

Enforcement in the Department of the Environment

October 2007

Criminal Justice Inspection
Northern Ireland
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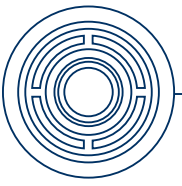
Enforcement in the Department of the Environment

October 2007

Presented to the Houses of Parliament by the
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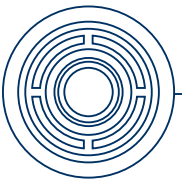


List of abbreviations

| | |
|--------------|---|
| ANPR | Automatic Number Plate Recognition |
| ARA | Assets Recovery Agency |
| ASSI | Area of Special Scientific Interest |
| ATF | Authorised Treatment Facility |
| CJI | Criminal Justice Inspection Northern Ireland |
| CJS | Criminal Justice System (Northern Ireland) |
| CR | Continuous Registration |
| DOE | Department of the Environment |
| DSO | Departmental Solicitor's Office |
| DVA | Driver and Vehicle Agency |
| DVLA | Driver and Vehicle Licensing Agency |
| DVLNI | Driver and Vehicle Licensing Northern Ireland |
| DVTA | Driver and Vehicle Testing Agency |
| EA | Environment Agency |
| EHS | Environment and Heritage Service |
| ELV | End of Life Vehicles |
| EPA | Environmental Protection Agency |
| EU | European Union |
| FoI | Freedom of Information |
| GB | Great Britain |
| HMRC | Her Majesty's Revenue and Customs |
| ISP | Information Sharing Protocol |
| IT | Information Technology |
| LEA | Law Enforcement Agency |
| MLA | Member of Legislative Assembly |
| MoU | Memorandum of Understanding |
| NCP | National Car Parks |



| | |
|--------------|---|
| NI | Northern Ireland |
| NIM | National Intelligence Model |
| NIO | Northern Ireland Office |
| PACE | Police and Criminal Evidence Order |
| POCA | Proceeds of Crime Act |
| PPS | Public Prosecution Service for Northern Ireland |
| PPS9 | Planning Policy Statement 9 |
| PPTO | Principal Planning and Technical Officer |
| PQ | Parliamentary Question |
| PS | The Planning Service |
| PSA | Public Service Agreement |
| PSNI | Police Service of Northern Ireland |
| REG | Review of Environmental Governance |
| RIPA | Regulations of Investigating Powers Act |
| RoI | Republic of Ireland |
| RPA | Review of Public Administration |
| SAC | Special Area of Conservation |
| SLA | Service Level Agreement |
| SMART | Specific, Measurable, Achievable, Realistic, Time-bound |
| SORN | Statutory Off Road Notification |
| SPA | Special Protection Areas |
| SSA | Social Security Agency |
| UK | United Kingdom |
| VED | Vehicle Excise Duty |
| VOSA | Vehicle and Operator Services Agency |
| WMU | Water Management Unit (EHS) |





Chief Inspector's Foreword

The purpose of this inspection was to assess the contribution that the Department of the Environment (DOE) and its Executive Agencies are making to the criminal justice system including how it carries out its regulatory responsibilities in protecting the environment and improving road safety.

Protecting the environment has become a mainstream political issue in Northern Ireland as local political accountability takes hold and the public expect a clean and healthy environment. The application of environmental justice requires an effective and transparent enforcement system.

Improving road safety is a priority for the DOE and the Driver and Vehicle Agency. Better enforcement can make a significant contribution to reducing the numbers of deaths and serious injuries on the roads. It can also help to tackle vehicle-related crime and deny criminals the use of the roads.

This inspection takes a strategic approach to enforcement focusing on those issues which are common across the agencies. It took place during a period of significant change brought about by the Review of Public Administration and the Review of Environmental Governance. These are challenging times but also an opportunity to make some significant changes to how enforcement is delivered.

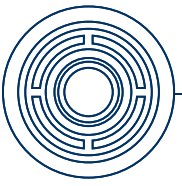
The Inspection Team, led by James Corrigan of CJI, appreciates the co-operation it received from the DOE and its Executive Agencies.



Kit Chivers
Chief Inspector of Criminal Justice in Northern Ireland

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Executive Summary

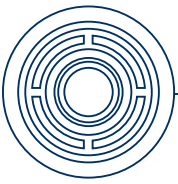
This report is based on how the Department of the Environment (DOE) and its Executive Agencies – the Environment and Heritage Service (EHS), the Planning Service (PS) and the Driver and Vehicle Agency (DVA)¹ – contribute to, and interface with the Criminal Justice System (CJS).

The DOE has regulatory responsibility for the protection of the environment, including the planning system as well as improving road safety. This is based on ensuring compliance with the laws and regulations, many of which have changed in response to new threats and concerns. While the vast majority of people are law abiding, there is a segment of the population that will resist compliance and seek to evade the law. Very often, crimes against the environment are profit motivated, as organised crime has moved into the lucrative business of waste disposal. There are also huge profits to be made from breaching the planning laws and the construction of unauthorised developments. It is estimated that 45,000 vehicles on the roads in Northern Ireland are defined as the ‘underclass’ meaning that they are likely to be untaxed, unlicensed, uninsured and unroadworthy, and many are used for criminal activities.

This level of illegality presents a major challenge to all Law Enforcement Agencies (LEAs) including the DOE family. A difficulty for the DOE is that it is relatively new to this type of enforcement as legislative changes provide new enforcement powers and a traditionally compliance based approach is tested in a more legal criminal justice arena. Inspectors recommend that a more co-ordinated and cohesive approach to enforcement should be developed by the DOE and its Executive Agencies which provides a clear statement of intent on enforcement and is supported by new organisational structures. This should include a single enforcement office within the EHS and an integrated enforcement unit within the DVA.

Developing an open and fully effective enforcement system requires the full incorporation of enforcement within the business planning of the DOE and its Agencies. Enforcement can be strengthened by having a performance management framework with co-ordinated strategies and SMART targets, and delivered by transparent and robust policies and procedures. For example, clear procedures must be in place to ensure the independence of the regulatory function so that enforcement staff are not subject to political and other internal/external pressures.

¹ DVA was formed through the merger of Driver Vehicle Licensing Northern Ireland and Driver Vehicle Testing Agency in April 2007.




The means of achieving greater compliance has become very complex and bureaucratic and should be reviewed to achieve a more streamlined and consistent approach across the DOE family. Inspectors found a 'prosecution as a last resort' approach is widely applied across the DOE family as various compliance measures are first applied. However, a more determined and direct enforcement approach is required for deliberate breaches, more serious crimes and for persistent and/or hard core offenders.

Criminal Justice Inspection (CJI) supports the moves towards a more intelligence-led approach to enforcement which targets the illegal operators and hard core offenders. The concept is found at a strategic level and in discussions with some enforcement staff but it is still at an early stage of development and is rarely applied in operational enforcement. For intelligence-led enforcement to work, Inspectors recommend that it is based on accurate, reliable and up-to-date intelligence supported by effective management information systems. Delivery will need to be supported by changes to strategic objectives and appropriate business targets based on an informed assessment of risk. As an example, the DVA is moving away from volumetric targets towards more intelligence-led measures of enforcement.

Delivering an effective and efficient enforcement service requires improved working relationships within the DOE family. The merger of the two driver and vehicle agencies is an opportunity to provide an integrated enforcement service. There is considerable scope for improved collaboration between EHS and PS in areas such as the enforcement of illegal waste disposal and unauthorised property developments. Inspectors would recommend that the two agencies discuss how to achieve better enforcement of listed buildings regulations which are currently licensed by EHS and enforced by PS.

Collaboration with other LEAs is starting to develop through various bi-lateral and multi-agency meetings as well as participation in some joint operations. It is recommended that the DOE and its Agencies should proactively engage in, and strengthen these relationships including the development of Service Level Agreements (SLAs) and specification of respective roles and responsibilities. Better sharing of information should be a priority and will form the basis of more joint investigations and prosecutions. Strengthening linkages with equivalent enforcement agencies in Great Britain (GB) and the Republic of Ireland (RoI) will facilitate learning the application of best practice. There is also a need to improve communication and co-operation with district councils in terms of their enforcement responsibilities and in view of the transfer of planning functions.

All of the criminal justice agencies are key partners in delivering joined-up enforcement and the successful prosecution of environmental and road traffic offences. The relationship with the Police Service of Northern Ireland (PSNI) is strong in areas such as illegal waste disposal and road safety though it needs to be formalised to ensure more certainty in terms

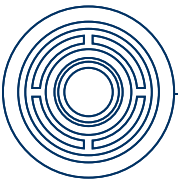


of the delivery of joint investigations (e.g. illegal taxi enforcement). Collaboration with the Public Prosecution Service (PPS) is variable as some agencies or parts of agencies send files to the PPS while others have in-house or external prosecutors. Inspectors recommend that a more corporate approach is taken by the DOE regarding the prosecution of more complex and serious criminal cases. Building relationships with the Northern Ireland Courts Service (NICtS) will ensure a smoother progression of cases and allow discussions around sanctions and the application of environmental justice.

A transparent and effective enforcement system will help to ensure equality and fairness. Weak enforcement on the other hand creates inequality and allows the more sophisticated illegal operators and hard core offenders to evade detection and prosecution and lets them compete unfairly with legal businesses. The application of enforcement is also different for state bodies and those in the private/non governmental sector. State organisations have 'crown immunity' against prosecution even where breaches and offences have been detected. There is also evidence that some groups or individuals can receive a different type of enforcement. For example, enforcement by PS is discretionary and reactive meaning that there is a greater risk of inconsistency of approach or treatment of offenders. DVA enforcement of foreign drivers/registered vehicles is less robust due to a lack of information on current enforcement databases and limited applicability of sanctions (e.g. penalty points cannot be applied to drivers with foreign driver licences).

Inspectors found a good level of job satisfaction among enforcement staff across the different Agencies. Morale varied due to factors such as pay, conditions of work and relationships with managers and/or staff. The over-riding concern of many staff is the perception that enforcement is considered peripheral to the wider DOE and specific Agencies, which was expressed in comments that enforcement is an 'add on' and 'not understood' or 'not heard' by the core or Agency Management Boards. CJI recommends that the DOE should take the lead in developing a core skill set and competencies for enforcement which takes account of legal and criminal justice requirements. Staff need to be supported by appropriate career development opportunities including training and access to learning and best practice. The key tools for the job (i.e. skills and equipment) need to be standardised across the different agencies and take account of specific health and safety concerns.

Inspectors found examples of best practice across the different agencies ranging from the 24 hour hotline for reporting water pollution incidents, the use of technology to detect motor tax evasion, bespoke training for investigators and the publication of enforcement statistics by the Water Management Unit (WMU). A weakness is that best practice is not evaluated and shared across the DOE family and a learning opportunity is missed. Inspectors were impressed with the quality of the organisational self-assessments prepared as part of the inspection process and recommend that these form the basis of continued performance management and learning within the agencies.



Inspectors recommend the benefits of a more shared services approach to enforcement which would deliver greater efficiencies and consistency of approach. A single incident and enforcement database should be developed by the DOE and its agencies. This would also provide improved management information.

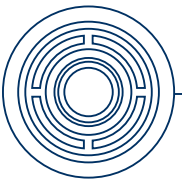
Analysis of available information by Inspectors points towards a lot of enforcement activity but a relatively small number of prosecutions. It is recognised that much of this activity will lead to compliance (e.g. reductions in motor tax evasion) but there is a concern that certain criminal offences are either not fully investigated or prosecuted in the courts due to resource constraints, competing demands within the agencies and some specific weaknesses in enforcement procedures.

Deterring future crime against the environment requires an enforcement system that leads to appropriate sanctions. Inspectors recommend the development of a specialist legal jurisdiction for environmental crime and would want to see full utilisation of powers with regard to the recovery of investigation costs and implementation of the ‘polluter pays’ principle. The latter, when accompanied by effective enforcement, is likely to be an effective deterrent for most offenders.

Section



Inspection Report



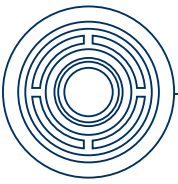
CHAPTER 1:

The Department of the Environment



- 1.1 The vision of the Department of the Environment (DOE) is to build a better and safer environment. The strategic objectives are to protect, conserve and enhance the natural environment and built heritage, promote and plan development in a sustainable way, work with statutory and voluntary partners to reduce road deaths and serious injuries and to support a system of effective local government.
- 1.2 The Department comprises a number of central policy divisions and three Executive Agencies – the Environment and Heritage Service (EHS), the Planning Service (PS) and the Driver and Vehicle Agency (DVA). The DVA was established through the merger of Driver and Vehicle Licensing Northern Ireland (DVLNI) and the Driver Vehicle Testing Agency (DVTA) in April 2007.
- 1.3 The work of the Department is co-ordinated and monitored by the Department Board involving senior DOE civil servants and the Chief Executives of the Agencies. Its role is to provide corporate leadership within policies determined by Ministers.
- 1.4 The DOE Corporate Plan 2006-08 outlines the budget of the Department. It shows that the budget for 2006-07 was £138 million which is made up of expenditure of £204 million and receipts of £66 million². Agency budgets for 2006-07 were £65 million for the EHS, £33 million for the PS and £46 million for the two components of the DVA (revenue from Vehicle Excise Duty (VED) – £135 million in 2005-06 – does not count as this is collected by the Driver and Vehicle Licensing Agency (DVLA) on behalf of the Department for Transport in the United Kingdom (UK).
- 1.5 The total number of staff employed by the Department in March 2006 was 2907 (projected to be 3115 in March 2007). This includes 730 in the EHS, 860 in the PS and 1067 in the DVA. The biggest allocation of staff within the core department is attached to the Environmental Policy Division (109).
- 1.6 The strategic objectives and targets of the Department are outlined in its current Corporate Plan 2006-08 and Business Plan 2006-07. This includes a number of Public Service

2 Receipts are shown to include DVTA fees for vehicle testing and licensing and PS charges relating to development control.



Agreement (PSA) and other key targets which are then broken down into specific actions in the Business Plan. The key PSA targets in terms of enforcement include, 'to achieve a 5% improvement in the compliance of consented discharges to waterways by 31 March 2007' and 'to reduce, by 2012, road deaths and serious injury by 33% from the 1996-2000 average of 1750 per annum.' Each of the Executive Agencies have set their own strategic objectives in their respective Corporate and Business Plans.

- 1.7 The separation of operational enforcement from policy is done by maintaining a policy function within the Department. It is the DOE which takes the lead in developing and implementing new policies. The passing of new legislation has provided enforcement with new responsibilities and powers meaning that the Department and its Agencies are now interfacing more directly with the main criminal justice organisations. The policy for vehicle excise duty and associated enforcement is established and governed by DVLA (Swansea), Department for Transport and HM Treasury.

CHAPTER 2:

Environment and Heritage Service



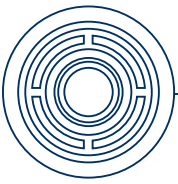
- 2.1 The aim of the Environment and Heritage Service (EHS) is to protect, conserve and promote the natural environment and built heritage.

Organisational structure

- 2.2 The EHS is structured into four directorates - natural heritage, built heritage, environmental protection and corporate services. The three operational directorates have their own compliance or enforcement units of which the largest is contained within environmental protection. The environmental protection directorate has established distinctive arrangements for the enforcement of waste, water and breaches of permits for industrial installations or radioactive substances. Built heritage and natural heritage make their own enforcement arrangements.
- 2.3 As a result, operational activities of the Agency are fragmented, encouraging a 'silo' approach to its enforcement activities with little integration of methods, systems or effort. One senior manager commented that it is 'a series of small organisations', while a strong and consistent view offered by many enforcement staff in each directorate was that there is a lack of

communication and interaction between the various units. The co-location of most of the EHS to a new Belfast site (the WMU will remain in Lisburn) does create an opportunity to address this issue although there is a more fundamental need for greater integration of resources, systems and methods.

- 2.4 Many of the staff interviewed by Inspectors support the need for better collaboration between the various EHS enforcement units, from improved communication and closer working units to the creation of new, overarching and co-ordinating arrangements. Greater collaboration on enforcement, whatever its form, would be beneficial for the Agency. However, the creation of a single enforcement unit would draw together existing specialisms, knowledge, expertise and resources and bring a more consistent approach to enforcement in all areas, particularly investigation and prosecution. It would also facilitate the identification of best practices and allow for more effective staff training and career development opportunities.
- 2.5 Senior management agreed the findings and reported that the Management Board intends to




restructure the enforcement function and favours a single Enforcement Office with specific responsibilities for enforcing regulations while other units will focus on the full range of compliance activities. Such an approach offers distinct advantages so long as there are clear boundaries between simple neglect or accidental non-compliance and deliberate abuses, breaches and offences of the law.

