

Independent review into serious and organised crime in the waste sector

November 2018



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Foreword



Industrial scale organised waste crime has emerged as an increasing problem in recent years - a problem which matters to us all in three respects: first, it blights the environment, adversely affecting communities and

creating inconvenience and often misery for people where they live or work; second, it undermines our efforts to dispose of waste responsibly; third, it disadvantages the legitimate waste sector which is playing by the rules.

The introduction of the Landfill Tax in 1996 has been transformational in commoditising waste as a resource, but a consequence of its introduction has been to increase the attractiveness of the market to organised crime, with – as we describe in this report – very few barriers to entry.

Compounding this situation, the Environment Agency, while it lacks no shortage of highly committed personnel, has neither the necessary authority, powers nor business model to counter this criminal scourge effectively. The current structure and organisation within which staff operate belongs to an older, simpler world where technologies for recycling and incineration were less developed, digital record keeping less common, and the waste industry less global.

In this report, we set out how we can modernise the structures, capabilities and powers to manage and reduce the problem of organised waste crime now and in the future. Our intention must be to give the criminals responsible real cause to fear the consequences of their actions. Today that is not the case.

I would like to record my thanks to my review team, my advisory board, colleagues at Defra and the Environment Agency. All have worked to ensure we complete this report in a matter of a few weeks in order that our recommendations be available for consideration in the forthcoming Resources and Waste Strategy and the Environment Bill.

Lizzie Noel

Chair, serious and organised waste crime review

Key facts

Waste Producers



27.2 million
households



5.7 million
private sector
business

200m tonnes of waste are
produced in the UK each year



**Waste
managers**



**Waste
exports**

Estimate **4.2m tonnes** of
waste exported



**Waste
recovery and
disposal**

£6.8 billion Gross
value of the waste
industry in UK
120,000 Jobs in the
waste industry



**Waste
crime**

£600m Cost to
England of
waste crime

1. Introduction

Around 200 million tonnes of waste are produced in the UK each year. How we manage this waste has an impact on the daily lives of people, the economy and the environment.

The waste sector has undergone significant changes in recent years, not least through the consequences of the Landfill Tax, which shifted waste management away from traditional disposal towards recovering, recycling and reusing (Figure 1).

Waste crime

‘Waste crime’ takes many forms, including fly-tipping, illegal dumping or burning of waste, deliberate mis-description of waste, operation of illegal waste management sites, and illegal waste export. It has significant economic impacts: in 2015 illegal waste activity was estimated to have cost over £600 million in England alone. Some estimates put this at an even higher figure of £1 billion.¹

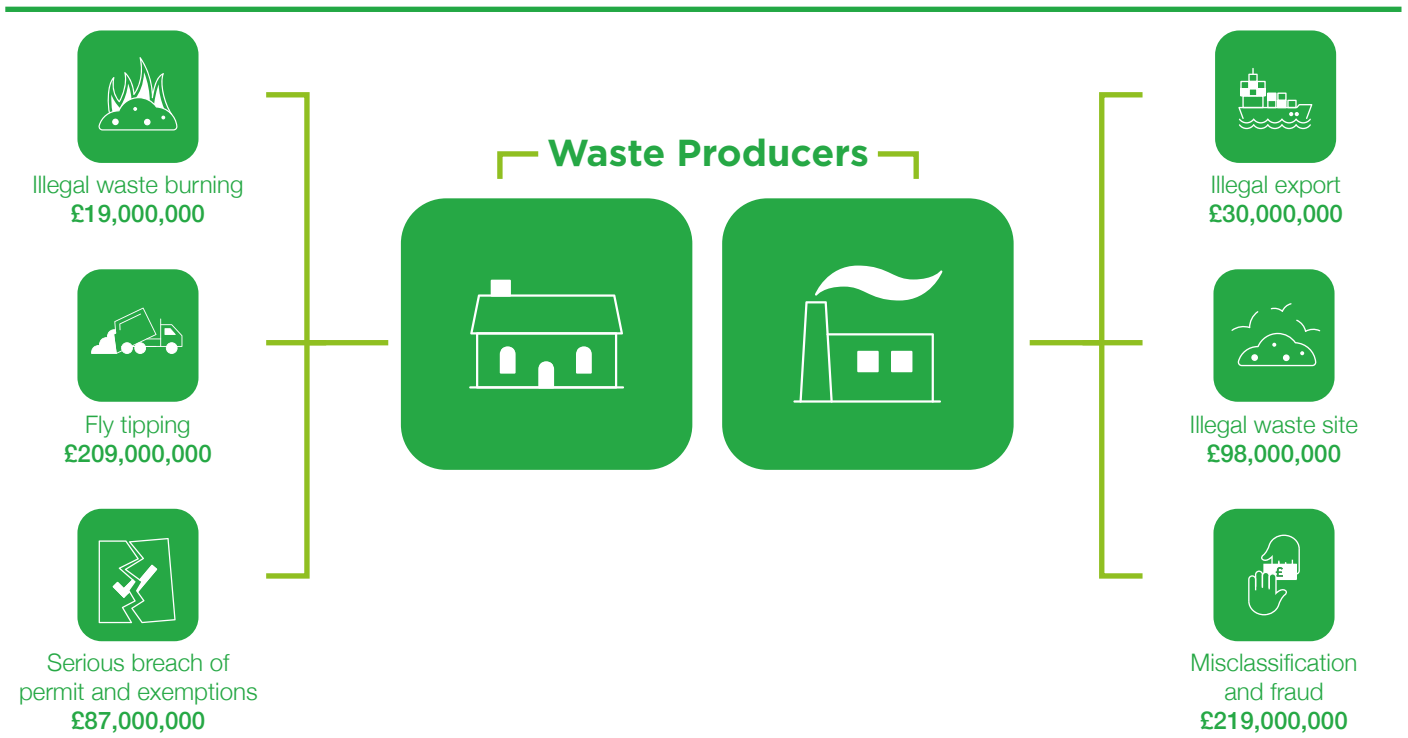


Figure 1: Showing the opportunities for organised criminals in the waste sector. ¹

