act 1980 - S137	Illegal Advertising on Highway	Fine £350, £15 victim surcharge, £300 costs.

### **PROSECUTIONS PENDING**

Environmental Protection Act 1990	3 x s33 illegal deposit of waste
Environmental Protection Act 1990	1 x s33 (5) In control of a vehicle used for fly-tipping
Environmental Protection Act 1990	2 x s34 Failure to transfer waste to an authorised person & obtain written descriptions
Environmental Protection Act 1990	1 x s34 (5) Failure to comply with notice
Environmental Protection Act 1990	1 x Failure to obtain written descriptions
Environmental Protection Act 1990	1 x Disposal of waste on land not in accordance with an environment permit
Environmental Protection Act 1990 & Control of Pollution Act 1989	1 x s33 illegal deposit of waste & not an authorised waste carrier
Environmental Protection Act 1990	3 x s80 Failure to comply with an abatement notice (amplified music)
Trade Marks Act 1994	1 x prosecution pending sale and supply of counterfeit clothing

Proceeds of Crime Act 2002	1 x confiscation application relating proceeds of the sale of counterfeit goods and mortgage fraud
Fraud Act 2006	2 x misrepresentation of building work at a consumers home
Proceeds of Crime Act 2002	1 x Money Laundering in relation to £13,800 fraud of a consumer
Proceeds of Crime Act 2002	1 x money laundering in relation to £250,000 fraud of consumers
Enterprise Act 2000	1 x application for an undertaking/enforcement order in respect of a local business failing to return monies owed to consumers
Consumer Protection from Unfair Trading Regulations 2008	1 x mis-use of logos
Consumer Protection from Unfair Trading Regulations 2008	Sale of counterfeit Bollinger champagne
Children & Young Persons Act 1933, Firework Safety Regs. 1997	Sale of tobacco and fireworks to a person under the age of eighteen
Criminal Justice and Immigration Act 2008	Restricted Premises Order following the persistent sale of tobacco to persons under the age of eighteen
Licensing Act 2003	1 x review pending following sale of alcohol to a person under the age of eighteen
Licensing Act 2003	Breach of licence conditions for sale after permitted hours
<b>Prosecutions Pending Street Scene and Greenspace</b>	
Highways Act - 1980 S139	2 x Illegal Skip on Highway
Environmental Protection Act 1990 - S33	Fly Tipping
Environmental Protection Act 1990 - S87/88	Depositing Litter on Highway
Environmental Protection Act 1990 - S87/88	Depositing Litter on Highway
Environmental Protection Act 1990 - S33	Fly Tipping

#### **UNDERTAKING/ASSURANCE GIVEN UNDER THE ENTERPRISE ACT 2002\***

Doorstep Selling Regs 2008	11 x cases resulted in an assurance of future conduct or undertaking given by a trader following a breach of the regulations
Consumer Protection from Unfair Trading Regulations 2008	1 x case in relation to the misuse of the London Olympics logo 1 x case in relation to the misuse of the Bromley swish logo 1 x misuse of a trade association logo
Trade Marks Act	1 x case in relation to the possession and supply of counterfeit vodka
Children & Young Persons Act 1933	3 x case in relation to sale of tobacco to person under the age of eighteen

\*Breach of an undertaking given under the Enterprise Act can lead to a formal enforcement order issued by a court. Breach of any such order is contempt and can result in imprisonment of up to 5 years.

**FORMAL/WRITTEN CAUTIONS**

Voluntary Closure of food businesses	2 x premises closed voluntarily in lieu of formal closure proceedings
Licensing	4 businesses given formal warnings

**WORKS IN DEFAULT**

Works in default	14
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**LICENSING REVIEWS**

Beckenham Convenience Store	2 Reviews in the period Oct 2010 Review by Cllr Wells and March Review by the Police	Oct Review – licence suspended and conditions varied – appeal lodged. March Review – Licence revoked. ( appeal likely )
Friends of Mine	Review by Trading Standards	Licence conditions varied

**LICENSING APPLICATION HEARD**

Applications head by the Licensing Sub Committee	27 hearings. 1x Appeal to the Magistrates court still awaiting final determination.
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