- 2.6 The enforcement organisation needs to fit within and be supported by an effective legislative framework. There is a broad range of environment regulations and a range of powers and sanctions that enable compliance and or enforcement of the regulations. The regulatory framework also needs policies and procedures that enable the organisation to fulfil its statutory functions.
- 2.7 The environmental protection directorate developed a specific Enforcement and Prosecution Policy in 2002. This has been revised and now applies across the EHS. Inspectors would expect some revisions in light of the findings and recommendations of this report. The policy is supported by a useful set of procedures and operational guidance. While natural heritage has developed some operational procedures neither it nor built heritage has clear policy statements that describe their strategic intent on enforcement.
- 2.8 There is a need for the DOE to develop a clear, unambiguous strategic statement that recognises the threats of non-compliance and abuse of the

regulations and that it will make full use of its statutory powers to enforce the law and protect the environment. That strategic commitment will set the operational framework and provide the direction and focus for all enforcement activities.

Openness and accountability

- 2.9 The Corporate and Business Plan of the Agency presents its strategic and operational objectives and are linked with specific performance targets. Performance against these targets is included in the Annual Report.
- 2.10 A priority for the Agency is the management and regulation of waste, which has taken on greater importance with the publication by Government of the Northern Ireland Waste Management Strategy 2006-2020. It is also an area where the EHS has come under criticism from various Audit and Parliamentary reports. The Department has set a Public Service Agreement (PSA) target 'to reduce to 1% of the 2004-05 baseline, the annual tonnage of controlled waste illegally disposed of in Northern Ireland, by 2015'.
- 2.11 The approach to achieving this ambitious target is not clear to Inspectors. While the DOE Corporate Plan 2006-08 includes the PSA target as part of its objective to protect, conserve and promote the environment, there is little information on how it will be achieved. The Business Plan 2006-07 has one action to 'investigate, prepare and have listed prosecution cases for



hearing at Crown Court' with a specific target of '5% of prosecution cases listed for hearing at Crown Court by 31 March 2007'. A problem with this type of percentage-based target is that it is meaningless in the absence of an actual baseline, e.g. number of prosecutions in relation to the number of investigations, and its delivery is very dependent on other organisations, particularly the Court Service.

- 2.12 The EHS Corporate Plan 2006-09 includes the above target and sets new targets for 2007-08 'to carry out the programme of training for investigative staff to ensure competency to National Occupational Standards' and for 2008-09 to 'conduct five financial investigations relating to illegal waste management activities under the Proceeds of Crime Act provisions'. The Corporate Plan also refers to a number of activities for the next three years which include to 'investigate all cases of illegal waste disposal on a commercial scale....apply enforcement powers within two months of relevant regulations being made operative.....conduct at least two joint investigative operations annually'. Separately, the EHS Environmental Crime unit has internal business targets for 2007 which include conducting visits to unauthorised waste sites, conducting investigations and submitting files to the PPS.
- 2.13 Several stakeholder organisations raised concerns about a perceived lack of openness and transparency on enforcement policies and procedures

and some did not know that the EHS has an 'enforcement and prosecution policy for environmental protection'. The Agency, through its own self-assessment, confirmed that there was a lack of external consultation on its enforcement policy. The EHS has an opportunity to re-engage with external stakeholders when the revised policy for all of the EHS is published and it needs to ensure that it gets wide coverage and is clearly signposted on its website.

- 2.14 The natural heritage directorate published a revised 'compliance policy and general guidance for protection of Areas of Special Scientific Interest (ASSI)' in March 2007. The document provides a good overview of action that should be taken in response to possible offences concerning ASSIs as well as Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Nature Reserves. However, no enforcement policy document was seen by Inspectors.
- 2.15 While protection of the built heritage is the responsibility of EHS, enforcement is carried out by the PS – the latter's enforcement performance is covered in Chapter 3. Inspectors considered the merits of enforcement of built heritage and formed the view that the enforcement of listed buildings could be better placed with the EHS, offering greater transparency, cohesion, accountability, equality and consistency. It will also address the variant approaches and practices currently taken by the directorates. The EHS needs to discuss this with counterparts in PS as a matter of urgency.



- 2.16 The traditional approach to regulation of the environment has been through compliance by seeking to advise and encourage changes in behaviour. The prevailing view is that *breaches* should be tackled by means of education, persuasion and monitoring of compliance (e.g. site visits). The compliant approach is non-confrontational and will only involve the criminal justice system, including the prosecution of cases, in exceptional circumstances. Much of the activities of the natural and built heritage directorates as well as elements of the WMU operate on a non-confrontational basis.
- 2.17 A more rigorous enforcement approach is founded on the principle that certain environmental offences or *crimes* require a criminal justice response in terms of investigation and prosecution. Many of these environmental crimes are profit motivated and often perpetrated by persistent and hardened offenders. The consequences of these crimes can be very serious for the environment as well as general public health. A notable example is the illegal transportation and disposal of waste in unauthorised sites, particularly in border areas. These sites can contain large amounts of household waste (often buried), end of life vehicles (including untreated oil, batteries and tyres) and building materials. The illegal disposal of these wastes creates big profits for the unscrupulous operators but produces a serious long term cost to the public in terms of contaminated land together with air and water pollution. It is the environmental protection directorate and specifically its environmental crime section which leads the enforcement response to this type of crime.
- 2.18 These two approaches are essentially separate perspectives on the role of a regulator – one where compliance can be achieved without recourse to the criminal justice system and one where enforcement, often through prosecution, is necessary to punish and deter environmental crime. Inspectors recognise that both approaches are required due to the broad regulatory remit of the EHS. While different types of compliance and enforcement are justified on the basis of the nature and seriousness of the breach/offence, the two distinctive approaches and styles present some major challenges to EHS when considering their efficacy, proportionality and results.
- 2.19 A key challenge for the Agency is to recognise, and be accountable for, its increasing enforcement role and its place in, and interaction with, the criminal justice system. Much of the new legislation of recent years has placed additional regulatory responsibilities and powers with the Agency. This in turn has raised the expectation of the general public, particularly environmental groups, that the agency will be taking a more rigorous and effective approach to enforcement, providing sufficient additional resources (the environmental protection directorate has significantly expanded in recent years) linked to new or improved policies and procedures and a clearer criminal justice approach to investigations and prosecutions.



Communication

2.20 Effective communication with external and internal groups is critical to ensure transparency, openness and that targets will be met as well as raising public confidence. This is particularly relevant to enforcement organisations, where success is often dependent on public support (e.g. as a source of intelligence). The EHS self assessment refers to work with trade organisations to encourage compliance with the law (e.g. Construction Employers Federation), but recognises that its customer focus is reactive and there is a lack of interface as a result of inadequate resources. An environmental group consulted by CJI criticised the Agency for a lack of transparency concerning the dissemination of enforcement information (e.g. number/types of investigations, prosecutions, etc). Inspectors found that the dissemination of enforcement information could be improved and highlighted the WMU Annual Report on water pollution incidents and prosecution as one example of a model for good communication that may be replicated in other parts of the EHS.

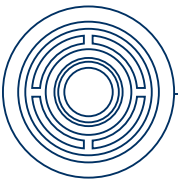
Joined-up enforcement

2.21 The increasing complexity of enforcement (i.e. overlapping remit and responsibilities of enforcement bodies) and requirements to improve the end-to-end process (i.e. intelligence through to prosecution) demand a greater level of co-

ordination and partnership between LEAs. The concept of joined-up enforcement, through greater interaction with the criminal justice system, is critical to improved performance.

2.22 Partnership arrangements between the EHS and the PS are not as advanced as Inspectors would have expected from two DOE Agencies. While there are formal links and co-operation at senior level (i.e. Departmental Board), formal processes for collaboration are just being developed. A SLA in respect of development control, development planning and waste management licensing and permitting, was approved in March 2007. The SLA sets an objective to promote an efficient and co-operative working relationship between both agencies. It is heavily focused on the PS consulting with the EHS about planning applications in areas where EHS is responsible (e.g. built heritage and waste) and sets timeframes for EHS responses and includes a section on enforcement, which is essentially based on better sharing of information (e.g. PS will update EHS on all cases involving listed buildings where enforcement action is started).

2.23 The joint agreement between the EHS and PS is a welcome development and will help to resolve some issues raised during this inspection. One significant issue concerns the licensing and enforcement of waste management sites. Inspectors were told that the majority of waste sites operate without planning permission and in contravention of waste licensing




regulations. The PS has the power to issue an enforcement notice in cases where planning permission was not applied for or the conditions of a planning application were not met. However, most sites continue to operate and are not subject to the proper controls. There is significant scope for better enforcement of these 'illegal' sites which might require joint action with a combination of environmental and planning enforcement. This issue also highlights the ineffectiveness of present arrangements, with EHS unable to take direct action on intelligence as it falls within the PS remit.

- 2.24 A second issue concerns the disjointed approach to enforcement in relation to Listed Buildings. Although the EHS is responsible for the protection and conservation of Listed Buildings, for producing and maintaining 'the List' and for commenting on proposed changes to Listed Buildings, responsibility for enforcement lies with PS under the Planning Order (NI) 1991. Inspectors heard criticisms, and views are shared by senior managers, about the lack of enforcement concerning damage to buildings – often carried out in contravention of planning permissions. This has undermined the wider work of the EHS, contributed to a negative public perception of enforcement and reaffirms the need to integrate the enforcement effort.
- 2.25 The environmental protection directorate has the closest interface with the criminal justice system and includes enforcement of water pollution and waste offences.

Managers from this unit represent EHS at the inter-agency Task Force meetings and the Environmental Protection Agency (EPA) Illegal Waste Management Group. An environmental crime unit has been set up to tackle illegal waste disposal and this has an objective to 'liaise with other enforcement agencies to maximise enforcement'. It has an operational target for 2007 to participate in at least two joint operations with the PSNI or other enforcement agency.

- 2.26 Partnership working with other LEAs is mainly achieved through membership of these inter-agency groups. After the initial networking and building of trust phase, agencies are now exploring intelligence sharing and joint investigations. While it may be too early to assess the impact of these partnership arrangements, they offer the potential to share knowledge and resources and deliver a more effective and efficient enforcement service. There is already evidence of a more intelligence-led approach to investigations allowing the EHS and other LEAs to target the more serious environmental criminals and those who operate at a competitive advantage to legitimate businesses.
- 2.27 While the inter-agency groups offer significant opportunities to strengthen partnerships and collaborative enforcement there are sensitivities in some agencies around data protection that limit or prevent data sharing and a general reluctance to share intelligence to tackle crime. The EHS states that it has no problems with the release of



information for prevention and detection of crime. It should therefore encourage other agencies to adopt a similar approach and refer them to the assurance from the Information Commissioner on handling requests for personal information ‘... needed to prevent or detect a crime, or catch and prosecute a suspect.’ The release of personal information is permitted (although there are limits), as there is an exemption in the Data Protection Act 1998 that allows the release of personal information for the specific purpose.

2.28 Difficulties in engaging some organisations or achieving agreement on better sharing of information should not impede the broader strengthening of inter-agency and bi-lateral partnerships. For the EHS, these partnerships provide a means of achieving a greater consistency and use of best practice in areas such as gathering of intelligence, stop and search powers, interviewing under caution, case preparation, prosecution and recovery of costs. Inspectors support the current active participation of the EHS in these structures and welcome the developing bi-lateral meetings with the PSNI, HM Revenue and Customs (HMRC) and the Assets Recovery Agency (ARA).

2.29 While district councils are not part of these LEA structures, they have an important enforcement remit in relation to the environment (e.g. environmental health officers, building control, etc) and are well placed to react to breaches and environmental crimes at a local level. They are also

key partners in delivering the targets of the Waste Management Strategy. The councils have established Group Environmental Health Committees, and it was encouraging to find that some council staff, including Water Quality Inspectors and Samplers, work on an agency basis for the EHS to supplement its investigation of water pollution incidents.

2.30 However, Inspectors also found some tensions between EHS and specific councils. The principal issue concerns the demarcation of responsibility for fly-tipping. EHS investigates and enforces regulations relating to commercial fly-tipping while councils are empowered to investigate and deal with other forms of dumping. However, the lines of responsibility have become blurred and this has led to some problems for both organisations such as EHS enforcement staff having to investigate and visit ‘minor’ reports and district councils having to deal with, and pay for, waste clean-up of tyres and scrap. The introduction of a new computer system known as ‘Flycapture’, designed to record and track all reported incidents and already used in England and Wales, should help to alleviate this problem, although there is an immediate need to improve communication, understanding and working relationships.

Cross border co-operation

2.31 Environmental crime is no respecter of borders, either organisational or territorial. Indeed, there is clear evidence from the Northern Ireland Affairs Committee and others that




criminals are using the Republic of Ireland/Northern Ireland border to make substantial profits from environmental crime. A Parliamentary Question in November 2006 revealed that a minimum of 250,000 tonnes of household waste from the Republic of Ireland has been illegally disposed of in Northern Ireland. The costs associated with the removal of this waste are likely to be in the region of £30 million. The EHS successfully prosecuted some of these offenders and continues to investigate a number of other cases, though little of the costs are likely to be recovered.

- 2.32 Cross border environmental crime will continue as long as different regulations and practices provide an opportunity for exploitation and profit. Common European Union (EU) Directives provide for increased harmonisation but differences emerge in terms of the timing, scope and enforcement of national legislation. The slowness of implementing many of these EU Directives in Northern Ireland created disparities between both jurisdictions, although this is now mainly resolved. The higher landfill charges in the Republic of Ireland is now leading to a legitimate and also an illegal cross-border market for waste. The best deterrent to the illegal transfer and disposal of waste is through the harmonisation of approach, full collaboration and more joined-up enforcement and prosecution of these crimes.
- 2.33 Inspectors welcome the developing co-operation between the EHS and its equivalent LEA in the RoI – the Office of Environmental Enforcement within the EPA – with more joint

intelligence and investigations including the prevention and interception of waste. The involvement of the police on both sides of the border is also important. However, there is a need to step-up joint cross-border enforcement actions to combat this most serious environmental crime. Better sharing of intelligence, more joint operations involving a range of LEAs and improved co-ordination of prosecutions and assessment of clean-up costs will act as an important deterrent to this form of criminal activity.

Legal advice and prosecution of environmental crime

- 2.34 Legal advice to the EHS is provided by the Departmental Solicitor's Office (DSO) but this is rarely requested before a file is submitted to the PPS. All EHS prosecution files are passed to the central Fraud and Departmental section within the PPS. This section deals with a range of case files from different government departments. The DSO and the PPS do not have specialists in environmental legislation, although some solicitors and prosecutors will have gained considerable experience with specific types of offences.
- 2.35 Many advocates of a new Environmental Protection Agency for Northern Ireland would favour an internal specialist legal team preparing and taking prosecution cases. This is the current practice in the Environment Agency (EA) in England and Wales and has the advantage of strengthening



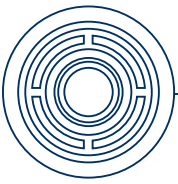
specialisms within an agency, although the higher number of cases makes it more compelling for the EA. However, there is some criticism that the lack of specialism within the DOE and the EHS, particularly in the context of a raft of new environmental legislation, does inhibit the prosecution of environmental crime especially as some solicitor firms and counsel are becoming more specialist in this area of business. There is also a criticism that a lack of continuity in legal representation, often exacerbated by court adjournments, is weakening the presentation of prosecutions. Senior managers in EHS favour the creation of in-house legal representation as this would also offer a specialist resource to support and educate enforcement staff and help promote an anti-crime culture.

Equality and fairness

- 2.36 On the whole, Inspectors were satisfied that the enforcement of environmental crime takes due recognition of equality and fairness considerations and evidence of equality impact assessments of relevant policies was provided by the Agency. The effects of the implementation of these policies and procedures will require the continuing monitoring of impact, particularly in relation to the Section 75 groups.
- 2.37 Inspectors identified some risks associated with the implementation of enforcement, which could have implications for equality and fairness. The first relates to the perceived lack

of external communication of enforcement policies and practices. Limited accessibility of policies can give rise to ignorance amongst operators and lead to enforcement action against those with least knowledge, and to more defences based on the unknowing committing of an offence. While the Agency has done much to publicise the need for compliance and targeted specific groups, improved communication of all new legislation and related compliance and enforcement actions will help to mitigate the risks.

