

Working Better Together Protocol Series

Protocol 6

FLY-TIPPING AND ILLEGAL WASTE ACTIVITIES

This technical protocol is one of eight protocols, introduced to support the joint Environment Agency and Local Government Association/Welsh Local Government Association memorandum of understanding 'Working Better Together'

Jointly agreed¹ January 2005

¹ Signed by Councillor David Sparks for the LGA, Councillor Richard Harry Hughes for the Welsh-LGA and Baroness Young and Sir John Harman for the Environment Agency.

A 'WORKING BETTER TOGETHER' PROTOCOL

1. In February 2003, the Local Government Association (LGA) and the Environment Agency (Agency) agreed and signed a joint agreement "Working Better Together". This updated and replaced the first Working Better Together for England signed on 15th December 1999. Previously, Environment Agency Wales and the Welsh Local Government Association produced a separate Working Better Together in Wales. The 2003 version is now a joint England and Wales document.
2. Local Authorities and the Agency have powers and duties that largely complement each other in contributing towards the protection of the environment and enhancing the quality of life of local communities. Working Better Together contains a commitment to work together to deliver specific environmental outcomes.
3. A series of local 'protocols' set out how the Agency and each local authority can work better together to deliver these outcomes. These protocols are locally flexible in that the targets and methods of assessing progress (Part 2) may be re-written and agreed locally, within the national template.
4. The protocol series is as follows:
 - 1) Air Quality Management
 - 2) Management of Flood Risk
 - 3) Arrangements to implement the requirements of the IPPC Directive
 - 4) Waste strategy and waste management planning
 - 5) Land Contamination
 - 6) Fly-tipping
 - 7) Town and Country Planning
 - 8) One further protocol 'Fire Service Issues' has not been updated as part of this 2003 review. It remains in its original form, last updated 8/8/02.
5. This protocol comprises the following sections:

Part 1 – The National Context – this sets out roles and responsibilities for tackling illegal waste activities and fly-tipping, followed by specific information with regard to local authorities, the Agency and others. Some of the roles and responsibilities set out here may not be current practice; however, it is envisaged that, overtime, they will be achieved in all areas by all partners with a fly-tipping problem. They will not normally be varied from through the "local agreement".

Part 2 – The Local Agreement – this sets out roles and responsibilities for the Agency and local authorities that may be subject to local agreements as to who carries them out and the arrangements for carrying them out in line with *Working Better Together*. Local authorities and the Agency are encouraged to agree practical, local approaches for tackling fly-tipping and illegal waste activities, particularly in local hot-spots of illegal activity.

Appendix 1 – examples of who should do what

Appendix 2 – a summary of legislation – powers and duties

Appendix 3 – guidance on developing local working agreements

PART 1 – The national context

1. ROLES AND RESPONSIBILITIES

- 1.1 This protocol sets-out the respective roles of local authorities and the Agency in tackling illegal waste activities including fly-tipping. In this document, “local authority” is generally taken to mean “Waste Collection Authority”, although other local authority departments (e.g. Environmental Protection) or other local authorities (e.g. waste disposal authorities) can also make a contribution to the working of this protocol. In England, County Councils can play a co-ordinating role in relation to tackling and preventing fly-tipping as well as providing waste disposal facilities.
- 1.2 This protocol sets out how the national framework and local arrangements can help local authorities and the Agency tackle the problems of fly-tipping and other illegal waste activities. It is recognised that local authorities and the Agency have limited resources available for this work. Clarity of working arrangements, especially at the local level is important to ensure efficient, effective working including partnership approaches. The protocol outlines current (at the time of drafting) best practice. Progress in adopting all aspects of the protocol may take some organisations longer than others. The Local Government Associations and the Environment Agency consider it important for all partner organisations to work towards adopting the arrangements as envisaged by this protocol at the local and national level. The protocol provides sufficient flexibility to enable the local agreement to be implemented to meet local needs.
- 1.3 This protocol seeks to address several key policy objectives. It seeks to bring about the protection and improvement of local environmental quality through the eradication of fly-tipping and other illegal waste activities, and increasing the level of compliance with the law relating to waste management. If successful in reducing fly-tipping and other waste-crimes this is likely, over time, to reduce the costs of clearing-up fly-tipped materials, although tightening of other waste management regulations could well lead to increases in the incidence of fly-tipping. Eradication of fly-tipping and compliance with legislative requirements are likely to require high-profile campaigns promoting the need for householders and businesses to take full responsibility for the waste that they produce and publicising the enforcement work undertaken including “naming and shaming” where appropriate.
- 1.4 This protocol does NOT address arrangements for dealing with abandoned vehicles,² litter³ or shopping trolleys. Together, local authorities and the Agency should endeavour to ensure that the full range of fly-tipping on public and private land are effectively dealt with.
- 1.5 Illegal waste activities, such as fly-tipping, unauthorised transfer stations, landfill sites and other illegal waste activities are a criminal offence and are anti social. It is estimated that local authorities, the Agency and landowners spend more than £100 - £150 million every year tackling the problem.
- 1.6 Fly-tipping reduces the quality of life and enjoyment of the environment and it can begin a spiral of decline in local environmental quality. It may cause serious pollution of the environment, can be a risk to human health and may harm wildlife and farm animals.

² Arrangements for dealing with abandoned cars vary, and there are several good examples of partnership working between local authorities and the Police aimed at tackling this problem.

³ For the purpose of this protocol, litter is defined as less than one bin-bag of rubbish.

- 1.7 Penalties in Magistrates' courts include a fine of up to £20,000 and/or 6 months imprisonment. In higher courts the fine may be unlimited and a prison sentence may be imposed of up to 2 years – up to 5 years if Special⁴ waste is involved.
- 1.8 Fly-tipping and other illegal waste activities take many forms and can occur almost anywhere – in both urban and rural settings. Examples include: dumping of a bag of household refuse in a lay-by, dumping a washing machine or fridge, traders failing to comply with the Duty of Care, the “man with the van” offering cheap waste removal and dumping the waste in a quiet road or lay-by, running an unauthorised waste transfer station, dumping hundreds of tonnes of construction and demolition waste on a piece of unoccupied land, the abandonment of drums of hazardous wastes and organised gangs of criminals deliberately flouting the law as a means of making large amounts of money.
- 1.9 Both local authorities and the Agency have a range of powers and duties to assist them in tackling illegal waste activities and fly-tipping; a summary of these powers is set out in Appendix 2. A recent survey for Defra⁵ suggests that between 1998 and 2003, only around a quarter of local authorities have prosecuted offenders for fly-tipping offences. This protocol envisages local authorities that have a problem with fly-tipping develop a planned approach to tackling the problem using the full range of investigative, enforcement and clean-up powers available to them and in appropriate partnership with the Agency and others such as the Police and landowners.
- 1.10 The national database, *Flycapture*, requires local authorities and the Agency to collate and submit summary data including the number and type of fly-tipping incidents that they deal with and enforcement actions taken. This will provide a national picture of the scale of the problem and, through a series of standardised reports, will enable comparisons to be made between local authorities and between Agency areas based on comparable data. Local authorities, the Agency and Government will be able to use the information to inform policy and strategy decisions for tackling problems and to see how effective their approaches have been. *Flycapture* also includes the ability to enter registration details of vehicles involved in fly-tipping to determine whether they have been involved in similar crimes elsewhere in the country. This enables the appropriate local authority or Agency officer(s) to make contact with each other and plan how to tackle the offender.
- 1.11 Well-publicised enforcement action is an essential part of a programme of work to reduce and tackle fly-tipping. Experience has also shown that partnership working between local authorities and the Agency can be an effective means of tackling persistent illegal waste activities such as large-scale illegal dumping.
- 1.12 This protocol envisages that local authorities and the Agency will establish local working arrangements to plan and organise their responses to illegal waste activities and fly-tipping. Local partnership arrangements could cover training, enforcement, identifying and tackling problem areas and sharing of resources such as surveillance equipment. Reviews of the local working arrangements may be needed to take account of fluctuations in workload and the availability of resources in partner organisations. Part 2 and Appendix 3 of this protocol provide further examples of what might be included in a local agreement. Reference should also be made to Appendix 1.

⁴ Forthcoming changes in the law will introduce a definition of “hazardous waste” that is likely to include more wastes than are currently considered “Special Wastes”. The potential for a five-year prison sentence on indictment makes illegal dumping of Special Waste an arrestable offence.