While waste crime in itself is not a new problem, in recent years there appears to have been a steady rise in organised, large-scale waste crime.²

Serious and organised crime

The Home Office defines serious and organised crime as ‘individuals planning, coordinating and committing serious offences, whether individually, in groups and/ or as part of transnational networks’. Their main

categories of serious offences are: child sexual exploitation and abuse, illegal drugs, illegal firearms, fraud, money laundering and other economic crime, bribery and corruption, organised immigration crime, modern slavery, human trafficking and cybercrime.³

Serious and organised waste crime results from the deliberate colonisation by existing criminal groups of otherwise legitimate waste and recycling markets. These groups bring with them a host of additional

1 Rethinking Waste Crime, 2017, commissioned by the Environmental Services Association and written by Eunomia.
 2 Evidenced by our interviews and field-visits, and indicated by INTERPOL, NCA, and the Environment Agency.
 3 The Government’s Serious and Organised Crime Strategy 2018.

criminality beyond the crime of illegally handling waste, much of it included under the Home Office definition. They engage in large-scale fraud, threaten and intimidate legitimate competitors, disregard environmental and safety regulations, and feed an illegal economy that draws on modern slavery in some cases.⁴

Sir James Bevan, the chief executive of the Environment Agency, has described the increasing threat of waste crime as the ‘new narcotics’, while the Home Office and Interpol also recognise that serious and organised crime is increasing in volume. And what we know about is almost certainly only a fraction of what occurs.⁵

About this review

Defra’s forthcoming Resources and Waste Strategy will outline the work that is underway to counter waste crime and will shortly be publishing new proposals.

However, industrial-scale, organised waste crime has only recently attracted systematic government attention. This review responds to a current gap in our understanding of serious and organised criminal involvement in the waste industry.

Our review set out to answer two questions. First, what is the threat and impact of serious and organised waste crime in England? Second, does the Environment Agency have the capability, resources and powers to tackle serious and organised criminality in the waste sector?

To answer these questions, we conducted a wide-ranging literature review to understand the current context and background to the subject; we issued a call for evidence from the public, the waste sector, regulators and enforcement agencies; we held interviews with experts; and we undertook a number of field visits within England to hear the first-hand experience of Agency staff.

This report details our findings from these activities. Within this review, we:

- Establish context, including the nature and extent of crimes being committed, where they are taking place, the types of individuals or groups involved and their links to other serious and organised criminal activities, and any apparent trends.⁶
- Explore the extent to which the Environment Agency is able to detect and prevent serious criminal involvement in the waste industry: through its organisation and leadership; enforcement powers and regulation; use of technology and data; duty of care; and business model.
- Present ten recommendations for consideration in the forthcoming Resources and Waste Strategy.

Our approach

In this review, we do not attempt to make a distinction between different types of waste crime. Organised criminals will tend to operate across categories so in our approach we recognise this.

There was also agreement that we would not attempt to separate serious and organised crime from other types of criminality, and that a focus on the criminal not the crime type was more certain to lead to improved outcomes.

Based on a shared view among our stakeholders, we also made an assumption that prevention and disruption of serious and organised crime is as important, if not more so, than prosecution.

These organising principles have implications for the systems, structures and agencies best placed to tackle the problem, and these are reflected in our recommendations.

4 “Majority of forced labour victims ‘exploited at recycling facilities’” Materials Recycling World 14 August, 2018.

5 The Government’s Serious and Organised Crime Strategy 2018.

6 Our ability to identify trends was limited by the availability of data in consistent and reliable formats - this lack of coordinated information, and the importance of establishing monitoring systems forms an important theme in our recommendations.

2. Context

In this section, we explore the nature and extent of organised crime in the waste sector and the context in which it happens, including the factors facilitating it.

Organised crime groups

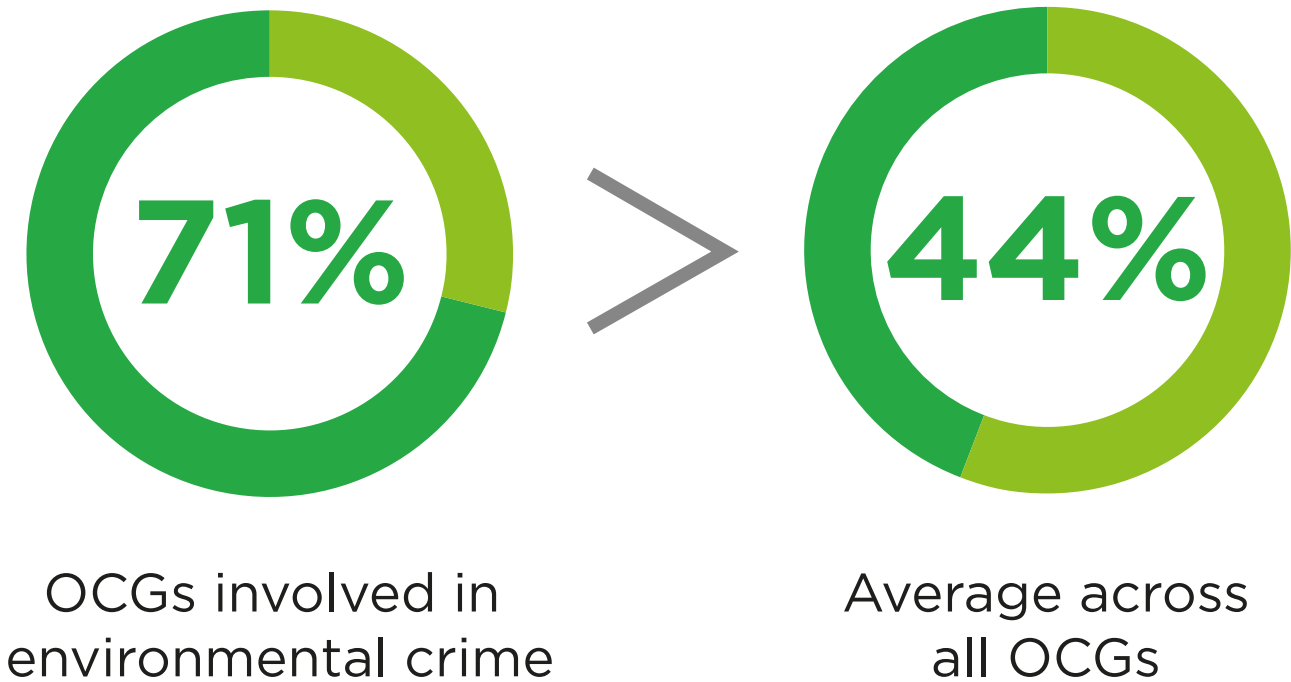
Our starting point to quantify organised crime groups operating in the waste sector uses the National Crime Agency’s mapping process.⁷ In 2017 there were 4,629 active organised crime groups (OCGs) on the NCA database: of these, 92 (2%*) were involved in environmental crime in its widest definition.