- 2.38 A second potential risk relates to the impact of enforcement on particular sections of the population. The custom and practice that government departments and agencies are not subject to prosecution is contentious, particularly in relation to environmental offences. It is widely known that the Water Service has been the source of many water pollution incidents although it was protected by its crown immunity. In contrast, private industry and the farming community have been subject to enforcement actions. The establishment of Northern Ireland Water (NIW) on 1 April 2007 removes crown immunity, although enforcement will initially take due cognisance of the state of the infrastructure which NIW inherited from its predecessor organisation until new capital investment is completed. Other government departments such as the Roads Service will retain crown immunity to prosecution. Legislation passed in 1991 relating to planning control stipulates that the Crown is immune from prosecution.




2.39 A further area of concern is the differential impact of compliance and enforcement on legitimate and illegal businesses. Legitimate businesses are subject to various checks ranging from financial audits to the monitoring of compliance with regulations. While these checks and monitoring visits can be time-consuming and may require additional investment, they are generally considered necessary and in the long term interests of businesses as well as the environment. Illegal operators, motivated by profit, will not respond to this type of monitoring and compliance approach. A weak enforcement effort will allow the illegal operators to continue to act with a competitive advantage over legitimate businesses. There is growing evidence of the involvement of paramilitaries and organised criminal gangs in environmental crime, particularly in relation to waste and fuel.

2.40 A good example is the enforcement of End of Life Vehicles (ELV) which is based on having a specified number (10-20) of Authorised Treatment Facilities (ATF) to ensure the proper management of recycling of hazardous wastes. Figures provided by EHS show that just 11 ATFs had reached the appropriate standard and there were 265 unapproved waste sites across Northern Ireland, most of which have not been subject to enforcement action (though many will be registered as waste carriers by the EHS). It must be assumed that the majority of these sites continue to collect ELVs and other potentially dangerous materials, do not have the necessary treatment facilities and

operate in competition with legitimate businesses. Inspectors are aware that EHS is planning increased enforcement action against these operators but are concerned that continuing delays will contribute to further damage to the environment and greater distortion of, and unfair competition in, the marketplace.

People

2.41 The expanding regulatory and enforcement remit of EHS requires continuous development of the competencies and skills of enforcement staff and enhanced professionalism of the role. Many of the competencies and skills are based on criminal justice specialisms of intelligence, data and evidence gathering, criminal investigation and prosecution and post case reviews (i.e. learning). This professionalism depends on the organisation developing a supportive environment which provides staff with a clear definition of the core skills required, a means of assessing capabilities and competencies, the provision of training, qualifications, career development, adequate and effective tools and resources, including IT systems for the job. A lack of action or movement with regard to any of these issues presents a significant risk to the successful delivery of enforcement. An increasing number of enforcement staff are involved in complex investigations and prosecutions involving serious or organised crime. The seriousness of these crimes will mean that many of these cases will come before the Crown Court and the policies,



procedures and practices of enforcement staff will be open to greater scrutiny and challenge than in the past.

2.42 The EHS has responded to this increased criminal justice role by providing the majority of enforcement staff with specialist training in areas such as the Police and Criminal Evidence (PACE) Order. Some staff have received intelligence and surveillance training in relation to the Regulations of Investigatory Powers Act (RIPA). This training is designed to ensure the correct procedures are used in all cases when interviewing suspects under caution, taking witness statements and gathering evidence for prosecutions in accordance with PACE. This type of training is an example of best practice which can be used for other agencies / more enforcement staff.

2.43 There is no defined career path and the lack of career development opportunities for enforcement and administrative staff presents a risk that they will move away from enforcement work causing an additional strain on resources. This was identified as a significant issue in the self-assessment. The ethos of the EHS, organisationally and culturally, is essentially one of environmental protection through compliance and it has struggled to develop the enforcement function as a specialism in its own right. The traditional career progression route has been through scientific specialisms with staff, including scientists, sometimes spending time in enforcement or compliance activities.

2.44 As enforcement has become more complex, the role has required greater knowledge and expertise and other competencies in intelligence and evidence gathering, criminal investigation and prosecution. Scientists are not necessarily best suited to or interested in these roles and there is now a growing recognition of a specialist enforcement role. Enforcement therefore becomes a specialism in its own right and draws on scientific and other expertise depending on the nature of the potential crime or investigation. This then needs to be matched by equivalent recruitment and career progression opportunities within the agencies.

2.45 The work of enforcement staff can be distinctively different to the work of other staff in the agencies. Gathering intelligence and conducting criminal investigations presents some specific health and safety risks. Inspectors were told of potentially dangerous situations which have included exposure to unsafe sites, dangerous dogs and some violent individuals. Risk management planning was evident to Inspectors (e.g. not visiting sites alone, telephone contact with the office, scheduled routes, police support, etc.), although there is no standard practice across the directorates, and it has not prevented some incidents of personal abuse, intimidation or addressed the risk of possible bribery and corruption. Inspectors were made aware of enforcement staff being subject to external pressures on their enforcement actions. There is an onus on the EHS to ensure the health and safety of enforcement staff and to



have clear procedures to deal with any form of external, or indeed internal, pressures concerning the conduct of its enforcement activities.

- 2.46 Enforcement action is likely to impact on the substantial profits that some unscrupulous operators are making. There is also some emerging evidence, particularly in the EHS, that non-enforcement staff are attracting unwanted attention from individuals subject to enforcement by the Agency. For example, it is not unusual for non-enforcement staff to come into contact with the same operator or landowner under enforcement investigation and for those staff to be subjected to abuse during the course of their own work.


Promoting and disseminating best practice

- 2.47 The identification, sharing and implementation of best practice is critical to improving the enforcement service. A good example of best practice is the 24-hour Water Pollution Hotline which has been operated by EHS WMU since March 1998, in conjunction with the environment agencies in Great Britain (GB). There is a strong case that the hotline service could be extended to include all of the EHS enforcement areas and therefore cover all types of environmental crime. It is noteworthy that some non-water pollution incidents are already gathered through the hotline and passed to relevant staff in EHS.

- 2.48 Existing intelligence databases across the DOE vary in their breadth, depth, quality and reliability of data captured – those considered most useful and user-friendly by staff include the DVLNI database in Coleraine and the WMU database in Lisburn. Staff in other agencies or enforcement units complained that existing systems are inadequate for intelligence gathering and as an investigation tool. For example, environmental crime has two separate databases for incident reporting and enforcement which do not interface with any other systems and do not meet the needs of enforcement staff.

- 2.49 There is considerable scope for EHS to make better use of management information systems, particularly in the area of intelligence-led enforcement. A unified database could be linked with the environmental crime hotline and the gathered intelligence can be shared widely and made available to all enforcement staff and others in the Department with relevant access rights. The benefits of a unified system, acting as a central repository of knowledge and information, include additional capabilities to compare, contrast and match data, identify and analyse trends, carry out risk assessments and analysis and target future enforcement activities.

- 2.50 Identifying and using best practice from outside the agencies is also important. For example, HMRC has the power to stop private vehicles as part of its enforcement actions and has developed procedures, training, etc to support this activity. New Environment Order legislation in



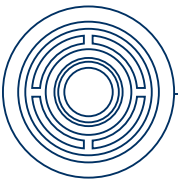
Northern Ireland provides EHS with similar powers, although the Agency is keen to develop proper procedures before using these powers. It is disappointing that procedures are not yet in place and the powers not used in full to combat crime. This is an obvious area where the transfer of good practice and experience would be directly beneficial to EHS, particularly as both agencies are now partners in joint operations.

Performance and results

- 2.51 The most important government (PSA) target in relation to waste is to reduce illegal dumping to 1% of the 2004-05 baseline. The baseline has recently been compiled at 2.8 million tonnes, though the actual figure is considered to be much higher. Inspectors were told that the amount of illegal waste from the RoI had significantly decreased while illegal dumping within Northern Ireland had substantially increased. Showing progress against this target will continue to be difficult and it is likely that it will need to be supplemented by more specific measures.
- 2.52 The EHS Corporate Plan 2006-2009 includes measures and specific targets to help deliver this PSA target. Specific targets for 2006-07 included a '5% improvement (against the 2004 baseline) in the compliance of consented discharges to waterways' and to 'investigate, prepare and have listed 5% of (illegal waste disposal) prosecution cases for hearing at Crown Court'. Neither of these targets cover the broad enforcement activities of the EHS and are very

dependent on external factors (e.g. nature of offences, court jurisdiction). Figures provided by the PPS show that just two offenders were prosecuted on indictment during 2006 (compared to 15 in 2005).

- 2.53 The EHS Environmental Crime unit has internal business targets for 2007 which includes conducting visits to unauthorised waste sites, conducting investigations and submitting files to the PPS. The enforcement of these unauthorised sites has the potential to make a significant reduction in illegal dumping, although little enforcement has taken place to date and few sites have been legalised or closed. Inspectors would wish to see a more robust and targeted approach to the enforcement of these known illegal sites and would expect challenging targets for the licensing of additional authorised sites and the prosecution/closure of other sites.
- 2.54 A key measure of performance for the public is the effectiveness of enforcement. This can be measured in a variety of ways such as reducing the incidents or volume of illegal dumping, pollution, damage to listed buildings, etc. It can also be measured by the type and effectiveness of enforcement actions which range from advice, warning letters, formal notifications and prosecutions. Prosecution outcomes can vary from fines to custodial sentences and may be linked to or followed up by specific actions such as seizure of financial assets and or orders to impose clean up costs. The latter is a significant power, can be a strong deterrent to potential offenders and is in line with the




“polluter pays” principle now enshrined in much environmental legislation.

- 2.55 The range of powers and options available to regulators is therefore significant. An analysis of data provided to Inspectors shows that in the critical area of waste, the number of reports has increased significantly over the past four years and reached 1,438 in 2006. On average, 22% of incidents are taken forward for enforcement action. The number of cases referred to the PPS has varied considerably from 17 in 2004, 119 in 2005 and 56 in 2006 of which the vast majority are heard in court. The average fine was £800 in 2004, £1,861 in 2005 and £1,669 in 2006. A number of recent waste cases (some jointly with water) have resulted in custodial sentences (see Appendix 2 for more details).
- 2.56 The low level of prosecutions relative to the number of reported incidents³ is a concern though it is considered higher than in Scotland. A determined enforcement effort should be aiming to bring as many criminals to account as possible and a more stretching target, say a minimum of 40% of investigations should result in a successful prosecution, would be a better indicator that enforcement action can make a real difference. This type of target should apply to all enforcement work in the EHS as it is about the efficacy of enforcement actions (i.e. a relationship between the number of investigations carried out that result in a successful prosecution).

- 2.57 The WMU provides a much more detailed account of its compliance and enforcement activities through an annual published report. Published figures show that the number of reports of water pollution has reduced from 2,534 in 2001 to 2,183 in 2005. The WMU investigated all reports and found that approximately 58% were substantiated in the period 2001-06 which then warranted further investigation. A total of 79% of all substantiated cases received a low classification of pollution, 19% were medium and 2% were high. Where culpability can be proved, a file is prepared for the PPS for all high and medium pollution cases. Some 6% of substantiated cases were referred to the PPS in the period 2001-06 – some lower classification cases were also referred to the PPS particularly those involving persistent offenders. A fine is the most common form of prosecution, in 2005, 97% of cases heard in court were fined, an average of £1,020 per case (see Appendix 2 for more details).
- 2.58 The industrial pollution unit of the environmental protection directorate is much smaller in scale and issued four enforcement notices in 2004-05, 22 in 2005-06 and three in 2006-07. The number of prosecution cases is small, though often high profile. A case against a major company led to a fine of £7,000 in 2004-05 while another case against a high profile Northern Ireland company is currently with the PPS and the Courts.

³ The number of prosecutions does not relate totally to the number of reports/investigations in a given year as some will be based on previous year's data. It is however a good overall indicator.



2.59 EHS enforcement statistics for natural heritage show that the number of incidents reported dropped from 228 in 2004 to 146 in 2006. The majority of reports (77%) are received within the EHS with the remaining coming from non government bodies/voluntary associations. Approximately 83% of all reports were substantiated by EHS with prioritisation on the basis of significant or not significant, in terms of impact on the environment. Between 2004 and 2006, 292 letters were issued – it does not issue enforcement letters. A total of 11 cases were referred to the PPS in the period 2004-06 of which eight were brought to the Courts. The level of fines ranged from £200 to £20,000. Inspectors are aware that natural heritage does not have enough resources to undertake the required monitoring of sites and that little resource is therefore available for enforcement, as it is considered a lower priority to monitoring work.

2.60 Responsibility for Listed Buildings is essentially a role carried out by EHS. However, planning applications for works to Listed Buildings and within the setting of Listed Buildings (including Listed Building consent applications), are the responsibility of PS with input from EHS. No enforcement data was provided for Inspectors though it is confirmed that enforcement is weak.

2.61 Data provided by the PPS showed that the EHS referred 185 cases for prosecution in 2005 and 100 in 2006. The most common type of offence changed from water pollution in 2005 to waste offences in 2006 – the

nature of the waste offences had also changed from ‘transporting waste without being a registered carrier’ to ‘unauthorised disposal of waste’. The PPS made decisions on 173 EHS cases in 2006 of which 134 were sent for summary prosecution and two for indictable prosecution. A decision of no prosecution was made in relation to 37 cases (21% of the total decisions). The PPS made decisions on 289 EHS cases in 2005 of which 42 (15%) were no prosecution.

2.62 Data provided by the PPS to Inspectors showed that in 2005, 92% of EHS cases prosecuted by the PPS in the magistrates’ courts resulted in a conviction. This decreased slightly to 87% in 2006. EHS cases sent to the Crown Court in 2006 showed that seven offenders were convicted, one was acquitted and the Crown Court offered no evidence in two other cases.

2.63 Feedback from the PPS indicated that the quality of EHS files had improved in recent years and fewer cases required additional information before a decision could be taken by the prosecutor. Data from the PPS showed that 13 Requests for Further Information were issued in 2006, which is a reduction of two from the previous year. This is a positive development and indicates quality improvements and growing expertise among many enforcement staff within the EHS.

2.64 A less positive factor is emerging evidence that many potentially strong cases are not sent to PPS due to operational issues such as a lack of resources, particularly where crimes




are complex and investigations likely to be prolonged. A senior enforcement manager said that EHS is 'not prosecuting enough' and that 'too many are getting away'. One Northern Ireland MP stated that 'despite the huge number of incidents (illegal dumping) since 2003, there have only been 173 prosecutions. This is a serious and dangerous activity which is on the rise in Northern Ireland, with evidence of some paramilitary involvement'. A Member of Legislative Assembly (MLA) stated that 'I believe that the problem is that the EHS are not getting to grips with it' (Newsletter, 15 November 2006). The data provided to Inspectors (and available to EHS managers) is not sufficiently comprehensive and accurate to assess the extent of this problem.

- 2.65 The public perception of enforcement is strongly linked to its success in tackling serious environmental crime and the non-compliant, illegal operators. This presents a number of challenges to the EHS. The first is that more substantiated and serious environmental crime cases need to be fully investigated and referred to the PPS. This will require more targeted use of resources and a greater commitment to pursue the hardened and more persistent offenders. Enforcement is a very resource intensive means of regulation but failure to fully investigate and prosecute these offenders will be more costly in the longer term.
- 2.66 There are however a number of options available to regulators and the criminal justice system to recover costs from those who commit

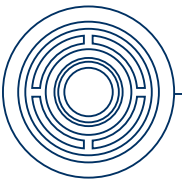
environmental crime. For example, the Proceeds of Crime Act 2002 (POCA) allows funds generated from financial investigations to be used for criminal investigations. These financial investigations are currently undertaken by ARA. New legislation, which came into effect in June 2007, allows the enforcement agency to request full investigation costs from a court. The situation in relation to clean-up costs is still uncertain at present. The recent Review of Environmental Governance (REG) has outlined the framework in which the "polluter pays" principle could be better applied. Inspectors would recommend that the DOE and EHS should develop policies and procedures to fully utilise the new powers, especially in the recovery of costs.

- 2.67 Achieving greater success is also dependent on the work of other agencies such as the PPS and the NICtS. There has been some criticism that external difficulties such as inexperienced prosecutors, court adjournments, levels of fines, etc have impeded the success of enforcement. These are issues which need to be resolved by the agencies involved and there is a need to consider some broader changes to how environmental crime is tackled. The REG has made a number of recommendations for strengthening 'Environmental Justice'. Inspectors support the efforts which raise the profile of environmental crime, punish and deter offenders and lead to improved protection of the environment. One area of particular importance is the need to strike a better balance between the real costs



of the crime and the outcomes (in terms of sentences and recovery of costs). Inspectors are therefore recommending the establishment of a specialist legal jurisdiction for environmental crime and better implementation of the “polluter pays” principle.