⁵ Trends in Environmental Sentencing in England and Wales. ERM, 2003. (Available from www.defra.gov.uk)

- 1.13 Organisations other than local authorities and the Agency have legitimate concerns regarding fly-tipping. They may, for example, be unwitting victims of fly-tipping on their land. The National Fly-Tipping Prevention Group includes a range of representatives of land-owners, businesses and potential victims of fly-tipping as well as English and Welsh national and local governments, Scotland, EA Wales and the Agency. It seeks to identify good practice in preventing and tackling fly-tipping and to advise government as to the problems and potential solutions with regard to fly-tipped wastes.
- 1.14 The local arrangements envisaged in this protocol could include partnerships with local representatives of those organisations on the National Fly-Tipping Prevention Group such as Network Rail, The National Trust, the National Farmers Union, the Country Land and Business Association, ENCAMS, British Waterways as well as other key local stakeholders.

2 LOCAL AUTHORITIES

- 2.1 As locally based organisations responsible for keeping the streets and public open spaces clear of litter and refuse, with local intelligence and with local political accountability, waste collection authorities have a number of incentives to take the leading role in tackling most fly-tipping. They are also well placed to do so. Waste disposal authorities also face the increasing cost of disposing of fly-tipped waste.
- 2.2 In England, County Councils, may wish to play a co-ordinating role on fly-tipping prevention work, spreading good practice, providing training and equipment and offering storage pounds for seized vehicles, etc. The Capital Standard, which is supported by the Mayor of London, has started to take on this role with respect to training in London. County Councils provide waste disposal facilities (re-use and recycling centres), which need to be well advertised to encourage the legitimate disposal of bulky household waste. County Councils may also take planning enforcement action against illegal waste sites and provide reception facilities for waste for businesses.
- 2.3 Local authorities have a broad range of powers such as those relating to planning, public health and trading standards as well as those relating specifically to waste. Local authorities produce municipal waste strategies that will include the local authority's policy on tackling fly-tipping. As an increasingly strategic approach is taken to fly-tipping, this protocol envisages that local authorities will move towards carrying out more preventative work and the investigation and enforcement of smaller-scale incidents of fly-tipping. Local authorities will take the lead in investigating and prosecuting those responsible for fly-tipping incidents and on clearing-up fly-tipped wastes as set out in this document. See Appendix 1 for further examples of responses to incidents.
- 2.4 Local authorities believe that provision of an adequate network of waste management facilities is important in preventing illegal waste activities and fly-tipping. Through their waste-planning role, local authorities will seek to ensure that a network of waste management facilities is available as a means of encouraging compliance with the law and deterring illegal waste activities and fly-tipping. Land-use planning powers available to local authorities also provide some effective enforcement tools for responding to some types of illegal activity.
- 2.5 Local authorities will ensure that waste management facilities are subject to appropriate planning approval and will carry out enforcement action against activities without such approvals, in line with a range of policies and practices.
- 2.6 Local authorities will ensure adequate collection arrangements for household refuse are in place including well-publicised arrangements for collecting bulky items. In particular, they will endeavour to ensure adequate arrangements are in place for the collection of waste from flats above shops and from houses in multiple-occupancy. For example, so that the

waste is not placed on the street prior to refuse collection day in such a way as to be seen by the public as fly-tipping as this can attract other dumping and make the area look run down and dirty.

- 2.7 Where fly-tipping on private land has an adverse effect on the environment, local authorities are encouraged to take steps to ensure that the waste is removed, appropriate enforcement action taken and costs recharged wherever possible. Many local authorities already do this.
- 2.8 Local authorities are also encouraged to advise the landowner or their representative of suitable measures to deter further fly-tipping and may get involved in the investigation of repeated incidents of fly-tipping to prevent further occurrences – possibly through partnership working with landowners, occupiers of land and the Agency.
- 2.9 In summary, local authorities will normally investigate and take appropriate enforcement action against:
- fly-tipping of quantities of waste up to and including a single tipper load of waste deposited at one time (i.e. up to approximately 20m³ in a single deposit)
 - accumulations of waste from several small-scale fly-tipping incidents
 - householders abandoning or dumping waste
 - waste management operations that do not have the appropriate planning consent
 - waste producers not complying with their Duty of Care
 - waste producers who illegally dump or abandon their wastes
 - unregistered waste carriers and brokers (for example through organised vehicle stop-checks)
- 2.10 Local authorities will normally, remove, investigate and take appropriate enforcement action with regard to:
- illegal dumping and fly-tipping of waste on public land including a road or other public highway
 - illegally dumped or abandoned hazardous wastes other than those which the Agency deals with (see section 3 below)
 - fly-tipped waste (including animal carcasses or remains) on private land or in watercourses that is giving rise to an adverse effect on the amenity or that is impeding the flow of water such as to give rise to and actual or imminent threat of a significant flood risk from an Ordinary Watercourse⁶ (see below for Agency responsibilities)
- 2.11 Local authorities will also:
- aim to remove fly-tipped wastes as quickly as possible to maintain the cleanliness of the area, discourage further fly-tipping at the same location and prevent wastes causing pollution or harm to health
 - enter data on to the *Flycapture* database on a monthly (or other agreed) basis.

3. THE ENVIRONMENT AGENCY

- 3.1 The Agency is a national organisation with a regional and local presence. As such it is well placed when tackling illegal waste activities to act across geographical boundaries that may present more of a difficulty for local authorities. The Agency has the capability to respond to the most serious incidents reported to its hot-line (0800 80 70 60) "out of hours" and will report non-serious incidents to the appropriate LA the following working day. The Agency also has a Memorandum of Understanding (MoU) with the Maritime and Coastguard

⁶ As defined in the Land Drainage Act 1991

Agency (MCA) and will respond to waste washed ashore in intertidal areas in accordance with that MoU.

- 3.2 In general, the Agency will focus its resources on investigating and taking appropriate enforcement action against large-scale illegal dumping of waste, organised criminal involvement in waste crime and the dumping of certain special and hazardous wastes⁷. In doing so, the Agency will seek to recover any costs associated with tackling illegal waste activities and fly-tipping, including any costs associated with "clean-up". Ideally, this will be from the polluter but may also include the occupier or those responsible for the affected land.
- 3.3 The Agency regulates much of the waste management industry and major waste producing industries. It maintains a register of waste management activities that are "exempt" from requiring a licence or permit and it issues appropriate licenses, permits or authorisations to a range of waste managers including carriers and brokers of waste and those whose business it is to recycle or dispose of waste. The Agency will monitor and inspect waste management activities, including carrying out enforcement action against both breaches of authorisations and illegal activities in line with its published Enforcement and Prosecution Policy and its published Customer Charter.
- 3.4 The Agency believes in firm and fair regulation supported by the following principles:
- **Proportionality** on the application of the law and in securing compliance
 - **Consistency** of approach
 - **Transparency** about how the Agency operates and what those regulated may expect from the Agency
 - **Targeting** of enforcement action
- Further details on how these are applied are contained in the Agency's Enforcement and Prosecution Policy available at www.environment-agency.gov.uk
- 3.5 The Agency also believes that provision of an adequate network of waste management facilities is important in helping to prevent illegal waste activities and fly-tipping. The Agency will provide data and information to local authorities and others to assist them in identifying the local requirements for waste management facilities in accordance with the Agency-LGA protocol on Waste Strategy and Waste Management Planning. The Agency will provide advice and guidance on the relevant legislation and requirements imposed by any authorisation to those operating or seeking to operate waste management facilities – but ultimately it is for the operator to fulfil their legal obligations by obtaining and relying on their own independent advice.
- 3.6 The Agency will consider applications for registration as a waste carrier or a waste broker and will maintain a register of successful applicants, access to which is available to the public, including businesses and local authorities through local Agency offices. In line with its published Enforcement and Prosecution Policy, the Agency will take appropriate enforcement action against unregistered waste carriers and brokers and those who are registered yet break the law.
- 3.7 The Agency will normally investigate and take appropriate enforcement action against:
- illegal waste activities such as illegal transfer stations and un-permitted landfill sites
 - large-scale fly-tipping i.e. tipping of more than a lorry load (more than approximately 20m³)

⁷ Unless otherwise agreed locally (e.g. in Wales where an addendum to the protocol has been agreed), the Agency will normally tackle incidents involving special or hazardous waste in containers with a capacity of 75 litres or greater and any special or hazardous waste dumped in a way that is likely to give rise to an actual or imminent threat to human health or the environment.