In July 2018, the Environment Agency provided 20 (15 active and five archived) OCGs to the NCA for mapping. All of these are involved in other crime

including drugs, finance and violence. The analysis indicates 70% of the groups are involved in a cash-based business, and 55% are involved in public sector fraud and business tax fraud.⁸

Each of these organised crime groups is linked to seven other companies on average, including investment businesses and food importation. This is much higher than the average number of businesses linked to other OCGs within the NCA database (which form the majority). This suggests that organised criminals in the waste sector are more likely than other OCGs to be operating behind legitimate limited companies.

Percentage of organised crime groups that are connected to at least one limited company



*Only 2% of OCGs on the NCA database are involved in environmental crime.

7 Organised Crime Group Mapping (OCGM) is a law enforcement tool which maps characteristics of OCGs and individuals involved in SOC. See National Strategic Assessment of Serious and Organised Crime, 2018, National Crime Agency.

8 This includes missing trader intra-community fraud.

Models of operation

In the course of conducting this review, we identified two broad models of operation typically adopted by organised criminals in the waste sector.

The first model involves illegal operation, without licences or registration: simply taking waste below cost and dumping it on farmers' land or industrial plots – either directly or using unscrupulous brokers. This activity evades all the costs a legitimate business would face, including Landfill Tax.

The second model involves subversion of the legitimate process – running registered companies, acquiring the appropriate licences and displaying the necessary certificates – in order to provide a veil of legitimacy for crime. 'Mis-description' can be non-compliance or deliberate fraud. 'Waste' crime aside, it is most often in fact fraud. INTERPOL has found that "financial crimes are particularly prevalent, with recurrent incidents of tax evasion and fraud. This occurs particularly through the misclassification of waste (e.g. hazardous waste labelled as non-hazardous), allowing for substantial savings on the tax amount".¹⁰

These two models are not mutually exclusive – indeed, the majority of organised waste crime involves an element of both, with criminals frequently moving between these modes of operation as opportunities arise.

Extent of organised waste crime



In August 2018, Polish authorities required 1,000 tonnes of waste from the UK, illegally labelled as recycling, to be returned when they intercepted it at the port of Gdynia. The Environment Agency has borne the cost as the exporter could not be found.

Between 2011 and 2017, the Environment Agency stopped the operation of over 1,800 illegal waste sites assessed as posing the highest risks. This secured 947 successful prosecutions, 37 prison sentences and 71 confiscation orders collectively worth £5 million. Current investigations involve large-scale fraud, illegal dumping, burial of hazardous chemicals and illegal export of waste.¹¹

The Agency estimates that in response to criminality so far in 2018, it has prioritised 70 serious or significant investigations, and nine active major investigations into waste crime. These cases are responsible for the majority of the current Agency waste crime budget.¹²

Typically, the Agency terminates 800 illegal sites in a year, half of these within 90 days of the sites being identified. However, the number of illegal sites operating in England has not reduced in the last four years (see Figures 2&3). New illegal sites appear as fast as old ones are closed and of those illegal sites that were stopped, only 10% became compliant. The remaining 90% ceased to operate, suggesting they were at best unviable as legal sites, or at worst deliberately criminal.¹³

Overall, few cases reach prosecution and even fewer generate meaningful recovery of costs using the Proceeds of Crime Act 2002.

9 INTERPOL and UNEP, Strategic report; Environment, Peace and Security. A Convergence of Threats, December 2016.

10 INTERPOL and UNEP, Strategic report; Environment, Peace and Security. A Convergence of Threats, December 2016.

11 Environment Agency waste crime summary data, 2016-17.

12 Environment Agency waste crime breakdown of spend July 2018. Total budget £15.5 million, 371 FTE.

13 These figures are indicative of illegal sites only and therefore do not even represent the entire picture of serious and organised criminality in the waste sector.