2.68 Some of these issues can be addressed by raising the profile of enforcement action and publicising the successes, widely and often, as this will improve public confidence and also help to prevent and deter future crime (assuming that the sentences and other outcomes reflect the seriousness, costs and environmental damage involved). Inspectors found some internal EHS concerns relating to publicity of prosecutions which are handled by the DOE rather than the agency. There is a view that the DOE press office are imposing too restrictive timescales and not providing adequate details of case outcomes, all of which combine to limit the impact of media coverage. The Department and Agency need to share the commitment to maximise exposure in the general and specialist press and develop a supportive system of publicity which seeks to broadcast the enforcement message. Inspectors have been encouraged by some examples of good media coverage of recent waste prosecutions.



CHAPTER 3:

The Planning Service



- 3.1 The PS has its Headquarters in Belfast and 6 Divisional Planning Offices in Omagh, Londonderry/Derry, Belfast, Craigavon, Downpatrick and Ballymena – two sub Divisional Planning Offices are located in Enniskillen and Coleraine. The purpose of the planning system is to regulate development and land use in the public interest. The range of planning functions and statutory powers available to the PS are set out in the Planning (Northern Ireland) Order 1991 and associated regulations.
- 3.2 The ongoing Review of Public Administration (RPA) is proposing the establishment of seven new super councils. It is proposed that the enlarged councils will acquire additional powers of which planning functions (and staff) are likely to be transferred from the PS.
- Organisational structure**
- 3.3 The PS has three key business areas: the development & control process (the system for dealing with individual planning applications), including enforcement; formulation of planning policy; and preparation of development plans. This inspection has focused on one discrete aspect of
- its business – the enforcement of planning laws and regulations and its interface with the CJS.
- 3.4 The PS is headed by a Chief Executive and a Board of Directors from its three directorates of operations, strategic planning and corporate services. The operations directorate has responsibility and accountability for all planning enforcement functions within a hierarchical chain of command emanating at Grade 5 level and cascading through Principal Planning and Technical Officers (PPTO) managers in each of the Divisional Enforcement Teams.
- 3.5 During the inspection, there was a total of 60 staff posts (7% of the staff complement) allocated to enforcement activities across Northern Ireland. However, Inspectors found that only 48.5 of these posts were filled, an overall shortfall of almost 20%, due in part to high levels of staff turnover and difficulties filling vacancies. Inspectors also found that other vacancies existed because staff had been allocated to non-enforcement duties, often at short notice. Six of the Divisional Enforcement Teams consist of a mix of staff from various technical and administrative grades. In addition, there is an enforcement



team at Headquarters that carries out special studies.


- 3.6 The Enforcement Policy is contained within Planning Policy Statement (PPS9) – ‘The Enforcement of Planning Control’. It states that ‘Planning procedures and decisions need to command respect, accordingly the Department’s key objectives for planning enforcement are to:
- bring unauthorised activity under control;
 - remedy the undesirable effects of unauthorised development, including where necessary the removal or cessation of unacceptable development; and
 - take legal action, where necessary, against those who ignore or flout planning legislation’.

However, Inspectors found little evidence that PS normally pursues court action in such cases.

- 3.7 The policy statement also makes the important point that the objectives must be met ‘to maintain the credibility and integrity of the planning system’. The policy sets the operational framework and helps to determine what (if any) action will be taken and priority given to breaches, as follows:
- Priority 1 – work resulting in public danger/environmental damage;
 - Priority 2 – unauthorised work/uses which may cause loss of amenity;
 - Priority 3 – non-compliance with conditions of planning approval; and
 - Priority 4 – minor breaches that

can be regularised (e.g. sheds and extensions).

- 3.8 Inspectors were referred to Information Leaflet 10, ‘A guide to Planning Enforcement in Northern Ireland’, which makes clear to the public that the PS ‘will normally pursue court action which often results in the conviction of and a criminal record for the offender for specific offences.’
- 3.9 During the inspection PS staff defined the enforcement process as ‘taking forward any action to rectify a breach of planning’. Enforcement action was described to Inspectors as being discretionary with court action usually considered as a last resort. Staff will try for an amicable settlement first, then arbitration, then negotiate restoration if appropriate before a case is considered for prosecution. It was estimated by staff that approximately 5% to 10% of enforcement cases end up in court although there was little management information to confirm this.
- 3.10 PPS9 (currently under review to reflect the enforcement provisions introduced by the Planning (Amendment)(NI) Order 2003 and Information Leaflet 10 are widely available and published on the Department’s website. While each provides a useful explanation of the approach to enforcement, they can be improved to explicitly state that offences against the planning regulations will not be tolerated and that those who deliberately ignore or breach the conditions or terms of enforcement notices will be dealt with to the full extent. The PS has



recognised the need to be more explicit about its duty to enforce planning laws to help 'maintain the credibility and integrity of the planning system'.

- 3.11 Inspectors were informed that management information was not readily available from the current '20/20' IT system to accurately measure and monitor the flow of work throughout the enforcement process, i.e. from receiving a complaint to its satisfactory conclusion. PS had recognised the weakness and was in the process of introducing a replacement IT system called ePIC, to improve the capture and retention of performance information.

Corporate and Business Planning

- 3.12 The PS Corporate and Business Plans present the strategic and operational objectives of the Agency and, with the exception of enforcement, are linked to specific performance targets. These plans and targets are reviewed on an annual basis.
- 3.13 The PS Corporate Plan 2006-09 identifies links to the government's PSA targets and details other key targets. While the 2006-07 Business Plan provides detail on the actions that will be taken to deliver strategic aims and objectives, there were no specific objectives, targets or commitments directly relating to enforcement activities. The existing IT system did not support management's need to accurately gather and report workload and performance information in relation

to enforcement activities, results and outcomes. PS management stated that work would be done to introduce specific enforcement targets in the 2007-08 Business Plan.


- 3.14 There is a disjunction between the strategic intent and the operational practice. PS needs to develop a performance management framework for enforcement that sets out its work priorities, key targets and performance standards if staff and managers are to be able to prioritise activities and target risks. The present approach is unwieldy and wasteful and provides no real assurance that the workload and workforce is well managed and focused on the right things.
- 3.15 The backlog in planning decisions is placing resource pressures on the Agency and this has impacted on enforcement. Inspectors are aware of the high levels of staff turnover, staff retention problems and the routine re-deployment of enforcement staff to non-enforcement work. This causes heavy, and increasing, workloads for enforcement staff and added difficulties managing the load. In addition, there is a lack of clarity on work priorities and a lack of focus on enforcement. These pressures are de-motivating staff and causing inequality and inconsistency of approach as staff look for 'quick wins' to close cases.
- 3.16 These issues combine to make the effective management and control of casework very difficult. It also increases the risk that some cases will not be pursued, that others will not be developed to the most



appropriate outcome and Inspectors found evidence that this was happening. PS needs to consider how it can adequately resource and maintain the enforcement effort, particularly when staffing pressures arise in other parts of the organisation.

Enforcement approach and policy

- 3.17 PS takes enforcement action across the full range of planning matters, including those affecting listed buildings which fall within the remit of EHS Built Heritage. Senior managers in EHS expressed the view that enforcement related to listed buildings would be better placed with them as there is a closer fit with other EHS enforcement activities. Inspectors would advise dialogue between EHS and PS to resolve this issue.
- 3.18 Enforcement staff raised concerns about the discretionary element in the current policy, particularly in relation to judging the action to be taken against a breach of planning control that is 'commensurate with the harm being caused and whether it regards it as expedient to do so. PS will also take into account potential effects of enforcement action on both local and regional economies'. There is some ambiguity around what is meant by 'commensurate' or 'expedient' which often leads to staff taking a 'soft' option. There is a need for more clarity around these elements to improve the efficacy of enforcement actions and show a greater determination to enforce planning laws, to their full extent.
- 3.19 Planning enforcement is normally reactive i.e. investigations begin when a complaint has been made by the public, elected representatives or other agencies. Enforcement is seen as the application of planning regulations, often a 'tricky' judgement with an intention to secure an agreement to comply and, as above, staff expressed some difficulty in deciding when to apply the appropriate enforcement action.
- 3.20 Inspectors were informed that PS will investigate all complaints about alleged breaches of planning control and carry out a site visit within a 'reasonable time-frame' although there are no specific clearance targets. All written complaints are placed on an enforcement file – under Freedom of Information (FOI) a request may be made to release details of complaints – normally personal information will not be released without the permission of the complainant. Anonymous complaints will be investigated although this can be difficult if further information or evidence is required to start the investigation.
- 3.21 It is important that enforcement activities are intelligence-led and risk-based to ensure maximum effectiveness. The current IT system does not capture a full range of information and that which is captured is not routinely analysed to learn lessons and help inform future actions. In addition, the majority (if not all) of the work is reactive in nature and each case considered afresh. Actions would be better informed if there was a systematic means of using the knowledge that is



created to help tackle individual incidents as well as the wider causes of crime. Regular assessment and learning from experience coupled with analysis of the gathered intelligence will also help identify potential risks and help direct future actions. Staff have recognised the need to learn from and share experiences and expressed frustration that this had not developed.

- 3.22 PPTOs meet every month as the Enforcement Working Group to discuss current work activities. Occasionally the group will consider operational problems such as workflows although discussions tend to focus on the current caseload, often low level discussions about the status of some 200-300 cases. While there is an element of good practice in such a forum, its effectiveness will be diminished unless it is able to maintain a higher level view of operations and make links between the strategic objectives and operational actions to provide assurance that key policies and strategies are having the desired effect.
- 3.23 The purpose of the investigation is to establish if a breach of planning control or an offence has occurred and if so who is responsible. Any subsequent action will depend on the nature of the breach/offence and its consequences/effects. PS has the power to seek further information and may serve an Information Notice to confirm for example the ownership of land. Where a breach of planning control has occurred a Planning Contravention Notice may be used to gain information about the

suspected breach. Both of these notices are discretionary procedures and do not constitute enforcement action. However, they represent the first stage in what might become formal action and act as a clear warning that further action is being considered. The processes for formal action are clear, e.g. the issue of Enforcement Notices, Breach of Condition Notices or Stop Notices and the procedures follow a logical route.

- 3.24 The statutory duty of PS is explained in PPS9 'to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development.' It goes on to state that the Department 'has a general discretion to take enforcement action against a breach of planning control when it regards it as expedient to do so ...' The ambiguity and lack of clarity around how discretion should be exercised causes problems for staff and leads to inequalities and inconsistencies in actions. It would be helpful if PS was to address this issue and recognise that it has a general duty to take enforcement action. How it fulfils that general duty would then be set around enforcing the planning laws, using judgements on the best course of action taking account of the complaint, its context, harm done to the environment, and so forth. Shifting the approach to become more evidence-based will improve understanding and inform judgements that direct effective enforcement action and will do much to resolve current difficulties and show that PS is committed to tackling those who would abuse the planning laws.



Communication

3.25 Efficient internal and external communication is essential to ensure a corporate approach to enforcement that is consistent across all divisions. It is also essential to cultivate effective working relationships with other stakeholders. Inspectors were informed that communication across the 'DOE family' needed to be improved to enhance guidance, case handling, gathering and sharing of intelligence and opportunities to learn from best practice.

Joined-up enforcement

3.26 Inspectors found a range of different views on the effectiveness of working relationships with the DSO, the three firms of private solicitors who undertake prosecutions on behalf of PS and colleagues in other parts of PS. There were said to be numerous causes such as variations in the effectiveness of communication, methods of contact and development of local relationships. The PS would benefit from building closer working relations with its key partners such as PPS because effective interaction is very limited and there is some disquiet about the extent of the service provided by solicitors. Closer working will also help create a better understanding of each others needs and raise awareness of the planning regulations, costs and restoration issues, as well as provide the basis for continuous improvement.


3.27 The relationship between PS and the EHS is critical to the effective enforcement of planning. The main

findings on this relationship are covered in Chapter 2 of this report.

3.28 Enforcement staff also recognised the importance of forming good working relationships with external stakeholders such as the police, HMRC, Social Security Agency (SSA) and DVTA. However, closer working and the exchange of information was often hindered by concerns about data protection and reluctance by some LEAs to share intelligence to tackle crime. As reported in Chapter 2, DOE Agencies can utilise the guidance given by the Information Commissioner on handling requests for personal information '... needed to prevent or detect a crime, or catch and prosecute a suspect.'

Prosecutions

3.29 The judgements to be formed around when to prosecute an offender are heavily influenced by the 'expedient' issue. In addition, there is a general acceptance that taking a case to court is resource-intensive and these issues have a direct bearing on the selection of cases for prosecution. Consequently, a relatively small number of breaches are pursued although there is a high level of success. Management information, although incomplete, showed that in the period January to September 2006, 31 cases were prosecuted from over 200 served enforcement notices. Staff confirmed that resource constraints limited their capacity to handle more cases. The resources issue needs management attention as does the need for more clarity at the very top – a strategic intent to tackle

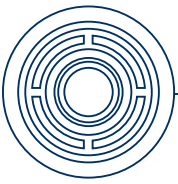


offences against the environment and a resource effort committed to achieving this – so that the various Agencies, including the PS, can show their determination, indeed duty, to protect and enforce.

- 3.30 Inspectors were informed that the action taken will be commensurate with the harm being caused. Where the proposed works or development cause significant harm to the environment, the notice served may require cessation of works or the removal of buildings and the restoration of land to original state. Contravention of such a notice is an offence and the PS will normally pursue court action. However, greater attention to ensuring that offenders will be brought to justice would provide a better emphasis together with an assessment of the harm caused. Better differentiation between compliance, non-compliance and criminal behaviour will provide a better understanding and assessment of incidents that should be pursued through the courts.
- 3.31 In cases where an offence has been committed PS has the option to proceed directly to prosecution. However, Inspectors found that, in practice, PS will serve the warning letter to give the offender the opportunity to remedy the situation. A clearer focus on enforcement and tackling offenders in these sorts of cases would lead to more direct action to prosecute from the outset.
- 3.32 Where there is non-compliance with a Notice (and no appeal or an unsuccessful appeal) the PS will proceed through its solicitors to

issue a summons to commence Court proceedings. Legal advice can be obtained through the DSO and the PS also uses three firms of private solicitors to carry out legal work including the prosecution of cases in Court. The PPS is not used to prosecute cases.

- 3.33 Prosecution cases taken to court may sometimes lead to the offender offering compliance or restoration before the hearing. If so, the case may be withdrawn, particularly for a first offence although persistent offenders will be pursued. In such cases it will be important to ensure that offenders are not avoiding justice, particularly repeat offenders and deliberate breaches.
- 3.34 Inspectors were informed that solicitors and barristers are often seen as being ill-prepared on the morning of court, unfamiliar with case details and don't often challenge applications for adjournment and Planning Officers consider that they are also unfamiliar with the Planning regulations. Some staff expressed the view that they would prefer a central legal team within PS or DOE to work with them to build knowledge and expertise in handling cases. There is a consistently held view that better results have been achieved by private solicitors familiar with the regulations and well briefed by the enforcement team and some staff have had court training that has helped them prepare for hearings.
- 3.35 There is general concern about the apparent low level of fines and award of nominal costs that bear no resemblance to actual resources



used. While it is not general practice to go for full recovery of costs, the PS needs to ensure that cases submitted for prosecution provide more information on enforcement costs so that courts can appreciate the scale of the crime and the costs incurred in bringing it to court. There is also concern about the apparent high level of adjournments which tie up scarce staff resources and the DOE needs to engage with the NICtS and magistrates to make them aware of the effects and also ensure that solicitors and barristers raise the relevant implications on each application for adjournment.

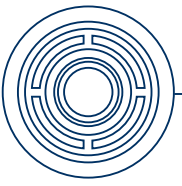
Learning and best practice

- 3.36 The identification, sharing and implementation of best practice is critical to improving the enforcement function. PS needs to consider how it can regularly and systematically learn from its experience and develop a proactive work programme to aid compliance and, more importantly, prevent and deter those who may breach the regulations. There is much scope to share knowledge and experience with other PS units, the DOE family and external partners to help develop such a programme although it will take more commitment if it is serious about its enforcement role.
- 3.37 Inspectors found that PS staff recognise the value of being more proactive to prevent the need for enforcement. The following were suggested by PS enforcement teams as a means of improving effectiveness:
- more powers to tackle the large-scale operators and persistent offenders;
 - introduction of a ‘late payment fee’; to deter those who delay planning or apply in retrospect;
 - introduction of an ‘administrative penalty’ as an alternative to prosecution in situations where it is not economically viable to prosecute;
 - align priorities with key stakeholders;
 - confirm PS as a meaningful player in the criminal justice system;
 - make PS more responsive to enforcement by raising its priority; and
 - raise awareness across PS/DOE about the value of effective enforcement actions.
- 3.38 Some of these options will need changes to existing legislation and other administrative changes but each has merit and will add to the effectiveness of the current enforcement effort.
- 3.39 PS needs to be seen as committed to tackling breaches of the regulations. That commitment needs to be sharpened to ensure that there is a systematic means of progressing all relevant cases through to the right outcome. There should be little room for a ‘soft option’ of restoration only, no offender should be able to negotiate their way out. In addition, a performance framework that sets a minimum level of cases to prosecution needs to be set so that staff can focus intelligence-led activities in the right areas.