- illegal dumping of hazardous waste in drums or other containers with a capacity of 75 litres or greater
- unregistered waste carriers and brokers including those identified through national and local stop exercises
- registered waste carriers and brokers that commit a relevant offence (e.g. those specified in the Control of Pollution (Amendment) Act 1989 and in the Waste Management Licensing Regulations 1994 – as amended)

3.8 The Agency will also normally investigate, arrange for the removal of and take appropriate enforcement action with regard to:

- waste (including animal carcasses or remains) dumped in Controlled Waters⁸ that is giving rise to an actual or an imminent threat of water pollution
- waste (including animal carcasses or remains) that is impeding the flow of water such as to give rise to an actual or imminent threat of a significant flood risk in a Main River⁸
- any waste described in 3.7 above that is dumped in a way that is giving rise to an imminent threat to human health or of serious harm to the environment

Where the problems identified are not “actual or imminent” the Agency may intervene where to do so will have significant benefits such as preventing future problems arising.

3.9 The Agency will continue to make use of suitable opportunities to promote the Duty of Care with producers of waste and will enforce the law in line with its published Enforcement and Prosecution Policy.

3.10 The Agency will, subject to continuation of funding from Defra and the Welsh Assembly Government, maintain and make agreed modifications to *Flycapture*, the national fly-tipping database, so that it remains a viable, operational database.

3.11 The Agency will continue to seek ways of providing guidance, training and passing on knowledge and expertise to local authorities or other organisations affected by or with responsibility for tackling fly-tipping and other forms of illegal waste activity.

3.12 The Agency believes that the work of the National Fly-Tipping Prevention Group (NFTPG) is important for assisting landowners and their representatives identify good practice in preventing and tackling fly-tipping and also to advise government as to the problems and potential solutions with regard to fly-tipped wastes. The Agency will continue to support and promote the work of the NFTPG.

4. OTHERS

4.1 As described above, in developing local working arrangements between local authorities and the Agency it may well prove beneficial to include other key stakeholders in local fly-tipping prevention partnerships. For example, in Internal Drainage Districts where the Internal Drainage Board (IDB) has responsibilities over ordinary watercourses it may be beneficial to enter into agreement with the IDB to ensure that waste is removed from these watercourses if there is an actual or imminent risk of significant flooding.

4.2 Working with the Police is especially important in tackling the problem. Local authorities and the Agency are encouraged to involve the Police in local partnerships for tackling fly-tipping (including working together through local Crime and Disorder Reduction Partnerships - CRDPs). The Agency currently has a Memorandum of Understanding (MoU) with the Association of Chief Police Officers (ACPO).

⁸ The definition of “controlled waters” can be found in the Water Resources Act 1991, with additional “Main River” controls detailed in the Land Drainage Act 1991.

PART 2 – The local agreement (The local agreement should suit local circumstances).

5. WORKING ARRANGEMENTS

- 5.1 There is scope for local flexibility as to how individual local authorities and the Agency work together to tackle illegal waste activities and fly-tipping. It is envisaged that local authorities and the Agency will enter in to local agreements for tackling hot-spots of illegal waste activity and fly-tipping.

- 5.2 Local agreements should bear in mind the general principals set out here.

The Agency will focus its resources on investigating and taking appropriate enforcement action against large-scale illegal dumping of waste, organised criminal involvement in waste crime and the dumping of certain hazardous wastes as set out in section 3 of part 1 of this protocol.

Local waste collection authorities will take the lead on investigating and prosecuting all other fly-tipping cases and on cleaning-up fly-tipped wastes as set out in section 2 of part 1 of this protocol.

- 5.3 Some local authorities will already be undertaking the full range of activities set out in this protocol, other local authorities may need to move towards carrying out more preventative work and the investigation and enforcement of smaller-scale incidents of fly-tipping. This local agreement should be used as the means to describe how and when this will be done with the expectation that the arrangements set out in this protocol and in the appendices will be operational by April 2005.

Who does what, when?

- 5.4 Appendix 1 gives specific examples of “who does what”. Local agreements should reflect this. Here are some of the areas where further details might need to be covered in a local agreement.
- Investigation and enforcement action where one or more van loads up to a single tipper load of waste are found fly-tipped
 - Investigation and enforcement action where there is fly-tipping of multiple small loads of waste which in aggregate exceed the volume of a single tipper load (i.e. greater than 20m³)
 - Investigation and enforcement action where there are sequences of smaller-scale illegal dumping or fly-tipping where evidence suggests repeat offences by an individual or group of individuals that might indicate an “organised” crime element
 - Surveillance of local fly-tipping “hot-spots”, information and technology sharing, prioritisation of “hot-spots” for investigation, enforcement and prevention work
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- Passing information to each other on fly-tipping “hot spots”, suspects (and whether they are registered waste carriers or holders of waste licences/permits), vehicles (particularly where seizures are planned), prosecutions planned and achieved, etc
 - Use of the *Flycapture* vehicle hot-list database record of suspect vehicles

- Keeping each other informed about vehicle “stop” exercises designed to catch unregistered waste carriers “in transit”
- Getting quick access to the register of waste carriers for vehicle stop exercises
- Police liaison/partnerships
- Storage arrangements for seized vehicles
- Advice and assistance to landowners including riparian landowners, covering
 - removal of illegal dumped or fly-tipped wastes
 - techniques to prevent or deter illegal dumping or fly-tipping
 - measures that can be taken to secure conviction of those guilty of illegal dumping or fly-tipping
- Involving local victims of fly-tipping in a more formal way to gather/share information/publicise successes etc
- Information sharing and action in relation to occupiers of land who will not remove illegally dumped waste when required to do so, for example by a notice served under section 59 EPA
- Cleaning up fly-tipping in rivers/water courses, enforcement action and practical arrangements for utilising Agency skills and equipment in removing waste (including animal carcasses and remains) from water courses on behalf of the LA where the Agency would not otherwise intervene⁹ (for example where the Agency may not have powers to act) and where funding arrangements may benefit from pre-planning
- Promotion of compliance with the Duty of Care by traders
- Clean-up of illegally dumped hazardous waste including any contractual arrangements with specialist waste contractors
- Publicity, campaigning, “naming and shaming”, press releases, leaflets, etc.
- Publicity around facilities for waste generated by jobbing builders, bulky waste collections and other targeted efforts to tackle waste-crimes
- Working arrangement with Planning Authorities dealing with waste-issues on tackling waste-crimes
- Training and “sharing” of officers and best-practice between LAs and Agency to tackle fly-tipping problems

These local agreements will be made between the appropriate local authority (probably the Waste Collection Authority) and the Agency. For LAs that are in more than one Agency area, local agreements should ideally be agreed with all affected Agency areas. Similarly for Agency areas covering more than one LA – a single local agreement is ideal. The sign-off of local agreements is a matter for each authority and the Agency area(s) concerned. However, sign-off

⁹ To facilitate a rapid response to dumping of waste in controlled waters, LAs and Agency areas may wish to ensure pre-emptive shared understanding of local watercourse designations, riparian ownership and navigational powers and duties. Such arrangements form part of the *Working Better Together* approach and should also take account of any local arrangements under protocol 2 – *Management of Flood Risk*.

should be by someone who is in a position to represent that authority/Agency area and who can ensure that the agreement is adhered to.

6. REVIEW ARRANGEMENT

- 6.1 Parts 1 and 2 of the protocol may be amended by the LGA, WLGA and the Agency to take account of legislative changes, improved technology, the review and implementation of best practice and organisational changes. It is envisaged that Part 2 will be reviewed after a period of not less than 12 months operation and in any case within 36 months of implementation.

Signed by:

Baroness Young

Sir John Harman

Councillor David Sparks

Councillor Richard Harry Hughes

On behalf of:

Chief Executive, Environment Agency

Chairman, Environment Agency

Local Government Association

Welsh Local Government Association

The following examples illustrate the sharing of responsibility between local authorities and Environment Agency for tackling a variety of examples of incidents of fly-tipping and illegal dumping of waste. Scope for flexibility in local agreements is also indicated. The Agency and LAs will seek to recover any costs associated with enforcement activities from the polluter, occupier of land or other person or organisation that is deemed responsible for meeting such costs. A definition of "organised crime" is presented at the end of this Appendix to assist in interpreting the responses indicated.