Number of illegal waste sites (IWS) - Active and High Risk

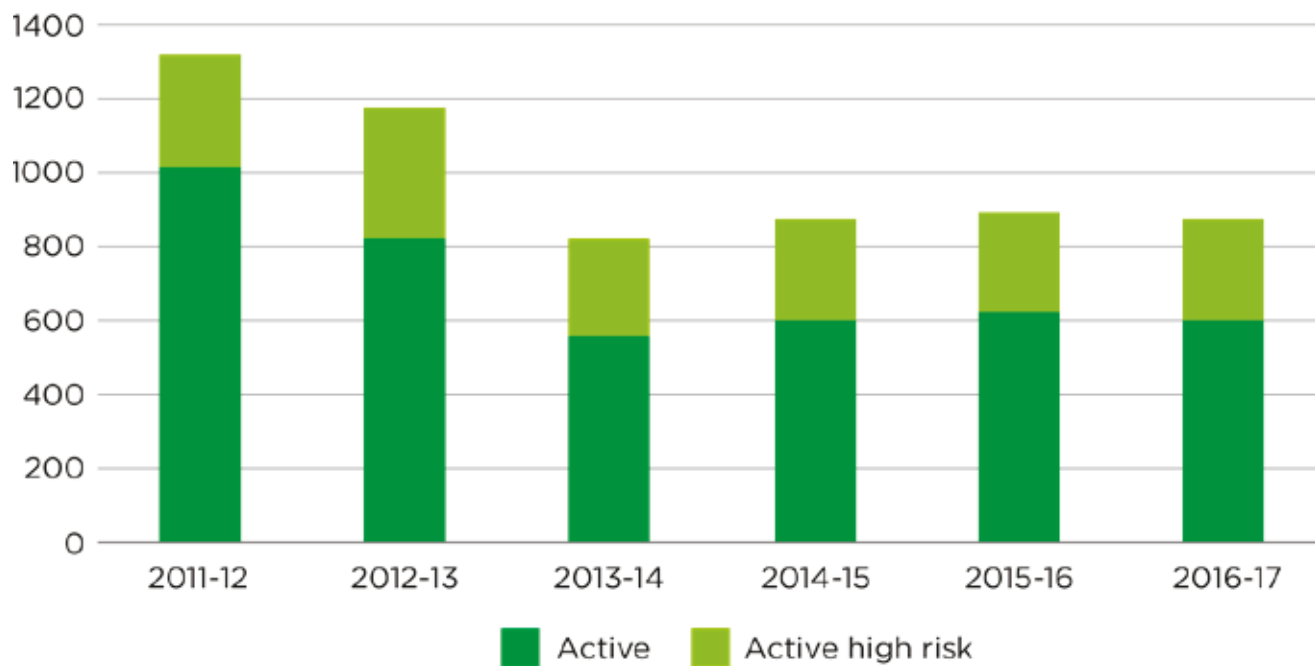


Figure 2: Illegal waste sites (IWS) England (2011-12 to 2016-17). After a reduction in 2011-13, the number of illegal sites has crept back up.

Number of illegal waste sites (IWS) - Stopped vs. New



Figure 3: Illegal waste sites (IWS) England (2011-12 to 2016-17). Since 2013, new sites have appeared as fast as old sites have been stopped, showing that at best, current efforts are unable to resolve the issues.

Market conditions

Over recent years, changes in market conditions have revolutionised the waste industry. However, the regulatory model has remained largely unchanged. The increase of criminality in the sector is a product of this divergence.¹⁴

Landfill Tax

The Landfill Tax forms the basis for the business model of the entire waste industry, creating the margin that makes recycling plants and the large-scale production of energy from waste viable. It has been very successful in incentivising the use of waste as a resource and increasing reuse and recycling. The amount of waste consigned to landfill has been reduced by 73% since the introduction of the tax in 1996.