Results

3.40 The PS is unable to provide useful and meaningful data on its enforcement activities prior to 2006 so Inspector's analysis of data is confined to 2006. As at 30 September 2006, there were 5,741 open enforcement cases and, other than June and September, the figures show a steady increase month-on-month since January, as more cases were received than closed (4,971 enforcement cases were open in January 2006). In the first nine months of 2006, PS served a total of 210 enforcement notices, issued 16 summonses and brought 31 cases to the courts for prosecution. The range of court fines for those cases that were finalised was £75 plus costs to £7,000 plus costs. Costs awarded by the courts tend to be very low (see Appendix 3 for more details).



CHAPTER 4:

Driver and Vehicle Agency



4.1 The new DVA was formed in April 2007 through the merger of DVLNI and DVTA. They were inspected as separate agencies for the fieldwork phase of this work. As the merger brings together the licensing and testing of vehicles and drivers in Northern Ireland, the findings and recommendations are presented together.

Organisational structure

4.2 DVLNI had three distinctive areas of business – the registration and licensing of vehicles which accounted for 73% of the business; driver licensing which was 17% of the business; and the licensing of passenger transport operators which had 10% of the business. The transfer of the vehicle registration and licensing function to the DVLA in Swansea was announced in January 2007. DVA will continue to carry out vehicle licensing and enforcement work in NI under a formal agreement between the Department for Transport (DfT) and DOE.

4.3 DVLNI's enforcement activity is carried out by about 40 staff, most of whom are located in Coleraine working on VED evasion. VED

offence reports are generated by PSNI, DVTA, Automatic Number Plate Recognition (ANPR) sightings and wheelclamping detections and then processed through to completion. It has five prosecutors located across NI who present its enforcement cases in the magistrates' courts. Enforcement Field Officers provide intelligence particularly for areas of high VED evasion.

4.4 The roadside enforcement of drivers and vehicles was undertaken by the DOE (Transport Licensing and Enforcement Branch) until 2000 when it then moved to the DVTA. The DVTA was established as an Executive Agency in 1992 and attained trading fund status in 1996. Enforcement consists of 32.5 staff from a combined Agency complement of 568 (2006-07). The enforcement complement is planned to remain the same for 2007-08. Enforcement is targeted at roadside checks of goods vehicles, taxis and buses as a means of reducing VED and MOT evasion and general transport and non-compliance.

4.5 The continued development of the new Agency is challenging as the merger now requires integration of the various functions including



enforcement. Inspectors recommend that this integration should take the form of a single enforcement unit under the management of a senior director. It should be supported by a statement of intent on enforcement from the DOE with a full set of policies and procedures to direct operations.

Openness and accountability

- 4.6 Improving road safety is a priority for the DOE and the DVA. The DOE has two specific PSA targets 'to reduce, by 2012, road deaths and serious injury by 33 per cent from the 1996-2000 average of 1750 per annum' and 'to reduce, by 2012, the number of children killed or seriously injured by 50 per cent of the 1996-2000 average of 250 per annum'. A key target from the DOE Corporate Plan 2006-08 is 'through multi-agency operations, to remove 8,000 unlicensed vehicles from the public roads by 2008.'
- 4.7 The DOE Business Plan 2006-07 has set a number of actions and targets to contribute to the delivery of the PSA targets. Most of these are policy and educational though one has a specific enforcement remit to remove 4,300 unlicensed vehicles from the roads.
- 4.8 DVA strategic and business planning has not been integrated as yet. Inspectors understand that establishing a common vision, aims and targets is a priority for the Chief Executive and senior management.
- 4.9 The mission statement of DVLNI is 'to assist road safety and law

enforcement through the provision of accurate and complete registration records and providing other integrated and value-added services'. A strategic objective of DVLNI is 'to increase compliance' through targets of increasing the tax yield from less evasion; defining persistent evaders and improving the quality of vehicle data. The DVTA mission statement is to 'contribute to the improvement of road safety and the environment, to the reduction of vehicle related crime and to fair competition in the transport industry, through testing, enforcement and education'. A key business objective is 'to improve compliance' which is supported by 21 key tasks in the 2006-07 Business Plan. The DVTA has eight key ministerial targets in its framework document though none relate to enforcement.

- 4.10 Both agencies had developed strategies and policies on compliance and enforcement. The DVLNI enforcement strategy covers the period 2005-09 and is accompanied by an enforcement activity plan. It is closely linked with the DVLA enforcement strategy 2005-09 for Great Britain. Key targets include the reduction of VED evasion level by 10% year on year and to continue to increase the accuracy of DVLNI records allowing enforcement officers to trace evaders and their vehicles more easily, achieving 97.5% traceability by 2009. It has a separate strategy for 'Dealing with the vehicle underclass in Northern Ireland 2006-09' with a target to 'reduce the number of underclass vehicles by 10%, year on year.'

4.11 The DVTA has separate compliance and enforcement strategies. The enforcement strategy is based on 'intelligence based targeted enforcement supported by outcome orientated performance measures, appropriate information systems and technology, better education of drivers and operators and professionally trained staff'. There were some concerns that enforcement staff have little influence over the setting of internal targets.

4.12 The broader tension between compliance and enforcement across the DOE family is evident in the DVA. There was a perception amongst enforcement staff that despite its increasing importance in terms of resources and activities, enforcement was still not adequately reflected at Management Board level in either agency. The DVTA self-assessment referred to a feeling that the Board is not sufficiently aware of the exact nature of enforcement work and of the constraints and competencies required. One member of DVTA staff commented that 'the rest of the agency does not see enforcement as part of the business' and that this feeling of marginalisation was increased by not including enforcement as part of the DVTA survey.

Communication

4.13 An important means of addressing the perception of peripherality is improving internal communication between senior management and enforcement staff. Inspectors would advise that enforcement should be

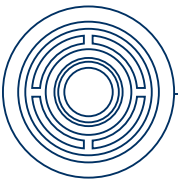
represented by a Director at Board level and that appropriate communication systems are in place to keep a focus on enforcement at Board level.

4.14 Inspectors had discussions with a range of external stakeholders including representative organisations for bus and road freight operators. These organisations are key partners for the DVA as good enforcement is a means of regularising the sector and providing fair and open competition. They are also a source of valuable intelligence on illegal operators. CJI supports the continued strengthening of these relationships through better communication and interactions and note that the DVTA self assessment refers to the need to develop external communications as part of the enforcement strategy (particularly in relation to communications with the industry). A good example of this cooperation is the Northern Ireland Road Freight Forum, which was established in 2004 and has membership from the DVA together with road haulage organisations.

Joined-up enforcement

4.15 The integration of enforcement activities should be a priority for the newly merged agency. At the time of the inspection fieldwork, enforcement was done separately, albeit with elements of a partnership approach. Priority areas for integration should include:

- appointment of a Director of Enforcement;
- a single enforcement unit within the DVA;




- an enforcement strategy, policy and procedures document; and
- management information systems and integrated databases leading to a single enforcement database.

- 4.16 The enforcement of environmental offences and road traffic offences is a shared responsibility of the DOE though the type of business is quite different. Inspectors are not proposing a single enforcement unit for the DOE but see mutual benefit in having a more collaborate relationship than currently exists. For example, illegal waste operators are using the roads as a means of achieving their criminal operations and closer collaboration has benefits in achieving enforcement objectives for each of the agencies. This could include a more robust and collaborate approach to the transport of waste (e.g. overweight and unroadworthy lorries) as well as more rigorous enforcement of Certificates of Destruction for End of Life Vehicles.⁴
- 4.17 More effective joined-up approaches to enforcement have the potential to make a significant contribution to road safety as well as wider criminal justice objectives such as denying criminals the use of the roads. The two agencies were developing Information Sharing Protocols (ISP) with a range of LEAs such as the PSNI and HMRC to facilitate the sharing of intelligence information. The relationship with the PSNI is critical as both organisations share

the enforcement of road traffic regulations. CJI recognises the importance of this partnership for improving road safety and is proposing to undertake a detailed inspection of Roads Policing and enforcement later in 2007.

- 4.18 As discussed in Chapters 2 and 3, there is scope to strengthen cooperation and joint operations with other LEAs. Inspectors acknowledge the concerns expressed in the DVTA self assessment that ‘demands on staff make it difficult to engage in multi-agency operations’ and would accept that this is an important factor in limiting the number of joint operations to date. There is therefore an onus on senior management, through strategic and business planning, to ensure that joint enforcement activities are prioritised, planned well in advance and based on reliable and robust intelligence and properly risk assessed.
- 4.19 The increasing use of technology as a method of enforcement has clear advantages for detecting and prosecuting road traffic offences. The increasing use of ANPR cameras linked to specialist databases such as untaxed vehicles is leading to more detections and greater compliance. The form of evidence is also leading to more successful prosecutions.
- 4.20 Realising the fuller benefits of this type of technology requires a more collaborate approach to the development and application of these

4 A Certificate of Destruction is used to close off the vehicle record after a vehicle has been scrapped. But many vehicles are not scrapped through authorised facilities, which raises concerns about the accuracy or legitimacy of destruction records.



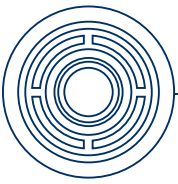
intelligence databases. It would also address a concern of staff expressed in the DVTA self-assessment that the Agency has 'fragmented interim IT solutions'. The transfer of vehicle licensing functions to the DVLA was partly in response to the need to improve vehicle IT systems, though the local NIVIS system was praised by many DVLNI staff. The DVA should therefore ensure that the IT benefits of the transfer are fully implemented in Northern Ireland. Other enforcement agencies and particularly the PSNI should be able to obtain relevant data from, and supply data to, these databases. As of October 2006, the PSNI had 75 vehicles with ANPR and loaded with three different databases – one of which related to vehicles where tax had expired by more than two months. The PSNI is also keen to link with an uninsured database and with a MOT database and have more ready access to the driver licence system within DVA.

- 4.21 There is also scope to develop better linkages with court IT systems allowing the courts to update DVA records with driver endorsements, create no licence holder records and confirm the identity of defendants. Inspectors understand that a pilot of this is taking place in London and welcome the further integration of DVA databases with the criminal justice system. This should also include closer integration with the Causeway project which is aiming to link the different criminal justice systems in NI.
- 4.22 The PSNI is a key partner for the DVA. A lack of enforcement powers

means that the DVA is dependent on police support for specific types of operations such as the stopping of vehicles at the roadside (though new powers are now being made available to DVA) and for potentially dangerous situations such as late night illegal taxi and bus checks. The DVTA self assessment noted that 'they (not confined to PSNI) sometimes pull out of/cancel operations at the last minute', and Inspectors did experience this situation during the fieldwork for this inspection. Inspectors welcome the PSNI/DVA liaison meetings involving senior staff (first meeting in October 2006) to discuss better cooperation and would encourage further dialogue with a view to resolving these types of issues and formalising the relationship through a SLA.

Cross-border co-operation

- 4.23 A feature of driver and vehicle enforcement systems is that they are limited by boundaries, whether organisational or territorial. The merger of the two driver and vehicle enforcement agencies, linked with closer collaboration with the PSNI, will help to overcome the organisational boundaries. Territorial boundaries are more problematic as they are reinforced by different laws and regulations and by different types of enforcement. The EU is taking the lead in trying to harmonise road safety legislation and enforcement though progress has been slow to date.
- 4.24 The problems for Northern Ireland are two-fold – different enforcement



systems from GB and different enforcement systems from other EU states, particularly the RoI. The increasing movement of traffic from GB and the RoI means that enforcement is compromised in some key respects. One problem relates to the lack of interface between various enforcement databases meaning that technology-driven enforcement such as ANPR is unable to detect untaxed vehicles from outside the jurisdiction. The transfer of vehicle registration and licensing to DVLA will improve links with GB, though cross-border traffic with the RoI will require more collaboration between the respective central Government Departments.

- 4.25 In addition to detecting offences, there is also a need to improve the sanctions available for offences involving 'foreign' registered vehicles. Road traffic penalty points incurred in Northern Ireland and GB are not counted together – drivers can therefore accumulate up to 11 points in each jurisdiction without losing their licence. This presents a risk for road safety in both NI and GB.
- 4.26 The situation is worse with regard to road safety on the island of Ireland where there is no mutual recognition of driving disqualifications or joint application of enforcement actions such as penalty points. There is mounting evidence to suggest that this is contributing to dangerous driver behaviour particularly in border counties. While resolving these issues is primarily an inter-governmental responsibility, the DOE and DVA have a major role to play particularly with regard to making improvements to enforcement.

- 4.27 Agreement has been reached with the RoI licensing authority to disclose licensing details of individual vehicles detected in Northern Ireland and clamping of Irish unlicensed vehicles is now underway.

Legal advice and prosecution

- 4.28 The vast majority of DVA enforcement cases are straight-forward or 'production line' as they are based on technology-driven detections (e.g. ANPR prosecution can be direct from a captured image) and are progressed through a standard process. Compliance rates are high as many offenders will rectify their breach (e.g. pay motor tax) before the case reaches the courts. It is likely that further compliance, without recourse to the courts, can be achieved by the use of fixed penalty notices and financial incentives to settle before court. For those cases that reach the courts, prosecution is undertaken by DVA prosecutors.
- 4.29 The DVA uses the PPS for a range of prosecutions. These include appeals for motor tax offences as well as the prosecution of driver and vehicle testing cases (i.e. all previous DVTA prosecutions). With the merger of the agencies, it is now timely to review the current arrangements for prosecutions in the DVA and establish a more consistent and uniform approach within the Agency. This review should link into, or be part of, any broader review of the legal advice and prosecution across the DOE family.



Equality and fairness

- 4.30 Securing equality and fairness is founded on transparent and effective enforcement systems, policies and procedures. Any weaknesses present risks in this regard and the issue should therefore be considered in a strategic manner by the DOE and the agencies.
- 4.31 One of the issues identified by DVTA in its comprehensive risk register is a 'failure to ensure that effective and proportionate levels of enforcement are directed at non compliance in all geographical areas throughout the province'. The same situation would have applied to DVLNI. Inspectors were assured that staff training and the use of equipment took account of this risk and that actions such as the use of geo mapping software to determine non compliance levels in all geographical areas were being implemented. Inspectors were also informed that DVLNI had prepared an unlicensed league table which shows the top 30 VED evasion areas in NI and therefore allowed more efficient targeting of resources. No geographical breakdown of VED or MOT evasion is published.
- 4.32 The application of effective enforcement as a means of supporting free and open competition is an increasing priority for the DVA (particularly evident within the DVTA during this inspection). Meetings and dialogue with various stakeholders in the passenger and freight transport sectors showed that legitimate businesses were coming under threat from illegal operators who could undercut prices for services. The legal sector is willing to provide intelligence on these illegal operators but this will only continue if the licensing, enforcement and sanctions are seen to be effective.
- 4.33 The concept of intelligence-led enforcement is a means of targeting the illegal operators. This is incorporated in DVTA strategic planning and is widely referred to by enforcement staff. It is based on reliable intelligence, often shared with other LEAs, that a group of persistent or habitual offenders is responsible for a range of vehicle and driver crime. The DVTA self assessment does however state that intelligence-led enforcement systems are not fully developed. An enforcement officer stated that 'most operations are random with the only sense of targeting being what time of day the operation runs or the area. Targeting of operations based on named operators does not happen'. The concept was less developed in DVLNI though there were examples of the approach in terms of VED evasion such as the geographical breakdown of worst areas and the adoption of the vehicle underclass strategy from DVLA.
- 4.34 The DVA strategy for the vehicle underclass is targeted at vehicles with one or more of the following characteristics: untaxed or between keepers for at least three months, vehicle registration mark not on database or registered to a different vehicle and vehicles that are declared scrapped. This definition was adopted by DVLA and then applied in Northern Ireland. It is estimated that 4.8% or 45,000 vehicles meet




this definition in Northern Ireland in 2006. The consequences of underclass vehicles include loss of vehicle excise revenue, more uninsured and unroadworthy vehicles on the roads and increased difficulty for the police in investigating crime and road traffic collisions.