Example incident	Local authority	Environment Agency	Any flexibility in "local agreement"
1 A bin bag or several bin bags of household or commercial waste on the street, in a public place in on public land	<ul style="list-style-type: none"> Investigates and where there is evidence take enforcement action: fixed penalty fine (unless repeat offence, when prosecution may be usual) Removes and includes in summary data monthly return on <i>Flycapture</i>¹ 	<ul style="list-style-type: none"> If reported to Agency – pass information to LA 	N/A
2 A pile of waste or several piles of waste about the size of a large car boot (up to 0.5 cubic metres) on the street, in a public place or on public land	<ul style="list-style-type: none"> Investigates and where there is evidence may serve fixed penalty fine or prosecute depending upon local circumstances/policies Removes Includes in summary data monthly return on <i>Flycapture</i> 	<ul style="list-style-type: none"> If reported to Agency – pass information to LA 	N/A
3 A pile or several piles of waste from a van or up to 7.5 tonne tipper truck (between 0.5 cubic metres and 10 cubic metres) dumped on the street, in a public place or on public land	<ul style="list-style-type: none"> Investigates and, where there is evidence, prosecutes Where frequently repeated offence or "organised" crime suspected advise Agency and agree action locally Removes Includes in summary data monthly return on <i>Flycapture</i> (unless Agency "takes the lead") 	<ul style="list-style-type: none"> If reported to Agency – pass information to LA Where agreed locally, the Agency may investigate and prosecute where frequent offences occurring Include incident on Agency database if Agency take the lead in investigation and prosecution 	<ul style="list-style-type: none"> Which party will investigate the incident and prosecute until April 2005. Arrangements for keeping each party advised of developments

By April 2005 it is anticipated that LAs will have built sufficient capacity to address these without Agency support.

¹ The Environment Agency is also required to enter summary data on incidents that it's staff respond to into the *Flycapture* database. Since this will be done electronically from the Agency's existing incidents database it is not referred to specifically in this Annex.

Example incident	Local authority	Environment Agency	Any flexibility in "local agreement"
<p>4</p> <p>A pile of waste from a single large tipper truck (approximately 20m³/18tonnes size) dumped on the street, in a public place or on public land</p>	<ul style="list-style-type: none"> Investigates and, where there is evidence, prosecutes Advises Agency of incident and shares details Where agreed locally, frequently repeated offences or where "organised" crime suspected pass to Agency for investigation LA removes Includes in summary data monthly return on <i>Flycapture</i> (unless Agency "takes the lead") 	<ul style="list-style-type: none"> If reported to Agency – pass information to LA Where agreed locally, investigate and prosecute only when frequently repeated offence or "organised" crime suspected Include incident on Agency database if Agency take the lead in investigation and prosecution 	<ul style="list-style-type: none"> Which party investigates the incident frequent offences or suspected "organised" crime Arrangements for keeping each party advised of developments
<p>5</p> <p>A pile of waste from several large tipper trucks (i.e. each more than 20m³ size – approx. 18tonnes) dumped on the street, in a public place or on public land</p>	<ul style="list-style-type: none"> If LA "find" fly-tip – may carry out initial investigation and enforcement (may pass to Agency) Where frequently repeated offence or "organised" crime suspected pass to Agency for investigation LA removes LA includes in summary data monthly return on <i>Flycapture</i> for removal and where enforcement action taken by LA details entered by LA 	<ul style="list-style-type: none"> If Agency "find" fly-tip – will usually carry out investigation and take enforcement action except where LA wishes to take on this work (in which case, EA will endeavour to respond to LA requests for support) Include incident on Agency database if Agency take the lead in investigation and prosecution 	<ul style="list-style-type: none"> Which party investigates the incident especially in relation to frequent offences or where "organised" crime suspected and in what (local) circumstances Scope for Agency provide support to LAs carrying out investigation and taking enforcement action Arrangements for keeping each party advised of developments

Example incident	Local authority	Environment Agency	Any flexibility in “local agreement”
<p>6 Fly-tipped waste in relation to a river or water courses or inter-tidal foreshore</p>	<ul style="list-style-type: none"> Where the waste presents only a local amenity impact, LA may ensure that the waste is removed (either by polluter, owner/occupier or by LA), investigate and take enforcement action Where the waste presents an actual or imminent significant flood-risk in relation to Ordinary Watercourse, LA will ensure that the waste is removed (either by polluter, owner/occupier or by LA), investigate and take appropriate enforcement action Where the waste presents an actual or imminent significant flood risk in relation to a Main River – LA pass to Agency Where the waste presents an actual or imminent threat of water pollution other than in a Controlled Water (e.g. a pond that doesn't discharge to a watercourse) – LA will ensure that the waste is removed (either by polluter, owner/occupier or by LA), investigate and take appropriate enforcement action Where the waste presents an actual or imminent threat of water pollution in a Controlled Water – LA pass to Agency Where frequently repeated offence or “organised” crime suspected, pass to Agency for investigation LA includes in summary data monthly return on <i>Flycapture</i> for removal and where enforcement action taken by LA details entered by LA 	<ul style="list-style-type: none"> Where the waste presents an actual or immediate threat of significant flooding in relation to a Main River or Critical Ordinary Watercourse the Agency will ensure the waste is removed (either by polluter, owner/occupier or by Agency) and may investigate and take appropriate enforcement action Where the waste presents an actual or imminent threat of water pollution in relation to Controlled Waters the Agency will ensure the waste is removed (either by polluter, owner/occupier or by Agency) and may investigate and take appropriate enforcement action Waste dumped in waters that are NOT the responsibility of the Agency – pass to LA or Internal Drainage Board Investigate and take appropriate enforcement action if LA advises frequently repeated offences or “organised” crime suspected Include incident on Agency database if Agency take the lead in investigation and prosecution 	<ul style="list-style-type: none"> Local agreement may identify watercourses at risk and illustrate action to be taken by each party Local agreements may cover arrangements for removal of waste from watercourses including utilisation of Agency resources and expertise Arrangements for keeping each party advised of developments

Example incident	Local authority	Environment Agency	Any flexibility in "local agreement"
<p>7 Animal carcass in water course</p>	<ul style="list-style-type: none"> Where the carcass(es) presents only a local amenity impact, LA may ensure removal (either by polluter, owner/occupier or by LA), investigate and take enforcement action (LA Trading Standards are enforcing authorities for the Animal By-Products Regulations) Where the carcass(es) presents an actual or imminent significant flood-risk in Ordinary Watercourse, LA ensure removal (either by polluter, owner/occupier or by LA), investigate and take appropriate enforcement action Where the carcass(es) presents an actual or imminent significant flood risk in a Main River – LA pass to Agency Where the carcass(es) presents an actual or imminent threat of water pollution other than in a Controlled Water (e.g. a pond that doesn't discharge to a watercourse) – LA ensure that the removal (either by polluter, owner/occupier or by LA), investigate and take appropriate enforcement action Where the carcass(es) presents an actual or imminent threat of water pollution in a Controlled Water – LA pass to Agency Where frequently repeated offence or "organised" crime suspected, pass to Agency for investigation LA includes in summary data monthly return on <i>Flycapture</i> for removal and where enforcement action taken by LA details entered by LA 	<ul style="list-style-type: none"> Where the carcass(es) presents an actual or immediate significant threat of flooding in relation to a Main River or Critical Ordinary Watercourse the Agency will ensure removal (either by polluter, owner/occupier or by Agency) and may investigate and take appropriate enforcement action Where the carcass(es) present an actual or imminent threat of water pollution in Controlled Waters the Agency will ensure removal (either by polluter, owner/occupier or by Agency) and may investigate and take appropriate enforcement action Investigate and take appropriate enforcement action if LA advises frequently repeated offences or "organised" crime suspected Include incident on Agency database if Agency take the lead in investigation and prosecution 	<ul style="list-style-type: none"> Local agreement will identify watercourses at risk and illustrate action to be taken by each party There may be local agreement re contract for removal Arrangements for keeping each party advised of developments