Landfill Tax

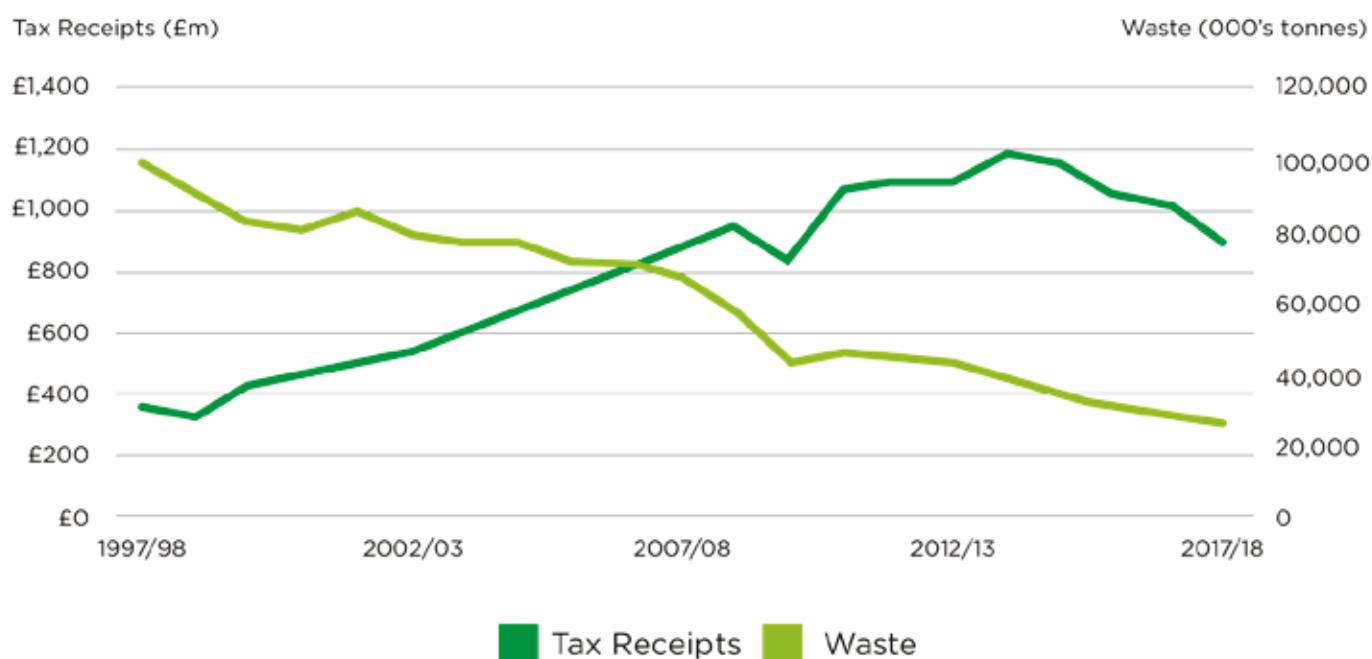


Figure 4: Landfill Tax receipts since its introduction. Tax receipts have generally increased and the tonnage of waste has reduced. Note: the above table includes the receipts from Scottish Landfill Tax since 2015.

The amount of waste tonnage declared at the standard rates has been declining since 2014, but tonnage declared at both the lower and exempt rates remains consistent. Between 2013 and 2018 total Landfill Tax cash receipts dropped from £1.189 billion to £888 million (Figure 4).¹⁵

It is impossible to tell how much this trend reflects an increased rate of environmentally sustainable recovery of waste, or how much waste that would

previously have gone to landfill is being dumped illegally without any environmental controls.

The current Landfill Tax gap – the unpaid element of the expected tax from landfill, not including illegality – is 12%, approximately £125 million.¹⁶ Though they are higher, this is comparable to the tax gaps for tobacco duties and alcohol duties, both of which are subject to high levels of illicit trading.

14 Rethinking Waste Crime, 2017, commissioned by the Environmental Services Association and written by Eunomia
 15 HMRC Landfill Tax bulletin April 2018. Includes receipts from Revenue Scotland from 2015 onwards, coinciding with Scottish devolution.
 16 Measuring tax gaps 2018 edition: tax gap estimates for 2016-2017, HMRC.
 17 <http://pwc.blogs.com/legal/2017/02/another-fine-mess-the-landfill-tax-gap.html>

In April 2018, HMRC extended the scope of Landfill Tax to cover unauthorised waste sites. However, no data is yet available on the impact of this measure.

CASE STUDY



South London investigation

The Environment Agency recently completed an investigation into the waste movements from a major, mixed-use development on a brownfield site in South London, which was contaminated with hydrocarbons and heavy metals. Contaminated waste was being disposed illegally in sites outside of London, driven by the savings from mis-describing the waste. 48,000 tonnes left the site as inert waste (with Landfill Tax at £2.60 per tonne) and only 832 tonnes was described as contaminated (with Landfill Tax at £82.60 per tonne).

Exports

Our responsibility for our waste does not end at our borders. Yet control over our waste exports suffers from the same weaknesses as the domestic waste management system, with the added complication of international jurisdictions. As such, waste exports provide ample opportunity for organised criminals to operate at scale, with a veil of legitimacy and with limited probability of detection.

Three regimes govern the UK international trade in waste:

- **The Basel Convention** covers international movements of hazardous waste.¹⁸ Volumes traded under this regime are small, highly regulated and do not pose a major opportunity for organised crime.
- **OECD Decision rules**, cover trade in waste which is exported for recovery between OECD countries.¹⁹ These are divided into waste with a low risk to human health and the environment, known as 'Green List', which are subject to light touch

controls and waste which poses a sufficient risk to justify greater control, known as 'Amber List'.

- **The EU Waste Shipment Regulations** implement the Basel Convention and OECD Decision for EU member states. These international agreements set the procedures and processes that govern the shipment of waste into, within, and from the EU.

The UK does not generally export waste for disposal, except for relatively small quantities of hazardous waste such as mercury, which requires specialist disposal. The majority of UK waste is exported for recycling under the Green List Controls.

Exported UK waste is governed by the receiving country once it arrives. Authorities there can reject the waste and require it to be returned if they determine that it is not being handled in accordance with its import terms. Repatriation is the responsibility of the exporter or, if they cannot be found, the exporting country.

With the exception of hazardous waste exports, which require prior approval from the UK competent authorities, data on the majority of UK waste exports is poor.

The EU system requires an exporter to attach an 'Annex VII' form to waste exports, similar to a Waste Transfer Note (see section 5 for details). In contrast to exporters in Scotland and Northern Ireland, exporters in England and Wales are not required to submit Annex VII forms to the Environment Agency. As a result, we do not know how much waste for recycling is leaving the UK, who is exporting it or where it is going.

Reliable data is also lacking for all waste exported under Green List controls, because although HMRC estimates the total volume and value from tax receipts, there is no UK-wide obligation for exporters to provide this data to UK regulators.

18 <http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>

19 <http://www.oecd.org/env/waste/theoecdcontrolsystemforwasterecovery.htm>

20 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1454069470717&uri=CELEX:02006R1013->

21 SEPA gives exporters the option of either submitting returns electronically once a month or submitting hard copy Annex VII forms in advance. Northern Ireland Environment Agency requires forms to be submitted.

3. Organisation and partnerships

As the primary agency involved in waste management in England,²² the Environment Agency has the national lead on tackling waste crime. Its successful prevention and disruption of waste crime depends on its ability to gather information and coordinate a response from its wider network (Figure 5). This in turn depends on effective organisation within the Agency itself.

Faced with the new generation of sophisticated, organised and often dangerous criminals operating in the waste sector, both clear organisation and successful agency partnerships are more important than ever.

Organisation

Our review found that despite a commendable willingness, Agency staff have found their ability to obtain, process and act on information about waste crime hindered by the structures in which they operate. These limitations are categorised as follows:

Intelligence

Comprehensive intelligence on serious and organised crime involves careful collation and analysis of information from multiple sources, including Agency field staff, other government agencies, industry, trade bodies and the public, as well as information contained in databases, licence information, and geo-spatial resources.