- 4.35 The further reduction in VED evasion will need a much more intelligence-led approach targeted at the vehicle underclass. Many users of these vehicles are not 'soft evaders' and are therefore less likely to comply with compliance-led approaches such as ANPR detections and the implementation of Continuous Registration. DVA would recognise that these initiatives led to higher than expected relicensing by 'soft evaders'. The 'hard evaders' or those that are 'more determined, more persistent evaders and those motivated by other than purely fiscal factors, requires a much more robust enforcement activity' according to one DVA enforcement officer. This will require more targeted roadside enforcement, working in close cooperation with the PSNI and based on reliable intelligence.
- 4.36 As part of the stakeholder consultations, Inspectors were made aware of concerns among independent coach operators that the licensing and enforcement of passenger transport operators could be more effective and applied more consistently. There was a specific concern that DVA is showing preference to the main transport operator in Northern Ireland by making it difficult for the private sector to obtain either operator or

route licences and failing to take an effective enforcement approach with unlicensed operators. However, senior management state that transportation strategy and competition policy are not matters for DVA and the Agency works within the remit of existing legislation.

- 4.37 One of the bigger issues raised in this inspection is how foreign nationals are dealt with by the enforcement system. On one side, there are concerns that prosecutions against foreign nationals could be unfair unless proper account is taken of language and cultural differences. It is positive to note that DVLNI met the cost of providing interpreters in court though broader concerns remain in relation to roadside enforcement. On the other side, the lack of information on foreign registered vehicles and drivers means that enforcement is less robust and some offenders are not receiving the same level of enforcement as those with Northern Ireland vehicle registrations and driving licences. The DVTA self assessment confirmed that the lack of an interpretation service limits the ability to prosecute non-English speaking drivers. While Northern Ireland is not unique in this regard, there are areas where the service could be made more consistent and fair. There is therefore a need for the DVA, possibly through the DOE and other LEAs, to set up a contract to provide interpretation services for its enforcement service.
- 4.38 The ease with which foreign registered vehicles, many of which have overstayed their 'visitor status' can drive with apparent immunity on



the roads is also a concern for the wider criminal justice system. As these vehicles are not registered with DVA or DVLA and can evade many road traffic penalties and charges, they are more likely to be used for wider criminality. DVA knows that some of the vehicles are not even originally registered abroad, but are UK vehicles with made up or stolen foreign number plates. Recent legal advice is that foreign registered vehicles which are currently not taxed and registered in their country of origin, are committing a VED offence in this country if they continue to drive here. Inspectors welcome the development of a DVA strategy to wheelclamp and impound such vehicles and a pilot scheme is in progress in relation to vehicles from Rol, Poland, Lithuania and Sweden.

People

- 4.39 DVA enforcement staff, like many of their colleagues in the EHS and PS expressed good job satisfaction. They are highly motivated and believe that they are making a major contribution to road safety. There have been some industrial relations difficulties over recent years and this has not been eased by problems with the re-grading of enforcement staff in DVTA and the recent transfer of vehicle registration and licensing functions from the DVLNI to DVLA. There were also some concerns expressed by DVTA staff that their 'unique working environment' is not seen to be recognised at senior management level.
- 4.40 The biggest challenge for the DOE and the DVA is to determine the

most effective and efficient means of investing in their enforcement capabilities. It is the view of Inspectors that the lead should come from the DOE in developing a set of competencies and core skill set for enforcement staff which includes those in the DVA. This should be linked to appropriate career progression opportunities and supported by skill development. It should lead to a more unified and consistent approach to enforcement. There is evidence of inequality across the enforcement grades, which is impacting on the good will of staff to work out of hours when an operation requires.

- 4.41 PSNI provided bespoke training to DVTA intelligence officers in December 2005 which included an understanding of the NIM, data protection, human rights, RIPA, the Criminal Procedures and Investigations Act and the management and analysis of intelligence. This type of training is an example of best practice which can be used for other agencies/more enforcement staff.

Learning and best practice

- 4.42 A good performance management system is crucial to developing a learning organisation, which is able to act upon its strengths and weaknesses. All of the agencies undertook a self-assessment as part of the inspection process and this is now an important tool to improve performance. The DVTA self-assessment was particularly strong in terms of detail and willingness to




address weaknesses as well as build on strengths. It formed an important input to this inspection and is a good example of best practice in terms of approach to performance improvement.

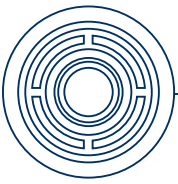
- 4.43 The DVA has strong links with its GB equivalent enforcement bodies – the DVLA and Vehicle and Operator Services Agency (VOSA) are the main enforcement organisations for drivers and vehicles. There is scope for DVA to learn from the wider experiences, knowledge and initiatives of its GB equivalents and this should be captured through regular exchanges of people, information and intelligence.
- 4.44 Quality assurance checks are an effective means of assessing progress in a range of enforcement areas. One area of particular importance is the quality of investigation files, most specifically those that are more complex. There was some evidence presented to Inspectors that a high number of prosecution files had fundamental errors. An internal audit review of DVTA enforcement in 2004 found a need for better monitoring of prosecution files for the PPS and recommended that management should ensure that the outcome of prosecution cases is established on a timely basis and explanations sought in instances where prosecution cases had been unsuccessful. CJI supports these actions as a means of embedding learning and best practice within the Agency and to encourage continuous improvement.

Performance and results

- 4.45 Enforcement within the DVA is geared towards achieving the PSA target to reduce road deaths and serious injuries. The DOE and DVA contribution to achieving this target is through specific targets and actions. The target to remove 8,000 unlicensed vehicles from the public roads by 2008 is contained in the DOE and DVA Business Plans. As of end of September 2006, 1,963 vehicles were removed most of which were in the Belfast area. This was mainly due to ‘Operation Clean-Up’ which was an inter-agency (NIO, PSNI and the Belfast City Council) plan to collect and dispose of these vehicles. Other large councils have refused to participate, primarily due to the costs involved. As many of these vehicles fall outside the remit of ANPR devices, a more intelligence-led and targeted approach will be required to achieve this target.
- 4.46 Both the DVLNI and DVTA report their contribution to the reduction of VED evasion. It is however the primary responsibility of vehicle registration and licensing unit (now transferred to DVLA) and its local enforcement unit. Progress on reducing VED evasion has been good over recent years (see Appendix 4 for more details) and the level of evasion has fallen from 7.2% in 2004 to 5.4% in 2005 and 5% in 2006.⁵ This is however much higher than the 2.2% rate in GB.

⁵ This is based on a survey of 69,000 registration marks of vehicles at 20 road sites across NI.

- 
- 4.47 The further reduction of VED evasion will require a more targeted enforcement approach as more hard core offenders will resist traditional compliance approaches. The DVLA is approaching this problem through better use of management information systems (e.g. better tracing of current keepers of vehicles) and by intelligence-led investigations (e.g. defining persistent offenders). Such measures will need to be implemented in Northern Ireland where the vehicle underclass is estimated to be 45,000 vehicles.
- 4.48 ANPR cameras are the single largest source of all detections accounting for over 40% of VED evasion cases. Prior to the use of the cameras, Traffic Wardens had been the largest source. The National Car Parks (NCP) contract for the new parking attendants does not include this type of evasion amongst their duties. Inspectors understand that this will be addressed when the contract is renewed as it would be beneficial to the DVA.
- 4.49 Most enforcement cases are dealt with on a production line approach which achieves high compliance, often before court action. This is best encapsulated by the comment that 'we try to secure compliance before prosecution because it is cheaper'. It also reduces the possible burden on courts. Most enforcement cases do not reach the courts as mitigated penalties are offered as an alternative to court proceedings and payment of enforcement cases are accepted up to the time of hearing. DVLNI figures for 2005-06 show that there were 44,407 cases reported for enforcement although in about 50% of the cases there was no offence or the offence was mitigated by payment of all outstanding arrears, that 10,840 people were prosecuted or actioned for evasion of VED, with £1.39 million collected in penalties, fines, back duty and court costs. The vast majority of VED cases that reach court result in a prosecution.
- 4.50 Inspectors found that the prosecution of hard core and persistent offenders was hindered by a problem in serving summonses. Summonses are issued to a court office six weeks in advance of the hearing date. But over 30% fail before court proceedings as the cases cannot go ahead unless there is evidence of the summons being served. Enforcement staff said that they 'do review un-served summonses. However there are only three methods and after these have been exhausted the offence is abandoned'. Another member of staff stated that 'although they target offenders through their records they know that there is a hard-core of offenders who know how to beat the system.'
- 4.51 Inspectors were told that a special meeting was held with the NICtS in late 2006 to address this problem, including the fact that some areas are much worse than others. Inspectors strongly support the resolution of this issue as it is allowing hard core offenders to evade justice.
- 4.52 A separate offence relates to Continuous Registration (CR) which replaced SORN. The processing of CR offences does not require a vehicle to be sighted on the road and



the offence is based on DVAs register of registered keepers who failed to re-licence their vehicle. It was estimated by DVLNI that up to 3,700 cases would be prosecuted per month (44,500 annually) through the courts. But this has not happened as the courts are reluctant to issue the minimum £1,000 fine prescribed in legislation. DVLNI are still sending out penalty letters, although only about 25% of people pay the civil penalty of £80. Nevertheless, 30% are induced to licence their vehicle, 13% to notify disposal and 15% to make a statutory off the road (SORN) declaration. Evaders could also find their vehicles clamped as part of ongoing enforcement activity - 5,814 vehicles were clamped in 2006/07. A total of 109 people were convicted under CR with £96,000 collected in penalties, fines and court costs (see Appendix 4).

- 4.53 The enforcement of driver licensing is investigated by DVA but prosecuted by the PSNI. There are few prosecutions for driver licence offences. The penalty is generally to revoke a licence, which is the responsibility of the DVA on the instructions of the Courts and on medical grounds. The DVLNI balanced scorecard refers to a measure 'to be able to trace holders of current driving licences' with a target of 92%, but no data is provided. A specialist identity checking section with Driver Licensing Division was established in October 2004. It deals with the identification of counterfeit or fraudulently-altered documents and the preparation of evidence and statements for further action,

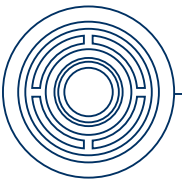
including prosecution, by the PSNI. They deal with 400 applications per month.

- 4.54 The licensing of road transport operators was the responsibility of DVLNI with enforcement resting with DVTA. Inspectors were told of difficulties between the two sections and would expect to see more cooperation now that they are part of a single Agency. A number of representative organisations expressed the view that more could be done to better enforce the illegal operators and close some loopholes in the legislation which are being exploited.
- 4.55 A key target for DVA (and previously the DVTA) is to achieve higher compliance with MOT testing. The most recent roadside survey indicated that the level of MOT evasion is 13.5% of vehicles. This has improved significantly in recent years but is still considered too high by the Agency. It is of course closely linked with VED evasion and further progress will be linked to broader enforcement actions.
- 4.56 The most recent annual report for DVTA reports 1,119 prosecutions in 2003-04, 1,382 in 2004-05 and 1,600 in 2005-06. This increase coincided with a more targeted approach involving less roadside checks. The use of warnings issued (from proceedings instituted) decreased from 31 in 2004 to 22 in 2005 and just three in 2006. In terms of offences detected, DVTA reported 5,716 in 2004 and 5,774 in 2005. Taxi offences detected has fallen from 879 in 2004 to 606 in 2005 and 434 in



2006. Bus offences detected has fallen from 313 in 2004 to 305 in 2005 and 163 in 2006 though it is known that more targeted enforcement in this sector will produce more detections for 2007. (See Appendix 4 for details).





CHAPTER 5:

Recommendations



- 5.1 The regulatory responsibilities of the DOE Executive Agencies are an increasing part of their overall work programme and it is generally accepted that an effective regulatory function must ensure that rigorous enforcement action will be taken to ensure that regulatory obligations are met. However, the enforcement function is not adequately reflected in the strategic and business planning of the DOE and its Agencies (i.e. vision, objectives and targets) and there is a lack of clarity and differential between the compliance and enforcement responsibilities and approaches.
- 5.2 Effective enforcement relies on the support and confidence of the public as well as stakeholder organisations and a clear, unambiguous statement of intent, accompanied by a specific enforcement policy, needs to be developed and widely publicised. Inspectors recommend that **the DOE should develop and publish a clear statement of intent on enforcement in relation to any breaches and or offences of environmental, planning and road traffic law. This should be incorporated into the DOE and Executive Agency's Corporate and Business Plans.**
- 5.3 Delivering an effective and efficient enforcement service requires appropriate organisational structures. As the overall structures of all of the agencies are subject to review under the RPA and the REG, Inspectors consider it timely to recommend some changes to the delivery of enforcement. This is based on a view that the current structures for enforcement are fragmented and not adequate to deliver the necessary improvements and differentiate between the compliance and enforcement functions.
- 5.4 It is recommended that **a single enforcement unit should be established within the EHS. This unit should draw together all of the enforcement elements of the EHS as well as those in PS where EHS has licensing authority. In the event of a new Environmental Protection Agency for Northern Ireland, a separate Enforcement Office should be established within this organisation. An integrated enforcement unit should be established within the DVA.** This restructuring and coordination of resources should produce a more consistent approach to compliance and enforcement, ensuring



transparency, equality, consistency and the capability and capacity to bring together best practice and strengthen specific expertise.


5.5 The RPA will bring major changes to the structural arrangements for planning and this has implications for how enforcement is delivered. Inspectors support the recommendation of the REG that **the enforcement of the planning system should remain a central function. Any review of enforcement should be guided by the capacity and resources of central government, district councils or other body (e.g. EPA) to deliver a robust enforcement service.**

5.6 The strategic intent and delivery structures also need an effective management and performance framework with stretching targets for enforcement that are Specific, Measurable, Achievable, Relevant and Time bound (SMART). Performance against those targets needs to be shared with key stakeholders and published to increase public confidence that environmental, planning and road crime is being tackled and resources are achieving the desired results and outcomes. It is recommended that a **performance management framework is developed to ensure that enforcement operations meet strategic objectives. The framework should include policies; procedures; risk analysis; and SMART performance targets. Clear procedures must be in place to ensure the**

independence of the regulatory function so that enforcement staff are not subject to political and other internal / external pressures. A review of specific criminal justice policies and practices (i.e. RIPA; PACE etc.) should be undertaken by the DOE and applied consistently within and across the agencies.

5.7 Good compliance and enforcement is resource intensive, requiring specialist staff and equipment. Inspectors are aware that all agencies are facing resource pressures, particularly in the context of new and expanding legislative powers. Achieving greater efficiencies will require some reorganisation, streamlining and modernisation of compliance and enforcement processes. Adopting a shared service approach in terms of IT systems would have benefits for the DOE family and other LEAs.

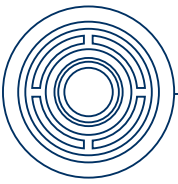
5.8 Inspectors identified the advantages of a unified system, acting as a central repository of knowledge and information, that would be shared by all enforcement staff and accessible to other enforcement agencies, subject to specific security rights, as a means of sharing intelligence, matching data, carrying out separate and joint risk assessments and developing future enforcement priorities and activities. Inspectors recommend that a **single incident and enforcement database should be developed for the DOE family.** It should be able to restrict access to sensitive information but allow for the sharing of relevant information, particularly for joint investigations.

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- 5.9 Evidence collected by Inspectors identified a bureaucratic and slow compliance and enforcement process with slow responses to incident reports, ad hoc and sometimes frequent monitoring visits, various communications in the form of advice/warning/notification letters, case reviews, issue of summons and decisions on prosecution. Prosecution cases are then subject to other delays in the criminal justice system. A modern and responsive regulatory system needs a set of responsive and streamlined processes that ensure resources are delivered promptly and to the best effect. It is recommended that **the EHS, through the proposed new enforcement unit/office, should review the existing administrative systems and processes for compliance and enforcement and develop a set of procedures and processes to produce a more streamlined and efficient service. A similar review should be undertaken by PS and DVA as part of ongoing re-organisations.**
- 5.10 Investing and securing the right human resources to effectively take enforcement action requires people with specific skills, competencies and capabilities. This will require the development of a specific core skill set and job description for enforcement. It is recommended that **enforcement staff should receive training, work experience, job shadowing and skill enhancement to deliver the required standards. It will also require new staff to be selected and recruited to fill gaps in areas**

such as criminal investigations and the broader strategic management of enforcement.

All enforcement staff should be provided with the necessary tools to carry out the role including cameras, personal alarms, surveillance and other IT equipment.