Example incident	Local authority	Environment Agency	Any flexibility in "local agreement"
<p>8</p> <p>Drums/containers of potentially hazardous waste abandoned in a public place e.g. lay-by</p>	<p>If reported to LA - assess and:</p> <ul style="list-style-type: none"> • If less than (75 litres [16.5 gallons]) arrange safe disposal and take appropriate enforcement action • If more than (75 litres [16.5 gallons]) – pass information to Agency for investigation and enforcement action and agree arrangements for removal • Inform Agency of action taken • Include in summary data in monthly return on <i>Flycapture</i> where LA deals with incident 	<p>If reported to Agency - assess and:</p> <ul style="list-style-type: none"> • If less than (75 litres [16.5 gallons]) pass to LA for investigation, to arrange safe disposal and to take appropriate enforcement action • If more than (75 litres [16.5 gallons]) – Agency will investigate and take appropriate enforcement action – agree removal arrangements with LA <p>Where actual or imminent threat to human health or environment and there is no adequate response from other responsible body - investigate, arrange removal and take appropriate enforcement action</p> <ul style="list-style-type: none"> • Inform LA of action taken • Include incident on Agency database where Agency takes the lead in investigation and prosecution 	<ul style="list-style-type: none"> • Arrangements for keeping each party advised of developments • Detailed local arrangements for investigation, enforcement and removal • There may be local agreement re contract for removal
<p>9</p> <p>Illegal waste landfill, transfer station or waste treatment site</p>	<ul style="list-style-type: none"> • If reported to LA – pass information to Agency and inform planning department/ authority • Agree best approach to enforcement with all parties • LA includes in summary data monthly return on <i>Flycapture</i> for removal and enforcement action where incident passed back to LA 	<ul style="list-style-type: none"> • When reported to Agency - carry out appropriate investigation • Inform LA • Agree best approach to enforcement with LA including planning authority • Include incident on Agency database if Agency take the lead in investigation and prosecution 	<ul style="list-style-type: none"> • Identify "at risk" sites and set out planning enforcement approach • Arrangements for keeping each party advised of developments

Example incident	Local authority	Environment Agency	Any flexibility in "local agreement"
10 Clinical Waste/bonded-Asbestos and less than 5m ³ fibrous asbestos	<ul style="list-style-type: none"> If reported to LA arrange safe disposal, investigate and take appropriate enforcement action – pass information to Agency for action ONLY where frequently repeated offence or organised crime suspected. LA includes in summary data monthly return on <i>Flycapture</i> for removal and enforcement action where incident passed back to LA Where waste is asbestos report to HSE 	<ul style="list-style-type: none"> Pass information to LA for investigation, enforcement and clean-up ONLY investigate and take enforcement action where frequently repeated offence or organised crime suspected May arrange removal where actual or imminent threat to human health or environment where there is no adequate response from other responsible body Inform LA of action taken Where waste is asbestos report to HSE Include incident on Agency database where Agency takes the lead on investigation and enforcement 	<ul style="list-style-type: none"> There may be local agreement re arrangements for removal Arrangements for keeping each party advised of developments
11 Greater than 5m ³ fibrous asbestos	<ul style="list-style-type: none"> If reported to LA, pass information to Agency 	<ul style="list-style-type: none"> Investigate and enforce Agency will arrange removal where there is actual or imminent threat to human health or the environment and where there is no adequate response from other responsible body Inform LA of action taken and inform HSE Include incident on Agency database where Agency takes the lead on investigation and enforcement 	<ul style="list-style-type: none"> Arrangements for removal

Example incident	Local authority	Environment Agency	Any flexibility in “local agreement”
12 Small scale fly-tipping on <u>private land</u>	<ul style="list-style-type: none"> May investigate and enforce Enter into <i>Flycapture</i> if LA lead in response May remove if threat to environment, health or amenity 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> LA and Agency may agree local strategy for tackling fly-tipping and illegal dumping of waste on private land – this will be subject to resource availability In serious cases of repeated fly-tipping/dumping – ideally advise landowners and occupiers and agree plan of action Arrangements for keeping each party advised of developments
13 large-scale illegal dumping on <u>private land</u> : <ul style="list-style-type: none"> More than a 20m³ tipper load of waste Where organised criminals involved Hazardous waste in drums/containers in excess of 75 litres (16.5 gallons) 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> May investigate and enforce Enter on to Agency database if Agency lead in response May remove if threat to environment or health 	<ul style="list-style-type: none"> LA and Agency may agree local strategy for tackling fly-tipping and illegal dumping of waste on private land – this will be subject to resource availability In serious cases of repeated fly-tipping/dumping – ideally advise landowners and occupiers and agree plan of action Arrangements for keeping each party advised of developments

A guide to the Definition of Organised Crime within context of the Agency-LGA fly-tipping protocol

This note provides guidance on the definition of “organised crime” within the context of the fly-tipping protocol to assist implementation of the protocol by LAs and the Agency.

The National Criminal Intelligence Service (NCIS) suggests a definition of “serious and organised crime” - e.g, football hooliganism may be organised but is not serious organised crime. The fly-tipping protocol has no such distinction and when the term “organised crime” is used, this should be taken to mean “serious and organised”.

In this context, the following characteristics are indicators of organised crime. This is not an exhaustive list nor must all of these characteristics be present in every case to for the crime to be considered as “organised”. However, the more of these characteristics exhibited by a particular case, the stronger the indications are that the crime is organised.

1. Indication of prior planning of the incident or incidents under investigation;
2. Working with others to carry out the offence(s);
3. The perpetrator is involved in crime(s) where they are making or have the potential to make substantial profit or gain;
4. Quasi legitimate structuring of the illegal operations/activities;
5. May be reliant on or involve other professionals such as solicitors, accountants, manager, etc. in the running of the illegal activities/operations;
6. Diverse operations involving more than one activity, perhaps more than one allegedly being illegal and operations not restricted to waste-related activities;
7. Use corruption and coercion (either proven or reliably alleged) to carry out operations/activities;
8. Apparently planned/deliberate subversion of individuals, communities, businesses or institutions to facilitate carrying out operations/activities;
9. Other associated criminal activity which could be large-scale, serious, small-scale, minor, etc;
10. Violence or threats of violence against Agency or local authority officers, the public, other individuals, businesses, Police, etc
11. Track record / previous history of similar activities or offences.

For the purposes of the fly-tipping protocol, waste-crime is **not** considered to be organised if the criminal works alone.

**Appendix 2: SUMMARY OF DUTIES AND POWERS IN RESPECT OF
TACKLING ILLEGAL WASTE MANAGEMENT AND FLY-TIPPING
FOR THE AGENCY AND LOCAL AUTHORITIES**

Introduction

The following details the powers and duties of the Environment Agency (EA) and Local Authorities (LA) in respect of flytipping. Although other bodies are not mentioned here it should be noted that offences under Section 33 and 34(1) of the Environmental Protection Act (EPA) 1990 and Section 85 of the Water Resources Act (WRA) 1991 are not restricted to being enforced by an enforcing body and actions can be brought by any person including landowners.

The sections are ordered as

A The Duties of Both Local Authorities and the Environment Agency in Respect of Flytipping

B The Duties of Local Authorities in Respect of Flytipping

C The Duties of the Environment Agency in Respect of Flytipping

D The Powers of Both Local Authorities and the Environment Agency in Respect of Flytipping.

E Additional Powers of Local Authorities in Respect of Flytipping

F Additional Powers of the Environment Agency in Respect of Flytipping.

These Powers and Duties are a summary of available legislation and are correct as at the 1st September 2004. For more details and amendments made to legislation after this date the issued legislation should be consulted.

**A. THE DUTIES OF BOTH LOCAL AUTHORITIES AND THE ENVIRONMENT
AGENCY IN RESPECT OF FLY-TIPPING**

1. Environmental Protection Act 1990 Part II

1.1 Section 59

In exercising powers under Section 59 the enforcing authority (Agency or LA) should exercise them in accordance with the priority set out in any direction from the Secretary of State (SoS). However nothing affects any power of an authority under section 59 see Section D1.3 for powers.

1.2 Police And Criminal Evidence Act (PACE)

Undertaking any investigation should be in accordance with the PACE Act.

1.3 Anti Social Behaviour Act (ASBA)

Both parties must register with flycapture and enter details to the database

1.4 Regulatory Investigation Powers Act (RIPA)

Surveillance and investigations must be carried out in accordance with RIPA Part I and II.