Information flow into Environment Agency

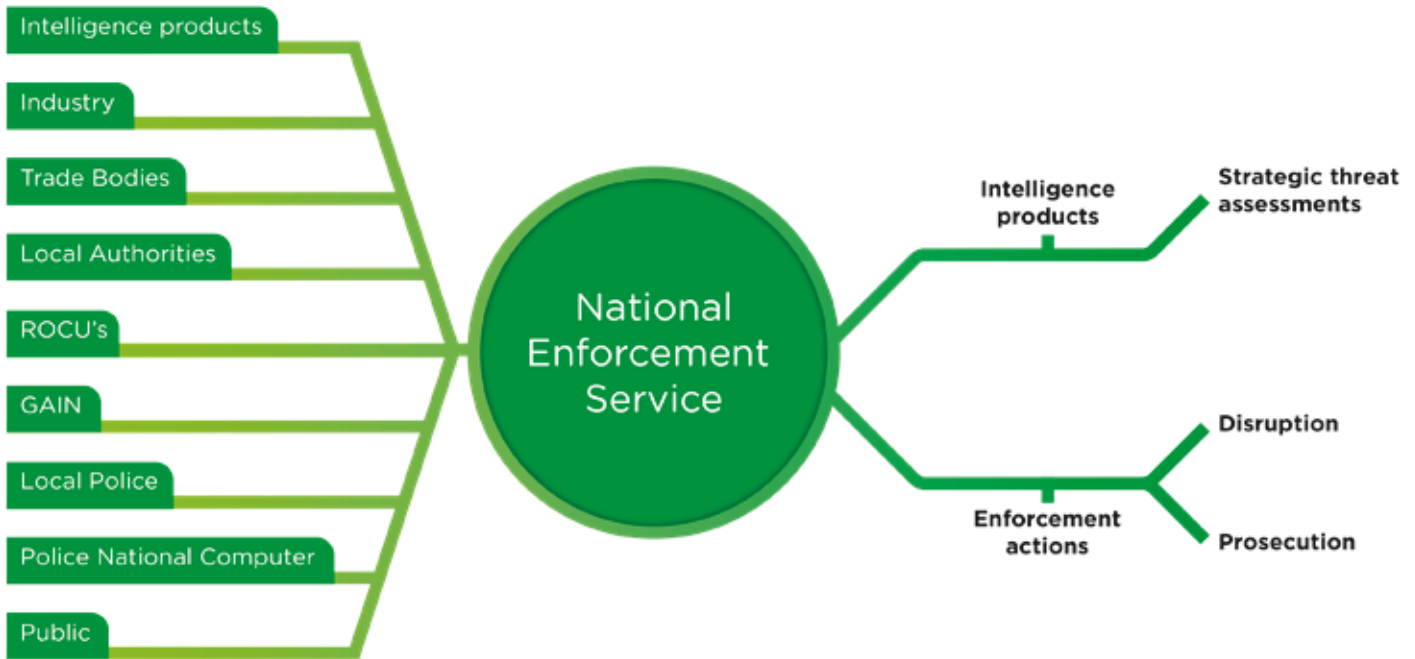


Figure 5: How information to tackle waste crime is collated and used. All of which could be improved.

22 Regulation is devolved. Natural Resources Wales, the Scottish Environment Protection Agency, and Northern Ireland Environment Agency are regulators for Wales, Scotland and Northern Ireland respectively.

National and regional networks are important sources of intelligence, particularly the national Government Agency Intelligence Network (GAIN) and ten regional organised crime units (ROCU). GAIN provides a joint resource for sharing intelligence between its members.²³ It is fundamental to the work carried out by local disruption teams who, working closely with the public and private sectors, use non-criminal justice techniques and non-traditional policing methods to disrupt local organised crime groups.

Neither GAIN, nor the relationship with ROCUs operate as effectively as they could. The Agency submitted the fourth highest number of intelligence referrals to GAIN in 2017-18 (behind police forces as a collective, Trading Standards and the NCA).²⁴ Despite this, EA intelligence referrals rarely meet the thresholds for ROCU involvement so engagement has been more relationship-dependent rather than intelligence led.

While the Agency is active in its use of the GAIN network, there is scope to use it more effectively for sharing tactical assessments and for tasking other authorities to respond to threats.

Threat assessments

The Agency lacks a strategic threat assessment, without which direction is weakened, prioritisation becomes harder, and the ability to secure appropriate engagement and response from partner organisations is limited.

We note that the Food Standards Agency has recently completed, shared and published its own strategic threat assessment²⁵ into organised crime in the food sector, which may provide a valuable reference.

Response tasking

The Agency carries out enforcement work through its National Enforcement Service, 14 area enforcement teams and multiple area environment officers. Current governance arrangements do not provide clear direction based on intelligence assessments from the national enforcement team. This results in a tension between the National Enforcement Service and local area teams, where local threats are often prioritised.

Reporting

During the course of our review, it became clear that the Agency needs to significantly improve management and performance information to understand how much money is being spent, by whom and to what effect.

Reporting metrics do not capture activities that disrupt and prevent waste crime before enforcement action is required, nor do they effectively measure current operational impact on waste crime. This limits the ability to monitor the impact of prevention and disruption activities, which in turn hinders development of strategy and tactics.

Partnerships

Collaboration between the Agency and other bodies is important at all stages of the response to organised criminality in the waste sector, from intelligence gathering to enforcement. Effective collaboration often requires powers beyond those held by Agency officers.

None of respondents to our call for evidence believed that organisations involved in dealing with waste crime were joined up. Respondents cited a lack of a shared awareness of criminal activities, limited information sharing between organisations, and slow reaction times after each event.