- 5.11 An effective enforcement service is founded on effective partnerships between a range of stakeholder organisations and LEAs. The development of these partnerships is founded on a formal, structured framework to deliver better joint working and collaboration. In addition, there is a growing reliance on legal expertise to prosecute offenders and make clear to the court any financial benefits resulting from non-compliance as well as the policy significance of the relevant regulatory requirements. It is recommended that **a structured framework of SLAs, MoUs, protocols and bi-lateral agreements is put in place for the strengthening of partnerships within the DOE family, other LEAs and with similar cross-jurisdictional organisations in GB and the ROI.**
- 5.12 The provision of legal advice to DOE agencies is primarily provided by the Departmental Solicitor's Office. This advice has been very valuable in a number of case investigations and prosecutions, though it is limited by resources and expertise within the DSO. There is a growing view within the DOE and the agencies that much of this service should be provided by in-house lawyers who would become much more specialised in these types



of cases. At the same time, there is an opportunity to review the current arrangements for the prosecution of cases across the DOE family as a number of different practices exist between and within agencies.

Inspectors recommend that **a review of the present arrangements for the provision of legal advice and prosecutorial services should be carried out to determine how best to support successful prosecutions.**

- 5.13 Inspectors are aware of considerable criticisms both within and outside the agencies concerning the continued non-compliance with environmental and planning laws. There is a view that the commitment to environmental crime is not clearly understood within society and public administration, which is partly due to complex and specialist legislation. Moreover there is evidence that current enforcement efforts are not achieving an adequate deterrent and not protecting the environment. Inspectors consider it appropriate that **environment crime/non compliance should be pulled together into a specialist legal jurisdiction with an option to establish an environment court to handle all environment business in Northern Ireland.** The precedent exists for children and family law, commercial law (with commercial court) and the coroners service, though it would need more robust enforcement actions to generate sufficient prosecution cases. It is also in line with a key recommendation from the REG that Government should establish a specialised Environmental Tribunal for

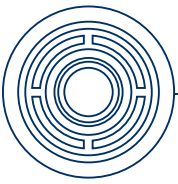
Northern Ireland which would ‘provide judicial specialism, consistency of, and ease of access to environmental justice’.

- 5.14 A key mechanism for deterring crime is better application of the “polluter pays” principle for environmental crime. It is recommended that **detailed policies and procedures should be developed by the EHS to implement new powers in relation to recovery of investigation costs and better implementation of the “polluter pays” principle.**
- 5.15 Inspectors found examples of best practice across the various agencies in areas such as the reporting of pollution incidents, intelligence-led investigations, specialist training, networking, target setting and performance reporting. However, sharing of best practice, as a means of organisational learning, is underdeveloped and restricted by a silo approach to enforcement and inadequate communication within and between agencies. Inspectors recommend that **each of the agencies should establish effective mechanisms to draw upon and learn from best practice on enforcement.** There is scope to improve the level of staff briefings and address a sense of peripherality and marginalisation amongst groups of enforcement staff in the various agencies and a general need to raise the profile of enforcement work across the DOE and its Agencies.

Section



Appendices



Appendix 1: Methodology

The inspection commenced from October 2006 onwards. The key aims of the inspection were to:

- Evaluate the contribution that the DOE and its agencies are making to the Criminal Justice System.
- Assess DOE and individual agency responses to investigation, enforcement and prosecution activities.
- Review the effectiveness of the DOE internal interactions and with criminal justice partners and key stakeholders.
- Review the systems and procedures in place to investigate, enforce and prosecute crime.
- Take account of developments with regard to the Review of Public Administration and the integration of DVLA and DVLNI which is subject to an inquiry by the Transport Committee.
- Consider recommendations for improving collective and agency practices and processes with regard to investigating, enforcing and prosecuting crime.

The inspection was carried out in five phases:

1. Notification
2. Research and review of documentation
3. Self Assessment
4. Fieldwork
5. Feedback and refinement

1. Notification

An official inspection notification letter was sent to the Permanent Secretary of the DOE and the Chief Executives of the four Executive Agencies informing them of the proposed inspection. It included a copy of the Terms of Reference and a request for self-assessment. A copy of key documents was requested.

An introductory meeting was held between CJI and the Chief Executives of the Executive Agencies. The purpose of this meeting was to outline in more detail the methodology for the inspection, provide any additional support and assistance (e.g. with self assessment) and answer any queries. It was also an opportunity to confirm the list of stakeholders to be consulted.



2. Research and review of documentation

The four agencies compiled and send a detailed bundle of relevant documentation including reports, plans, performance data, minutes of relevant groups/committees and protocols. This informed the early preparation of the inspection.

Research was also conducted on comparisons with other jurisdictions.

3. Self Assessment

Two representatives from each of the agencies attended a training day in CJI focused on undertaking a self-assessment.

Each of the agencies prepared a self assessment of their organisational strengths and weaknesses. This was presented along the lines of CJI's common core matrix of openness, partnership, equality, learning and results.

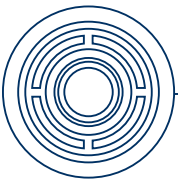
4. Fieldwork

Fieldwork was carried out during February of 2007. This involved meetings and focus groups with staff of all grades within the DOE and each of the Executive Agencies.

A range of stakeholders were also consulted during this phase of the inspection.

5. Feedback and refinement

Following the drafting of the main findings and preliminary recommendations, CJI provided separate feedback to the senior management of each of the agencies. A final presentation and discussion meeting was held with the DOE Board prior to final drafting of the report. The draft final report was sent to the DOE and the agencies for an accuracy check prior to publication.



Appendix 2: EHS enforcement statistics

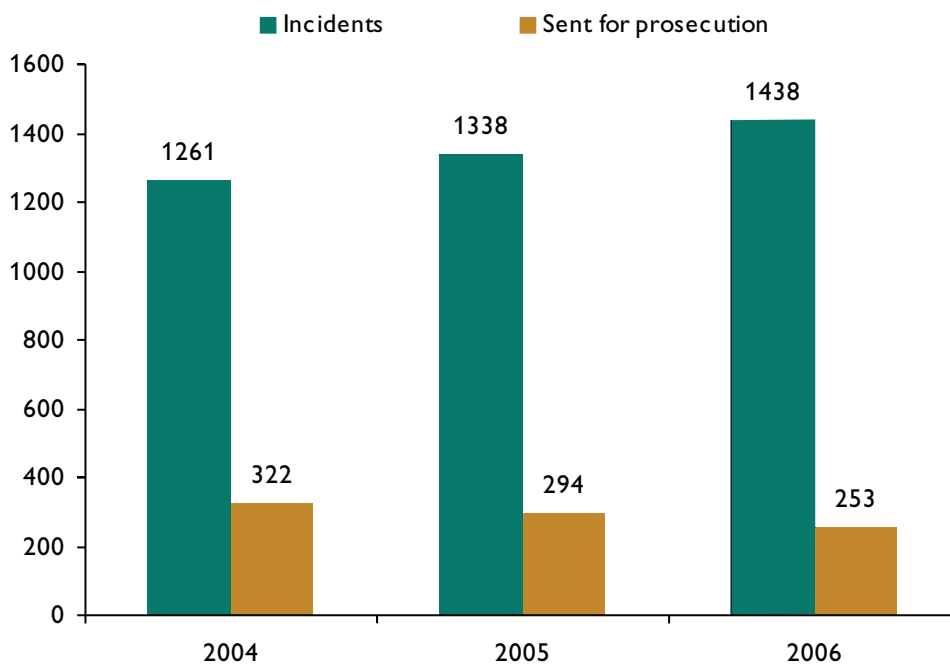
Environmental crime unit

The information below was forwarded to CJI by the EHS waste management unit. The information reflects the status of the EHS environmental crime unit as at **11 May 2007**.

Workload

Figure 1 shows the number of reports of alleged illegal waste management between 2004 and 2006 (cases sent for prosecution do not relate to the number of incidents in a particular year).

Figure 1: Number of incidents and cases sent for prosecution between 2004 and 2006





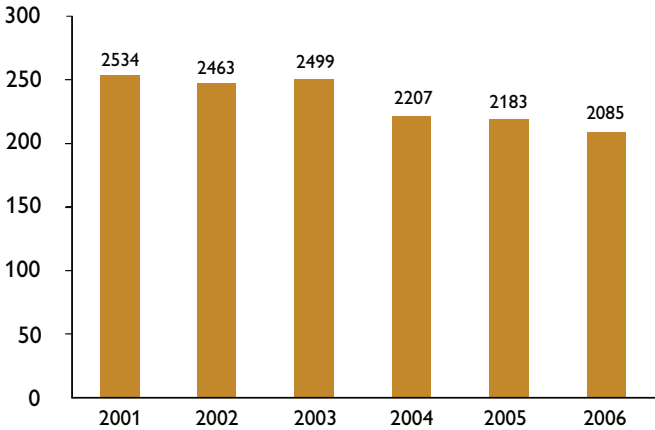
Water Management Unit

The information below was forwarded to CJI by the EHS water management unit. The information reflects the status of the EHS water management unit as at **31 October 2006**, and recent data is therefore liable to change.

Workload

Figure 2 shows the number of reports of water pollution between 2001 and 2006.

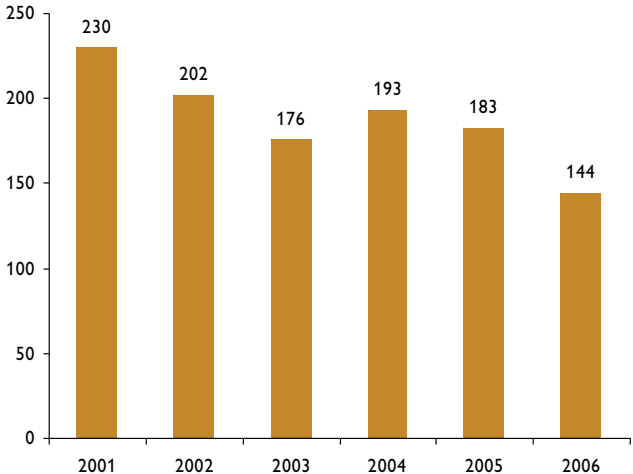
Figure 2: Number of reports of water pollution 2001 to 2006



Warning letter & Enforcement notices

The average number of warning letters between 2001 and 2006 is 188 which ranges from 230 to 144 (see Figure 3). Approximately 8% of all reports and 14% of substantiated reports receive a warning letter. Between 2001 and 2006 only four enforcement notices have been issued, two in 2003 and two in 2004.

Figure 3: Number of Warning letters sent for 2001 to 2006





Prosecution results

Of the 506 reports referred to the PPS 360 (71%) have been heard in court, see Table 1 for results. Of the 360 reports heard in court 349 (97%) resulted in a fine.

Table 1: Results of cases heard in court between 2001 and 2006

| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|-----------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Heard in court | 101 | 99 | 97 | 23 | 38 | 2 |
| Fines | 85 | 86 | 89 | 56 | 32 | 1 |
| Absolute Discharge | 2 | 3 | 1 | 0 | 0 | 0 |
| Conditional Discharge | 4 | 7 | 2 | 0 | 1 | 0 |
| Dismissed | 3 | 2 | 1 | 0 | 1 | 0 |
| Withdrawn | 7 | 1 | 4 | 0 | 4 | 1 |

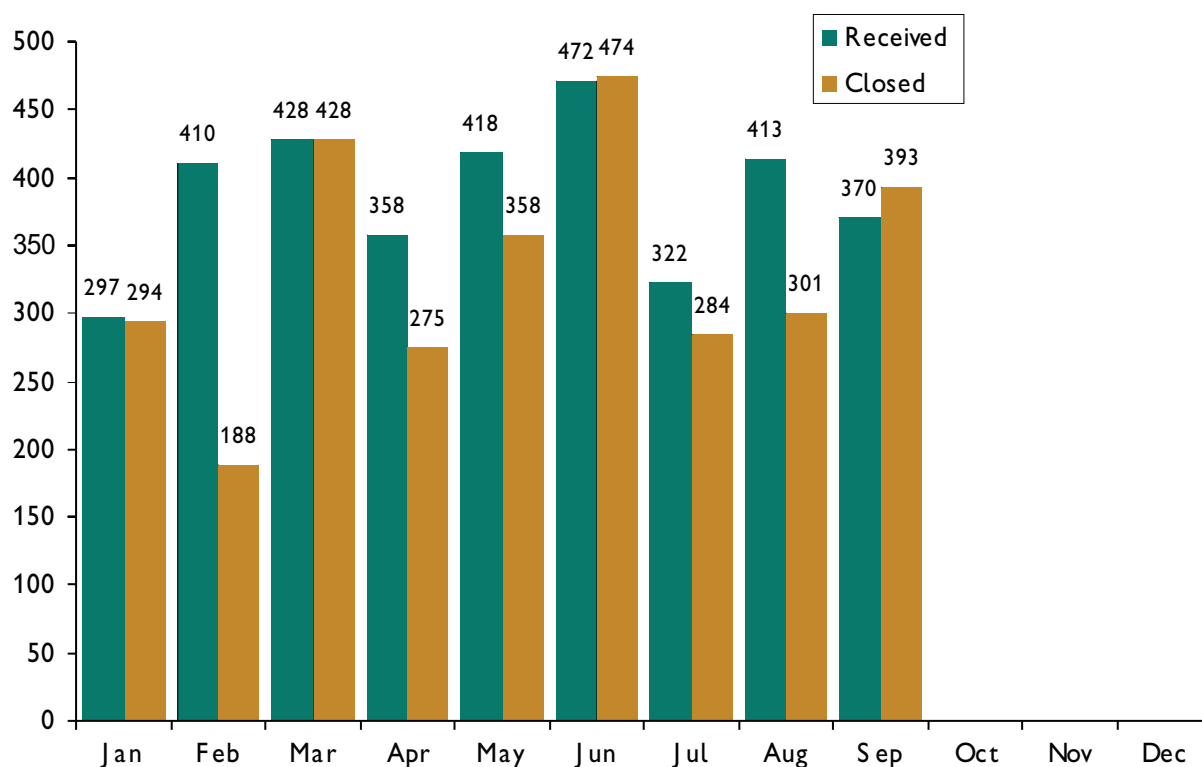
Appendix 3: PS enforcement statistics

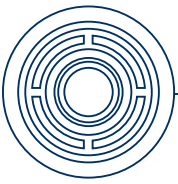
Statistical data for 2005 and 2006 was forwarded to CJI by the Planning Service. The data was incomplete for 2005 and therefore analysis was not undertaken. The data for 2006 was from January to September.

Workload

Figure 1 shows the number of enforcement cases received and closed between January and September 2006. From the Figure, June and September are the only months from the nine where the number of cases closed was greater than those received.

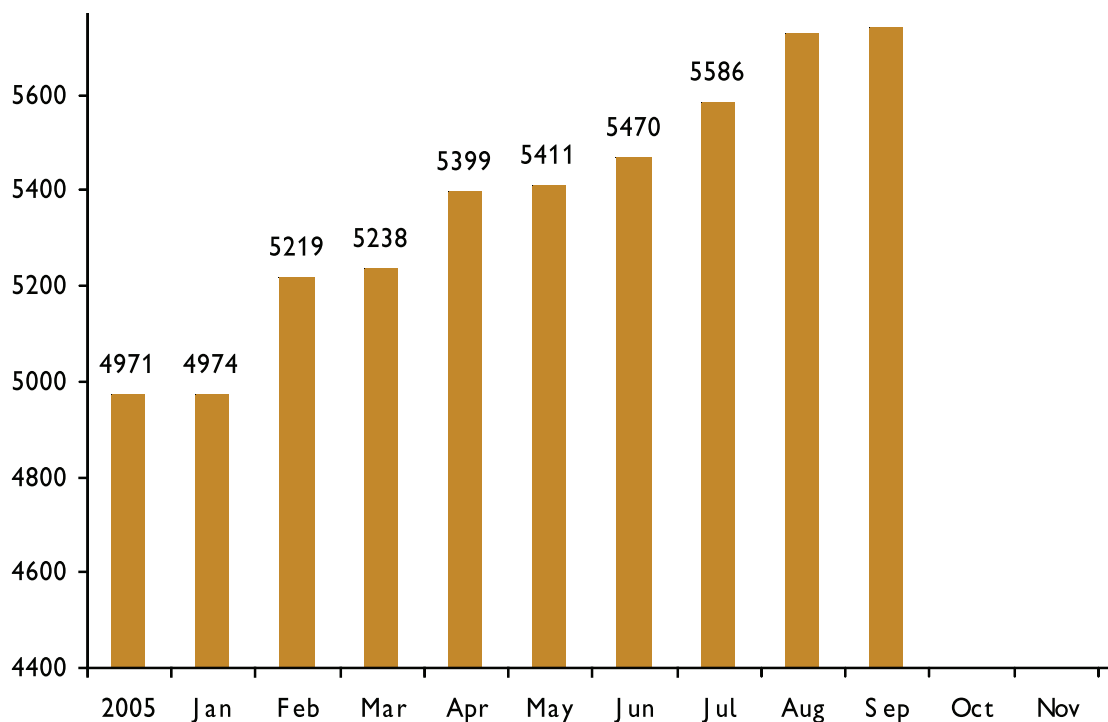
Figure 1 Number of cases received and closed between January and September 2006





Due to difference between the number of cases received compared with the number carried forward each month, the caseload is increasing exponentially from a baseline figure of 4,971 cases carried over from 2,005 to 5,741 cases in September 2006 as shown in Figure 2.