B. THE DUTIES OF LOCAL AUTHORITIES IN RESPECT OF FLYTIPPING

1. Environmental Protection Act 1990 Part IV

Clearance of litter and refuse

- 1.1 Under Part IV of the Environmental Protection Act 1990 "principal litter authorities" must ensure, so far as is practicable, clearance of litter and refuse from "relevant land" (s89(1)(c)). The following are "principal litter authorities" - a county council; a county borough council; a district council; a London borough council; the Common Council of the City of London and the Council of the Isles of Scilly (s86(2)). "Relevant land" is land that is open to the air (notwithstanding that it is covered if it is open to the air on at least one side), but not a highway (see below for highways), which is under direct control of a local authority to which the public are entitled or permitted to have access with or without payment (s86(4)).
- 1.2 Also under Part IV, local authorities must ensure that any "relevant highway" for which it is responsible, so far as is practicable, kept clear of litter and refuse (s89(1)(a)). A "relevant highway" is one that is maintainable at public expense, but not a trunk road which is a special road. A local authority is responsible for so much of the highway as falls within its area (s86(9)).
- 1.3 There is no statutory definition of "litter and refuse". However, the code referred to below states that the definition is wide and includes a brief section on fly-tipping (see below). There is a case, an appeal by way of case stated - Westminster City Council -v- John Riding QBD 17 July 1995, which deals with whether rubbish consisting of 10 black plastic refuse sacks, empty beer and crisp cartons and two empty bread bags could be litter within the meaning of s87(1). It was held that it could be litter as there was nothing to suggest that it could not be. The fact that the litter in question was controlled waste (commercial waste) did not prevent such waste being litter for the purposes of s87.
- 1.4 There is a code of practice for the purpose of providing practical guidance on the discharge of these two duties, amongst other things - Code of Practice on Litter and Refuse - EPA 90 (DETR 1999). At paragraph 2.6 which is not part of the code, but is labelled "Good Practice Advice", there is a short section on fly-tipping, which recommends steps to prevent recurrence of fly-tipping incidents to include such things as higher fences, prosecution and liaison with highway authorities.
- 1.5 Paragraphs 20 to 23 of the Code of Practice provide guidance with respect to "so far as is practicable" in the context of s89(1). The code provides cleanliness standards based on land use and time which should be complied with to discharge the duty. In terms of practicality, it states that some "circumstances may render it impracticable for the body under the duty to discharge it". Examples are given, such as severe weather conditions; special events preventing access and avoiding damage to sensitive habitats.

- 1.6 The duties that apply to principal litter authorities in relation to relevant land also apply to each local highway in respect of relevant highways (highways maintained at public expense apart from trunk roads) and governing bodies of schools as respects its relevant land open to the air and under the governing bodies' direct control.

Litter Abatement Orders – s91 EPA 1990

- 1.7 These are made by Magistrates' Courts on the application by any person aggrieved by the defacement by litter or refuse of amongst other things; any relevant highway or relevant land. A local authority can, therefore, be the subject of such an order, if it fails to comply with its duties under s89(1). If the local authority fails, without reasonable excuse, to clear the litter or refuse away within the time specified in the order, it shall be guilty of an offence. It is a defence to prove that it has complied with its duty under s89(1) with respect to the land or highway in question. The code of practice is admissible in evidence and where relevant, it must be taken into account.

2. The Litter Act 1983

- 2.1 Where a litter authority provides and maintains in streets or public places, bins for refuse or litter it must make arrangements for them to be regularly emptied and cleaned, sufficiently frequently to ensure no bin or its contents shall become a nuisance or give reasonable ground for complaint (section 5(2) and (3)).

C. THE DUTIES OF THE ENVIRONMENT AGENCY IN RESPECT OF FLY-TIPPING

- 1 The Environment Agency has no specific direct statutory duty requiring it to take any action in respect of fly-tipping.
- 1.1 It is the principal aim of the Agency (taking into account legislation and any likely costs) to protect or enhance the environment whilst discharging its functions, so as to make a contribution towards attaining the objective of sustainable development. The Agency has been given guidance by the Secretary of State as to the Agency's objectives under this provision. The guidance includes the need to take a holistic approach, taking a long term view and working in partnership with regulated organisations to further improve management techniques. In considering costs the guidance suggests the Agency should take a broad view of all costs whether quantifiable or not. [Section 4 Environment Act 1995]
- 1.2 The Agency has a duty (to the extent it considers desirable) generally to promote the conservation and enhancement of the natural beauty, and amenity of inland and coastal waters and associated land, the conservation of flora and fauna dependant on an aquatic environment and the use of such waters and land for recreational purposes. [Section 6 of the Environment Act 1995]
- 1.3 In deciding whether and, if so, how to exercise its powers, the Agency must generally take into account the likely costs and benefits when exercising (or not exercising) its powers, or in deciding the manner of exercising its powers. "Costs"

includes costs to the environment as well as financial costs. [Sections 39 and 56 of the Environment Act 1995]

- 1.4 The Agency has a duty to maintain a public register of waste carriers [The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991]
- 1.5 The Agency is responsible for the grant of authorisations for waste disposal and recovery operations. It is required to maintain a register of establishments and undertakings exempt from waste licensing. Some of these exempt activities need not be registered. Some need to be registered with local authorities. The Agency has a duty to carry out appropriate periodic inspections of authorised and registered waste management facilities and sites.
- 1.6 Where asked, the Agency has a duty to provide environmental information under the Environmental Information Regulations 1992. Where required to do so by notice, the Agency must supply to the Secretary of State information concerning where it has taken action under sections 33 and 59 of the Environmental Protection Act 1990. [Section 71 Environmental Protection Act 1990]

D. THE POWERS OF BOTH LOCAL AUTHORITIES AND THE ENVIRONMENT AGENCY IN RESPECT OF FLY-TIPPING.

1. Part II of the EPA 90

1.1 Illegal deposit, disposal treating or keeping of waste, Section 33

Nothing in Section 33(1) defines the authorised enforcing agency so anyone can prosecute under section 33. This section prohibits the depositing, treating, keeping or disposing of controlled waste in or on land except and in accordance with a waste management licence. There is also provision under 33(5) that allows for charges to be brought against the person who controls, or is in a position to control, the use of a vehicle, if that vehicle has been involved in fly-tipping. There are statutory defences available to persons charged with offences under this section.

1.2 Duty of Care, Section 34

Section 34 offences, which provide for a range of offences relating to a person's failure to comply with their duty of care as respects controlled waste can be prosecuted by both parties.

Both parties can serve a Section 34(5) notice requiring the furnishing of transfer notes. (This power was extended to LAs by virtue of the Environmental Protection (Duty of Care) (England) (Amendment) regulations 2003 and the Environmental Protection (Duty of Care) (Wales) (Amendment) Regulations 2003).

1.3 Power to remove waste and remediate and serve notice to require removal of waste and remediation, Section 59

Both parties may serve and enforce a notice under Section 59 of the Environmental Protection Act 1990 requiring the occupier of land to remove material fly-tipped in contravention of s33(1) and/or reduce the consequences of the deposit of that fly-

tipped material, subject to a right of appeal and/or the occupier establishing a statutory defence.

Under section 59 both parties may remove fly-tipped material and can seek to recover the necessary costs of doing so from any person who deposited, knowingly caused or knowingly permitted, the deposit of the controlled waste.

1.4 Notice to require information, Section 71

Both the EA and Local Authorities can use S71 notices for the purpose of the Control of Pollution Amendment Act, to require anyone they consider may be able to provide them with the name and address of the person using the vehicle at the time when the offence was committed¹

Local Authorities cannot use Section 71 notices for any other purpose whereas the Agency can use Section 71 notices to obtain any information it reasonable considers it requires.

2 Environment Act 1995

2.1 Powers of Entry Section 108 EA

Both parties have powers of entry for their pollution control functions, for the Local Authority this is restricted to Section 59 of the EPA 90 only.

2.2 Powers to seize or render harmless any article or substance that is a cause of imminent danger of serious pollution of the environment or serious harm to human health, Section 109 EA

Both parties have powers under S109 for their pollution control functions, for the Local Authority this is restricted to Section 59 of the EPA 90 only.