23 GAIN member agencies include the National Police Chiefs' Council, National Crime Agency, Department for Work and Pensions, HMRC, Intellectual Property Office, DVLA, UK Visas & Immigration, Companies House, Charity Commission, National Trading Standards, Security Industry Authority, Department for Business, Energy & Industrial Strategy, Food Standards Agency, Gambling Commissions, Medicines and Healthcare Products Regulatory Agency, Insolvency Service, Gangmasters & Labour Abuse Authority, NHS Protect, Environment Agency, ACRO Criminal Records Office. The Police Service of Northern Ireland and Police Scotland are not core members of GAIN but work with the network on a case-by-case basis.

24 GAIN network enquiries information provided by the Home Office.

25 Food Standards Agency, Food Crime Annual Strategic Assessment 2016, <https://www.food.gov.uk/print/pdf/node/462>.

Perceptions of where partnership work is most lacking are mixed. Many respondents to our call for evidence reported that when joined-up work does take place between organisations, it is exercised for investigation and prosecution rather than prevention and disruption. Conversely, senior Agency managers expressed frustration at a lack of support in major investigations, while reporting that joint working on prevention and disruption was more common.

Barriers to partnership working

Common barriers to successful partnership working included reluctance to share intelligence or disclose information, lack of shared priorities, zealous interpretation of data protection rules, limited resources, and the perception of waste crime as only a civil offence (which it is not) and not a police matter (which it is).

Local authorities

Local authorities and trading standards are a vital part of the prevention and enforcement picture. Fly tipping and waste feature high on the list of local priorities, according to the Local Government Association. They are conscious of the role of organised criminal involvement in many cases but, unsurprisingly, interpretations of what is serious and what is organised differ from area to area. They are hampered by limited funds and multiple competing priorities. The effectiveness of their responses varies accordingly.

Role of PCCs

Police and crime commissioners (PCCs) are the locally elected leaders on all matters concerning policing and crime. They have a direct stake in tackling waste crime and play a vital leadership role in local partnerships.

PCCs have a responsibility to their constituents to prevent the many detrimental effects of organised waste crime on local communities and environments, and to ensure the rigorous prosecution of those engaged in it. During our review, we heard examples of powerful PCC voices leading efforts against waste crime (see case study 1), but overall, we found commitment to be patchy.

PCCs are in a unique position to engage local partners and energise local Serious and Organised Crime Partnership Boards. They can also choose

to prioritise waste crime in their Police and Crime Plans, which in turn establish the operational priorities of their chief constables and the allocation of resources to support them. This process has proven instrumental in galvanising action in some areas but not others.

CASE STUDY



Durham Organised Crime Disruption and Intervention Panel

- Established in 2009 to address a growing threat of organised crime in the local area – of all local OCGs, 20% were already engaged in the waste industry, and intelligence revealed attempts to diversify further.
- Environment Agency is lead strategic partner; its main role to identify trends, intelligence gaps, and where disruptive action could be taken against criminals.
- Panel includes representatives from 16 agencies; members meet every other month to share information, develop joint situational awareness, conduct threat assessments and schedule action to be taken within the boundaries of each of their powers.
- Action from the panel over the past nine years has involved hundreds of interventions that have successfully disrupted the activity of all OCGs operating in the area, with several OCGs being totally dismantled as a result.
- Panel has contributed to the overall success of the local police force, which is one of only two forces to be ranked as outstanding in the HMICFRS Peel report 2017.

Existing comparison models

A number of successful models exist for the kind of multi-agency working that is required to tackle serious and organised crime in the waste sector. Two examples are the National Wildlife Crime Unit and the National Food Crime Unit (see below).

There is significant potential to learn from these existing models, not least in terms of their success in

‘rebranding’ the problem of sector-specific crime, and in sharing the solution among multiple partners.

The operation of both units is underpinned by the Home Office Serious and Organised Crime Strategy framework, based on the 4Ps – ‘Prevent, Prepare, Protect and Pursue’ – which aims to remove space for serious and organised criminals to operate.



National Wildlife Crime Unit

- Established in 2006 to prevent and detect wildlife crime in the UK
- Acts as an information hub and coordination mechanism for agencies, and a single point of contact for relevant bodies such as the RSPCA
- Assists police forces in wildlife crime investigations
- Produces a biannual strategic assessment of wildlife crime following National Intelligence Model guidance, which is used to set wildlife crime priorities
- Receives funding from the police and Defra



National Food Crime Unit

- Established in 2015, following the horse meat incident in 2013, to understand, detect and coordinate action on food crime
- Advises and guides law enforcement partners to protect consumers from serious criminal conduct that impacts on the safety or authenticity of food and drink
- Has an important role in national and international multi-sector engagement
- Produces a strategic threat assessment to support law enforcement responses, and is currently building investigative capabilities and seeking related powers
- Receives funding from the Food Standards Agency and HM Treasury

Recommendation 1:

The Joint Unit for Waste Crime (JUWC) should be established.

The unit should be established as a command and control centre, clearly directing the agency response on national and local priorities, and with the mandate to direct and coordinate a joined up, multi-agency response in the most serious cases.

Existing national enforcement units, including the National Wildlife Crime Unit and the National Food Crime Unit (see case studies), should be explored as potential models for the JUWC, but may not go far enough in respect of leadership, accountability and control.

The JUWC should sit within the Environment Agency, which should provide the principal governance and accountability mechanisms. Staff from the Agency, National Police Chiefs Council and HMRC should be seconded into the unit on fixed terms, with a permanent, high-profile Director; preferably from a law enforcement background. The JUWC should include an advisory board to support and challenge its work, with representatives from both the Association of Police and Crime Commissioners and the waste sector.²⁷ A close relationship between the Unit and the advisory board should ensure greater integration and analysis of data. The JUWC should be the primary point of contact with the sector.

