

## *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 agreed<sup>1</sup> January 2005

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<sup>1</sup> 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,<sup>2</sup> litter<sup>3</sup> 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.

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<sup>2</sup> 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.

<sup>3</sup> 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 Special<sup>4</sup> 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 Defra<sup>5</sup> 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.

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<sup>4</sup> 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.

<sup>5</sup> Trends in Environmental Sentencing in England and Wales. ERM, 2003. (Available from [www.defra.gov.uk](http://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 20m<sup>3</sup> 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 an actual or imminent threat of a significant flood risk from an Ordinary Watercourse<sup>6</sup> (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

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<sup>6</sup> 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 wastes<sup>7</sup>. 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 licences, 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](http://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 20m<sup>3</sup>)

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<sup>7</sup> 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 Waters<sup>8</sup> 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 River<sup>8</sup>
- 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).

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<sup>8</sup> 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 20m<sup>3</sup>)
  - 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
  - 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 intervene<sup>9</sup> (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

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<sup>9</sup> 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 they 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