3. Control of Pollution (Amendment) Act 1989

3.1 Seizure of vehicles Section 6 CoP(A)A

Under Section 6 the EA and Local Authorities can seize, under the authority of a magistrates' warrant, and, if no person establishes a valid claim to the vehicle, dispose of a vehicle involved in a fly-tipping incident.

3.2 Proof of registration of waste carriers Section 5 CoP(A)A

Both parties can require the furnishing of proof of registration of waste carriers. LAs were empowered to do this under Section 5 of the Control of Pollution (Amendment) Act as amended by Section 55(3) of the Anti Social Behaviour Act.

¹ This was brought in by (Regulation 20(3) of the Controlled Waste (Registration of Carriers and seizure of Vehicles Regulations 1991) and was extended to LAS by virtue of S7 of the Control of Pollution (Amendment) Act which resulted in a waste disposal authority being a regulatory authority. Furthermore the Anti Social Behaviour Act 2003 in Section 55 (3) made further amendments to include WCAs within the definition of regulatory authority for the purpose of Sections 5-7 of the CoP(A)A).

4. Water Resources Act 1991

4.1 Solid waste in controlled water, S85

Both parties can use Section 85 of the Water Resources Act to take action for solid wastes deposited in controlled waters.

5 Powers to obtain injunctions

- 5.1 In some cases both the Agency and the LAs may be able to obtain an injunction against a person to prevent further offending or requiring remedial steps to be taken. Cases where that power is available are likely to be restricted to the most serious cases

6 Powers to require forfeiture of items Powers of Criminal Courts (Sentencing) Act 2000 Section 143, 146.

- 6.1 As the name suggests this is a power that can be used by either party but belongs to the Courts. Either party can apply for items used in the commission of an offence to be forfeit. In most cases the item should be in the custody of the police to prevent disposal by the defendant before sentencing. It would not be appropriate to remove their driving licence or other property unlikely to be disposed of prior to sentencing.

E. THE ADDITIONAL POWERS OF LOCAL AUTHORITIES IN RESPECT OF FLY-TIPPING

1. Part IV of the EPA 90

The offence of leaving litter, S87 EPA

- 1.1 Under section 87 of Part IV of the Environmental Protection Act 1990 it is an offence to throw down, drop or otherwise deposit litter in a public open place and leave so as to cause defacement by litter. A local authority can take proceedings for breach of this section. It also has powers under section 88 of the Environmental Protection Act 1990 to issue fixed penalty notices.

Designation of land as a Litter Control Area, S90 EPA

- 1.2 Under section 90 of Part IV of the Environment Act 1990, any principal litter authority (see 1.1 above) can, by order, designate any land in their area as, or as part of, a litter control area. The authority must be of the opinion that, by reason of the presence of litter or refuse, the condition of the land is, and unless they make a designation order is likely to continue to be, such as to be detrimental to the amenities of the locality. The Secretary of State can prescribe descriptions of land which can be designated.

Litter Abatement Notices, s92 EPA 1990

- 1.3 Where a principal litter authority (but not an English County Council) is satisfied that relevant land within a Litter Control Area (see 5.1 below), relevant Crown land, relevant land of a designated statutory undertaker or relevant land of a designated educational institution is defaced by litter or refuse, or that such defacement is likely

to recur, it must serve a litter abatement notice, on the appropriate person, requiring it to be cleared within a specified time and/or a prohibition on permitting the land to become defaced by litter or refuse. Failure to comply with a notice without reasonable excuse is an offence, however it is a defence to show that the duty under s89(1) has been complied with. With the exception of relevant Crown land or relevant land of statutory undertakers, if the person on whom the notice is served fails to comply with the requirement imposed, the authority can enter the land, clear the litter or refuse and recover costs necessary in the circumstances. Again the code is admissible as above.

Street litter control notices, S93 EPA

- 1.4 Principal litter authorities, other than a county council, can issue "street litter control notices" under section 93 of the Environmental Protection Act 1990 on the occupiers of premises having a frontage onto a street where the street, or open land adjacent to the street, is recurrently defaced with litter or refuse, or the condition of the premises which is open land is such that it is likely to be detrimental to the amenities of the locality as a result of the presence of litter or refuse, or if the activities on the premises are likely to cause defacement with litter or refuse of the street or land in the vicinity of the premises.

2. Provision of litter bins, S5(1) Litter Act 1983

- 2.1 A litter authority (see section C2.1 above) can provide and maintain in any street or public place, litter bins for refuse or litter

3. Removal of material attracting rats and mice, S4 Prevention of Damage by Pests Act 1949

- 3.1 A local authority can serve a notice on an occupier and/or owner of land, but not agricultural land, in its area, if it appears to the local authority that steps should be taken for the destruction of rats or mice on the land or otherwise for keeping the land free from rats and mice. The notice can include the application to the land of any form of treatment and/or the carrying out on the land of any structural repairs or other works.

4. Remedying land, S215 Town & Country Planning Act 1990

- 4.1 If it appears to a local planning authority that the amenity of a part of their area, or of an adjoining area is adversely affected by the condition of land in their area, it can serve on the owner and occupier of land a notice requiring steps to remedy the condition of the land within a certain time.

5. Cleaning of land in open air to which public has access, S22(3) Control of Pollution Act 1974

- 5.1 A council of a district or London borough and the Common Council of the City of London or a local authority in Wales can arrange for any land in the open air to which members of the public have access, either as of right or otherwise (but not the site of a highway for which there are other powers), to be cleaned. Such arrangements must be with the consent of any person who has an interest in or is

the occupier of such land and can include an agreement for such persons to pay the charges in respect of the cleaning.

6. Cleaning of land other than a highway, S78 Public Health Act 1936

- 6.1 A local authority can sweep and clean any court, yard or passage, which is used in common by the occupants of two or more buildings, but is not a highway repairable by the inhabitants, if it is not regularly swept and kept clean and free from rubbish or other accumulation to the local authority's satisfaction. The local authority can recover any expenses reasonably incurred from the occupiers of the buildings which front or abut the court or yard, or to which the passage affords access.

7. Remove rubbish seriously detrimental to the amenity, S34 Public Health Act 1961

- 7.1 A local authority can take steps to remove rubbish, as it thinks necessary, in the interests of amenity, if it appears to it that there is rubbish on any land in the open air in their area which is seriously detrimental to the amenities of the neighbourhood. Rubbish means rubble, waste paper, crockery and metal and any other kind of refuse (including organic matter), but it does not include material accumulated for or in the course of any business or waste deposited in accordance with a disposal licence.

8. Removal of anything abandoned without lawful authority, S6 Refuse Disposal (Amenity) Act 1978

- 8.1 A local authority can if it thinks fit, remove any thing in its area, other than a motor vehicle, which is abandoned without lawful authority on any land in the open air or on any other land forming part of a highway.

9. LOCAL AUTHORITIES' POWER TO PROSECUTE

- 9.1 Under section 222 of the Local Government Act 1972, a local authority may prosecute or defend or appear in any legal proceedings where it considers it expedient for the promotion or protection of the interests of the inhabitants of their area.
- 9.2 Unless legislation precludes it, a local authority may institute criminal proceedings under any legislation.

F. THE ADDITIONAL POWERS OF THE AGENCY AND AGENCY AUTHORISED PERSONS IN RESPECT OF FLY-TIPPING

1 Powers concerning applications

1.1 Refuse to register, Regulation 5 of and schedule 1 to the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991

The Agency can refuse to register a person as a carrier of controlled waste, where that person, or another relevant person, has been convicted of a prescribed offence.

1.2 Revoke a Registration, Regulation 10 of and schedule 1 to the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991

The Agency may revoke a person's registration as a carrier of controlled waste in similar circumstances.

1.3 Refuse a Licence or Permit, S36 Environmental Protection Act 1990; Regulation 10 Pollution Prevention and Control (England and Wales) Regulations 2000.

The Agency may refuse an application for a waste management licence or a PPC permit for a specified waste management activity if the applicant or another relevant person has been convicted of a prescribed offence. Prescribed offences include offences under Section 2 Refuse Disposal (Amenity) Act 1978, Section 3 Control of Pollution Act 1974, Section 33 Environmental Protection Act 1990. Offences under litter provisions of Environmental Protection Act 1990 are not prescribed.