Figure 2: Cases carried over each month during January and September 2006



Enforcement notices

Between January and September 2006 the Planning Service served a total of 210 enforcement notices. Seventy-eight of these notices were planning contravention, 74 were operational development, material change of use or failure to comply with conditions notices, 27 breach of conditions notices served, 26 submission notices (advertisement and development), 4 stop notices and 1 a listed building enforcement notice.

Summons

Between January and September 2006 the Planning Service issued 16 summonses, seven concerning advertisements with the remaining nine classed as other.

Prosecutions

The Planning Service prosecuted 31 cases between January and September 2006.



Appendix 4: DVA enforcement statistics

DVLNI

Statistical data for 2006, as at **31 December 2006**, was forwarded to CJI by the DVLNI. The data DVLNI sent to CJI refers to the period April to December 2006.

Workload

As at 31 December 2006 the total number of cases completed by the enforcement section was 36,890, on average 4,099 cases each month, which is an increase of 14.7% over the comparable figure for the 2005/06 year of 32,169. For the same period the DVLNI received 34,738 reports, on average 3,860 reports a month. Forty-seven percent (16,286) of the cases were received through the Automatic Number Plate Recognition (ANPR). Other cases were received from the central claims agency, general public, PSNI, traffic wardens and wheel clampers.

Method of closure

Just under half (47%) of the 36,890 cases completed between April and December 2006 resulted in no offence or no action, 28% there was no prosecution possible (NPP's), 21% involved payment while 4% a conviction.

Cases closed no action

Of the 47% (17,039) cases completed between April and December 2006, 76% were already licensed or licensing was induced, 15% already had current enforcement action against them with the remaining 9% other.

Cases closed no possible prosecution

Of the 28% (10,445) cases completed between April and December 2006, 30% was a result of an inability to establish ownership or serve a summons.

CR Cases

Between April and December 2006 the DVLNI received 37,571 (on average 4174 a month) CR out of court settlement (OCS) requests. For the same period the DVLNI completed 35,831 CR OCS requests.

Method of Closure

Just under two-thirds (63%) of the 35,831 CR cases completed between April and December 2006 resulted in a 10 day letter blocked, 20% no prosecution possible, 15% AUTO CR Closure, and 2% no offence/no action.

Revenue Accrued

Between April and December 2006 a total of £410,800 was accrued through OCS paid.



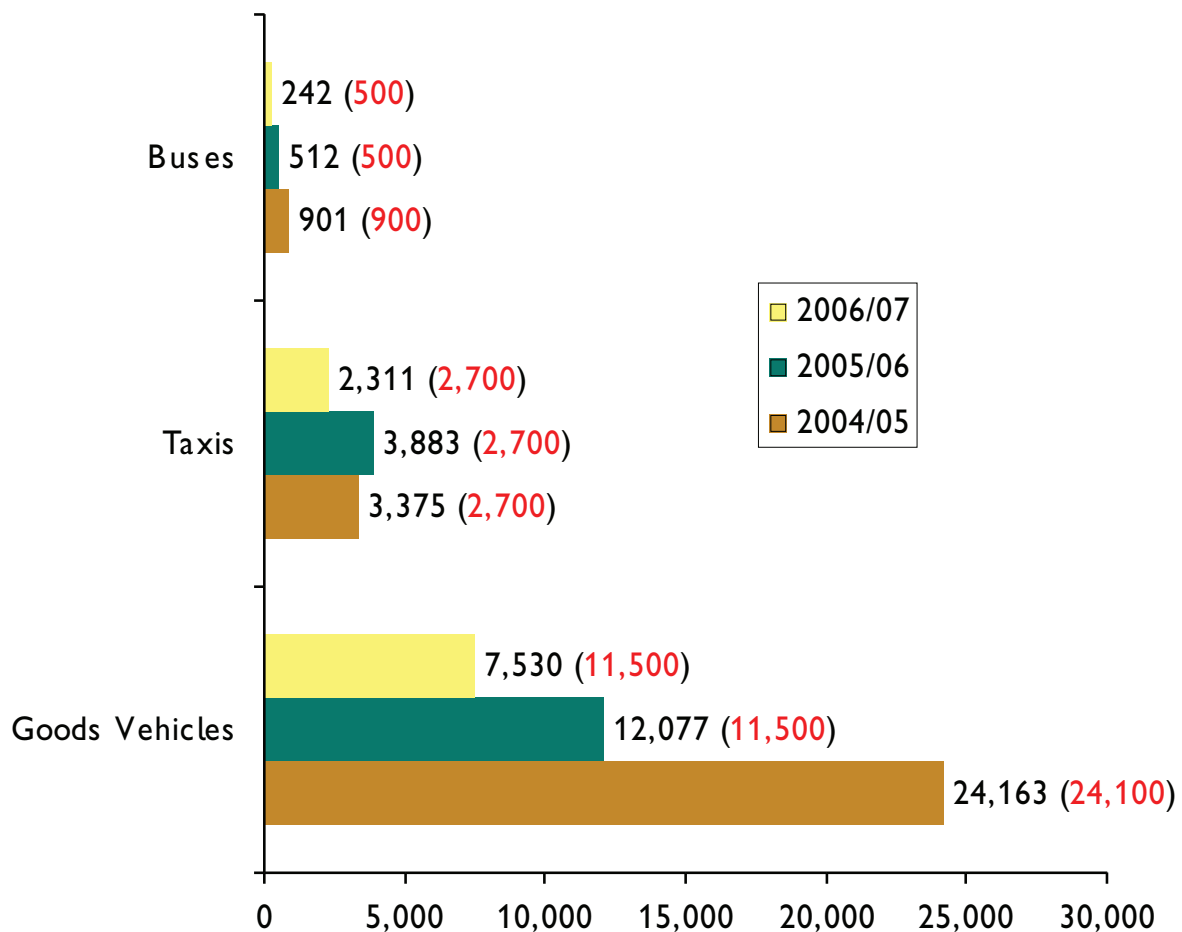
DVTA

Statistical data for the DVTA was taken from the annual report 2005/06 and statistics provided to CJI during the inspection by DVTA for April to December 2006.

Vehicles checked

Enforcement officers randomly check vehicles to ensure compliance with various legislative requirements. Figure 1 shows that during 2004/05, 85% of the 28,439 vehicles checked were made on goods vehicles, 12% on taxis and 3% on buses. For 2005/06 the number of vehicle checks reduced by 42% to 16,472 with fewer checks (73%) made on goods vehicles, more (24%) on taxis with checks on buses remaining at 3%. The current position for 2006/07 shows that of the 10,083 checks undertaken between April and December 2006, 75% have involved goods vehicles, 23% taxis and 2% buses. The figure also shows that all DVTA targets for 2004/05 and 2005/06 were met or exceeded.

Figure 1: Number of vehicles checked between 2004/05 and 2006/07, targets in red





Offences detected

Table 1 shows the number and percentage of all those checked where an offence was detected. From the table the offences detected for goods vehicles has increased from 24% to 44% while reducing for taxi and bus offences. The target for 2006/07 for offences detected for goods vehicles is 37% with the current results for April to December 2006 at 35%.

Table 1: Offences detected 2004/05 and 2005/06

| Offences detected | 2004/05 | % of checked | 2005/06 | % of checked |
|-------------------|---------|--------------|---------|--------------|
| Goods vehicles | 5,774 | 24% | 5,407 | 44% |
| Taxi | 606 | 20% | 434 | 11% |
| Bus | 305 | 34% | 163 | 32% |
| Total | 6,685 | 24% | 6,004 | 36% |

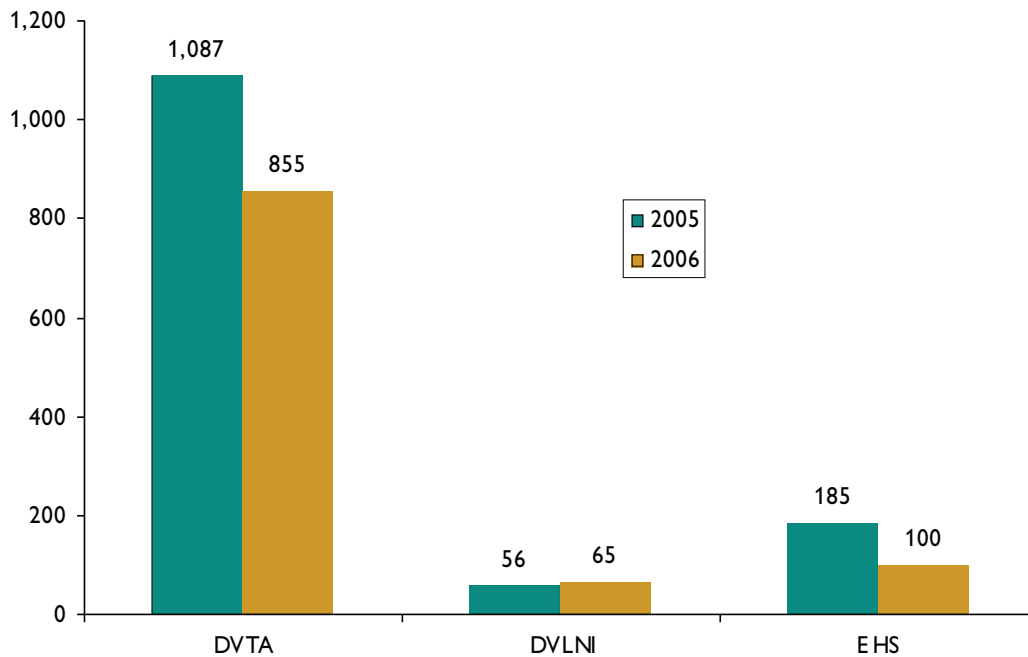


Appendix 5: PPS statistics on DOE referrals

Files Received

A total of 1,328 cases were referred to the PPS in 2005 from the DOE. Of these 1,087 cases were from the Driver and Vehicle Testing Agency (DVTA), 185 cases from the Environment and Heritage Agency (EHS), and 56 cases from the Driver Vehicle Licensing Northern Ireland (DVLNI). During 2006 the number of cases sent to the PPS from the DOE reduced by 308 cases comprising of 855 from DVTA, 100 from EHS and 65 from DVLNI, see Figure 1.

Figure 1: Cases referred to the PPS from DOE in 2005 and 2006.



Primary Offences

The following data provides details on offences referred to the PPS in 2005 and 2006 from the EHS, DVLNI and DVTA.

EHS

Over a third (65 cases) of the 185 cases referred to the PPS in 2005 were against the primary offence of discharging a poisonous, noxious or polluting matter into a waterway, while 31 cases were miscellaneous offences. For 2006 the main primary offence changed with 63 of the 100 cases involving unauthorised disposal of waste, while 33 involved discharging a poisonous, noxious or polluting matter into the waterway. See Table 1 for the full list of offences.

Table 1: Full list of offences referred to the PPS from EHS in 2005 and 2006

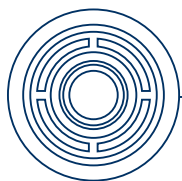
| | 2005 | 2006 |
|--|------------|------------|
| Contravening a condition of a discharge consent | 4 | 0 |
| Did not comply with conditions regarding the keeping of radioactive material | 1 | 0 |
| Discharging any poisonous noxious or polluting matter not covered in 9(1) into a water | 4 | 1 |
| Discharging a poisonous, noxious or polluting matter into a waterway | 65 | 33 |
| Miscellaneous offences | 44 | 0 |
| Offences contrary to consumer protection | 1 | 0 |
| Transporting controlled waste without being a registered carrier | 31 | 1 |
| Unauthorised disposal of waste | 25 | 63 |
| No primary offence description | 10 | 0 |
| Failing to bring the taximeter of a motor hackney carriage into action | 0 | 1 |
| Failing to comply with conditions for keeping farmed animals | 0 | 1 |
| Total | 185 | 100 |

DVLNI

Fifty of the fifty-six cases sent to the PPS from the DVLNI in 2005 were against the primary offence of failing to comply with notice regarding vehicle excise disc. Similarly, fifty-eight out of sixty-five cases in 2006 sent to the PPS were for the same offence. See Table 2 for a full list of offences.

Table 2: Full list of offences referred to the PPS from DVLNI in 2005 and 2006

| | 2005 | 2006 |
|--|-----------|-----------|
| Failing to comply with notice re vehicle excise disc | 50 | 58 |
| Using vehicle without vehicle excise licence | 1 | 6 |
| Altering a vehicle registration book | 0 | 1 |
| No primary offence description | 5 | 0 |
| Total | 56 | 65 |



DVTA

Of the 1,087 cases sent to the PPS from the DVTA in 2005 189 were against the primary offence of excess gross vehicle weight and 128 no road freight vehicle licence. Table 3 provides details of the top offences.

Table 3: Full list of the top offences referred to the PPS from DVTA in 2005 and 2006

| | 2005 | 2006 |
|--|--------------|------------|
| Excess gross vehicle weight | 189 | 128 |
| No road freight vehicle licence | 128 | 80 |
| No PSV licence | 93 | 71 |
| Excess weight | 74 | 48 |
| No goods vehicle test certificate | 68 | 83 |
| Failing to take daily rest period from driving | 61 | 49 |
| Other tachnograph offences | 44 | 66 |
| Other offences | 387 | 330 |
| No primary offence description* | 43 | 0 |
| Total | 1,087 | 855 |

*As a function of the 'Roll-out' of the PPS, the primary offence description is not available for these cases

PPS Decisions

Table 4 shows that from the three DOE agencies only the EHS have indictable prosecutions. The percentage of cases between 2005 and 2006 with the decision of no prosecution has increased for EHS (15% to 21%), DVLNI (13% to 29%) and DVTA (4% to 13%).

Table 4: PPS decision for cases referred in 2005 and 2006 by agency

| | EHS | | DVLNI | | DVTA | |
|------------------------|------------|------------|-----------|-----------|-------------|------------|
| | 2005 | 2006 | 2005 | 2006 | 2005 | 2006 |
| Indictable Prosecution | 15 | 2 | 0 | 0 | 0 | 0 |
| Summary Prosecution | 224 | 134 | 46 | 60 | 1,021 | 862 |
| No Prosecution | 42 | 37 | 7 | 25 | 38 | 125 |
| No trial mode* | 8 | 0 | 0 | 0 | 6 | 0 |
| Total | 289 | 173 | 53 | 85 | 1065 | 987 |

*As a function of the 'Roll-out' of the PPS, the primary offence description is not available for these cases



Crown Court Outcomes

No persons were prosecuted at Crown Court from files received from the DVLNI and DVTA. During 2006 the EHS prosecuted ten persons; one acquitted, seven convicted and 2 the Crown Court offered no evidence.

Magistrates Court Outcomes

Of the three agencies the DVTA has the highest percentage of convictions with 93% in 2005 and 92% in 2006, see Table 5.

Table 5: Decisions of the Magistrates Court in 2005 and 2006 by agency

| | EHS | | DVLNI | | DVTA | |
|--------------|------------|------------|-----------|-----------|------------|------------|
| | 2005 | 2006 | 2005 | 2006 | 2005 | 2006 |
| Acquitted | 3 | 10 | 1 | 0 | 11 | 15 |
| Convicted | 128 | 158 | 24 | 34 | 926 | 730 |
| Withdrawn | 9 | 2 | 8 | 2 | 61 | 44 |
| Other | 0 | 11 | 0 | 1 | 0 | 3 |
| Total | 140 | 181 | 33 | 37 | 998 | 792 |

*'Elect for Crown Court Trial' and 'Summons not served' are included in 'Other'



Requests for further information (RFI)

There were no details of RFI's for the DVLNI in 2005 or 2006. The RFI's sent to both the EHS and DVTA have shown a reduction in the number of average days for a full reply. However, it is noted that for some RFI's that the PPS receive no reply. See Table 6.


Table 6: Number of requests for further information in 2005 and 2006 by agency

| | EHS | | DVTA | |
|---------------------------------|------|------|------|------|
| | 2005 | 2006 | 2005 | 2006 |
| Number of RFI's Issued | 15 | 13 | 4 | 8 |
| Number of RFI's (Initial Reply) | 13 | 11 | 3 | 8 |
| Number of RFI's (Full Reply) | 11 | 11 | 3 | 8 |
| Average Days (Full Reply) | 64 | 26 | 36 | 11 |

*The number of RFI's issued for the PPS Regions include Requests for Full Files







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