2. Powers to deal with obstructions, matter and waste in water

2.1 Section 211 of and Schedule 25 to the Water Resources Act 1991 and Section 23 Land Drainage Act 1991

The Agency may make and enforce bye-laws in respect of obstructions within rivers. Main rivers are generally covered by WRA (and fall to the Agency) and ordinary watercourses by LDA (and fall to the LAs).

2.2 Require removal of obstruction, S107 of the Water Resources Act 1991 and Section 25 of the Land Drainage Act 1991

The Agency may serve a notice on any person who caused an obstruction (so as to impede the flow) within a main river or, in restricted circumstances, on the landowner to remove the obstruction and enforce that notice.

2.3 Remove obstruction from main rivers, S109 Water Resources Act 1991

The Agency may remove obstructions within main rivers

2.4 Require works to be undertaken to remove material in controlled water, S161A of the Water Resources Act 1991

The Agency can serve a notice (a "works notice") on a person who has caused or knowingly permitted poisonous, noxious or polluting matter or any solid waste matter to enter, be likely to enter, or be present in controlled waters requiring them to remove that material and enforce that notice.

2.5 Prevent material entering controlled water and remove material, S161 Water Resources Act 1991.

The Agency may take action to prevent from entering, or remove from, controlled waters, any poisonous, noxious or polluting matter or solid waste matter and seek to recover the costs from any person who caused or knowingly permitted the matter to enter, be likely to enter, or be present in the controlled waters.

3. AGENCY POWERS TO PROSECUTE

- 4.1 The Agency can carry out prosecutions [section 37 Environment Act 1995].
- 4.2 The Agency has issued an enforcement and prosecution policy. Decisions to institute prosecution proceedings are taken in accordance with this policy and functional guidance.

Appendix 3: Guidelines for local agreements

Introduction

The Protocol envisages that where there is a fly-tipping/illegal waste crime problem a local agreement should be developed between the Agency and the relevant local authority/ies to reflect local circumstances. This annex sets out areas that could be considered when developing your local agreement.

Key Partners

To successfully tackle the problem of environmental crime it is important that all of the key partners are engaged in developing these agreements. The key partners should consider setting up or linking in with an existing local forum which can consider the problem of fly-tipping/illegal dumping and agree how to best tackle it.

key partners could include:

Local authority:

- Waste collection authorities
- Waste Disposal Authorities
- Environmental Health Officers
- Trading standards Officers
- Planning officers
- Gypsy/traveller liaison officer(s)

Other:

- Local police
- Large landowners (this can include representatives of landowners such as NFU, CLA or any landowner who is suffering excessive fly-tipping problems e.g. The National Trust, Network Rail, British Waterways)
- Local press/media
- Local waste contractors

Context

The agreement should set out the latest national and local "pictures" to provide the necessary background to enable the key partners to understand the extent of fly-tipping/illegal waste crime and to understand their role in tackling the problem. It should include facts and figures setting out the problem, using information from *Flycapture* for example.

Aims

The aims of a local agreement are to:

- set out the detailed arrangements between the local authorities involved and the Agency Area to ensure that the Protocol is followed;
- explain how local issues will be tackled;
- establish an effective working partnership between the enforcement authorities who have signed up to the agreement to ensure that the Protocol is adhered to;
- identify local issues (e.g. local "hot-spots") that need to be tackled and set out effective working arrangements;
- establish effective intelligence and best practice sharing between the key players;

- identify baseline training needs and options for how these can be provided for key personnel involved in combating fly-tipping/illegal dumping; and,
- agree effective and targeted publicity campaigns to discourage offenders and ensure that convicted offenders are named and shamed as appropriate.

Standard arrangements

This section should set out the agreed resources and working arrangements which enable the relevant Agency Area and local authorities to meet the aims of the Protocol. This could include response times to investigate incidents and carry out any necessary clean up.

In addition the agreement could set out the responsibilities, resources and standard of response to other waste crimes such as unlicensed waste sites, waste burning, unregistered waste carriers etc

Local arrangements

This section should set out additional scenarios which do not have clear national responsibilities but which are of concern in the local area and set out the arrangements for tackling these crimes. The list below suggests some areas that may need to be considered but is not exhaustive:

- Investigation and enforcement action where one or more van loads up to a single tipper load of waste are found fly-tipped up until April 2005^[L1]
 - Investigation and enforcement action where there is fly-tipping of multiple small loads of waste which in aggregate exceed the volume of a single tipper load (i.e. greater than 20m³)
 - Investigation and enforcement action where there are sequences of smaller-scale illegal dumping or fly-tipping where evidence suggests repeat offences by an individual or group of individuals that might indicate an “organised” crime element
 - Surveillance ^[L2]of local fly-tipping “hot-spots” and the subsequent investigation and enforcement
 - Frequency, timing of Operation Mermaids (Road stop events run by the police). Follow up enforcement activity following these operations
 - Identification of watercourses at risk and responsibilities of each party
 - Arrangements for removal of wastes from watercourses including utilisation of Agency resources and expertise
 - Arrangements for removal of fly-tipped wastes including hazardous wastes and any agreed sharing of contracts for removal
 - Arrangements for storage of seized vehicles
 - Strategy to deal with fly-tipping on private land. This could include identifying hotspots, setting out roles and responsibilities and targets
 - Duty of Care checks
 - Training exercises
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Identification of local hotspots

The agreement should use local data to identify and target local hotspots. The agreement should define how an area is classified as a hotspot and set out responsibilities (in accordance with the context of the national agreement) for tackling the defined hot-spots.

Sharing of intelligence

Effective sharing of information between enforcing authorities is essential. The agreement should set out the working arrangement for how intelligence relating to illegal activity should be shared. This section should ideally be agreed in liaison with the local police.

Flycapture should be used for linking up the Agency and local authorities of any vehicles suspected of being involved in fly-tipping in the area. Confidentiality issues will need to be addressed.

Surveillance

This section should set out the equipment available in the area, location and lead contacts for each key player. Agreement on sharing of equipment, ensuring that the other party is informed when and where any surveillance work will be carried out and commitment to follow up enforcement work for both parties.

Health & Safety

Both partners will share appropriate health and safety information and specifically risk assessment information wherever necessary. Where a joint exercise is mounted, the lead authority will be responsible for ensuring adequate risk assessment and risk control measures are in place. Each partner will have a named individual who will be responsible for ensuring that the respective authorities risk management and health and safety procedures are followed. Any known areas of high risk will be flagged up by these individuals at an early stage.

Designing out Fly-tipping

Opportunities exist to enshrine appropriate planning and design features into projects, so as to reduce the opportunity for the fly-tipper and to maximise the detection of offenders. Local authorities should consider how fly-tipping can be designed out in any refurbishment or development. Both parties could produce a list of areas where design features could help to reduce the problem. Opportunities to increase signage, improve lighting or install cameras should be considered.

Enforcement and Prosecution Policy functional guidelines (EPP)

The Agency has set out its national EPP for waste offences and detailed guidelines on its application. Please see the Agency's web-site for our enforcement and prosecution policy.

Local authorities should consider drafting an Enforcement and Prosecution Policy for waste offences to ensure a consistent transparent approach is used by all key regulators and the sanction for the same crime is the same whichever party undertakes the enforcement action.

Publicity Campaigns

It is important for the key players to consider how they can work to prevent illegal waste activity occurring. The agreement should consider how the key partners use publicity to assist in preventing this crime.

Part of any successful campaign is ensuring that effective publicity is used to report successful enforcement action – so acting as a deterrent to others. The agreement should set out how successful enforcement activity can be publicised and offenders can be named and shamed.

Equally important is promoting the legitimate management of waste. This can be achieved through promoting the waste management Duty of Care and also through clearly promoting local arrangements for waste management such as opening times of civic amenity sites, arrangements for bulky waste collections and any trade waste services that are offered.

It may be useful for the agreement to set out a documented media plan. The partners could consider the waste types, typical offenders, and hotspots that are a problem and set out if any resource is available to run targeted campaigns.

Review and Evaluation

It is important that fly-tipping incidents are tackled and reduced, the agreement is successful and the key players continue to participate and remain enthusiastic and effective. Partners should agree a number of key outcomes with associated success criteria upfront. It may be useful to ensure that the key players receive regular, standard reports.

It is important to set out that this is working document and will need to be reviewed regularly to ensure that the agreement keeps up to date with any legislative, resources, hotspot changes etc.