The performance of the JUWC should be reviewed within 12 months to monitor progress and success.

Building on the findings of this review, the JUWC should:

- Operate in accordance with the Home Office Serious and Organised Crime Strategy: ‘Pursue, Prevent, Protect and Prepare’.
- Act as the strategic lead for enforcement and intelligence, by making provision for clear, unambiguous tasking from national to local teams within the Agency and its partners.

- Produce strategic threat assessments, consistent with standards that the NCA requires for intelligence and law enforcement communities.
- Monitor and report on use of GAIN by waste crime teams across the country.
- Agree joint reporting and analysis protocols with industry to improve the integration and analysis of data.
- Integrate intelligence systems with other relevant agencies.
- Direct local agency staff to report progress with local partners and monitor the relationships with local authorities.²⁸

Recommendation 2:

Strategic relationships between the Environment Agency and PCCs should be strengthened.

The Agency should offer assessments, or provide resources for assessments, of organised waste crime in local force areas. Some police force areas are more affected by organised waste crime than others, and these should be identified and prioritised.

The Agency should encourage PCCs to include organised waste crime as a priority in their police and crime plans. This will establish waste crime as an operational priority for local Chief Constables. The example of Durham demonstrates where this approach has been very effective to engage local partners.

Progress on establishing effective relationships between the Environment Agency and PCCs should be reviewed in 12 months.

²⁷ The Environmental Services Association (ESA) represents the industry. CIWM represents professionals who work in the sector.

²⁸ Representation could come from either, or another suitable nominated organisation.

These partners include: National Crime Agency, Natural Resources Wales, Scottish Environmental Protection Agency, Northern Ireland Environment Agency, local police forces, Trading Standards, Driver and Vehicle Standards Authority, local authorities, Gangmasters and Labour Abuse Authority, and port authorities.

4. Enforcement powers and regulations

Waste management is a complex business. The sector operates under powers and regulations that span a plethora of national legislation and international treaties. The purpose of these powers and regulations is to protect the environment and quality of life for the public.

Environment Agency powers

In England, the Agency acts as regulator for the waste sector, and as such, most of its powers relate to ensuring compliance with regulation. Policing criminality in the sector requires a different focus. While the Agency has acquired (and lost) police-type powers during the course of its existence, it relies heavily on police bodies to investigate and prosecute serious criminality.

The ability of the Agency to respond to serious and organised waste crime is therefore limited by a lack of powers covering prevention, investigation and early intervention. In the course of our review we identified the following areas of weakness:

Surveillance

In 2011, under the Regulation of Investigatory Powers Act (2000), or RIPA, the Agency lost its powers to access communications data, including subscriber information for mobile phones, and web addresses to locate computers involved in financial transactions.

Previous access to RIPA communications data facilitated the identification of criminals and their networks, enabling the Agency to put several dangerous criminals behind bars and to retrieve stolen goods, firearms and illegal profits worth millions of pounds. However, the recent restrictions mean that they must now rely on already-stretched police resources to access this data, resulting in lengthy delays to some of the Agency's largest investigations.



In 2015, an organised crime network began systematically dumping illegal waste across northern England. Although mobile phone data was available that would prove links amongst the groups responsible, the Environment Agency was unable to access it. As a result, the investigation took nearly two years, during which time the criminals were able to get away with dumping hundreds more tonnes of illegal waste.

Disruption

The power to halt illegal waste activities by issuing stop notices requires the Agency to prove a 'significant risk of serious environmental harm', and comes with the risk that compensation must be paid if the notice is deemed to have been incorrectly served.

This creates a significantly higher burden of evidence than is the case for other types of crime, and presents particular difficulties if a pre-emptive notice is required.

The Agency also does not currently have the tools available to quickly and effectively disrupt criminal activity relating to the mis-description of waste. The margin created by Landfill Tax rates presents a significant opportunity for criminals to profit through tax avoidance – an operation involving just a few loads of mis-described waste can easily generate several thousand pounds of profit.



The intentional mis-description of waste is widespread in the construction and demolition industry, with hazardous waste frequently labelled as ‘inert’ to avoid the highest band of landfill tax. In one case, involving a major, mixed-use development on a brownfield site in South London, the mis-description of over 1000 tonnes of hazardous waste led to it being transferred to sites lacking the controls to ensure its safe disposal. Not only did this present a serious environmental and public health risk; it also represented a tax avoidance of several million pounds.

Vehicles

The power for the police to seize vehicles involved in waste crime currently requires an Agency officer to be present, with public funds paying for the recovery of the vehicle. This is in contrast to other types of offence, such as illegal parking, where the offender must cover the costs of storage and recovery of their vehicle.

Investigation

The legal basis for investigatory powers is built on environmental legislation that is now over 20 years old. The current powers of entry and inspection require the Agency to give seven days’ notice to enter residential premises, even with a magistrates’ warrant. Officers must also show their authorisation to an occupier before the powers can be exercised. This creates an obvious opportunity to hide, remove or tamper with evidence before inspection can occur, and is a particular issue with remote or unstaffed sites, because the Agency officer must ‘present the warrant’.

Asset recovery

The Proceeds of Crime Act 2002 (POCA) enables law enforcement agencies to recover assets from convicted criminals, but this is not proving a sufficient deterrent in the sector.

Some powers of financial investigation are currently underused for waste crime. For organised criminals,

who may be involved in many different types of criminality, the threat of having their assets scrutinised is a significant deterrent.

One such power is the use of unexplained wealth orders (UWOs), which can be issued to suspected criminals under Part 8 of POCA.²⁹ Currently the ability to apply for an UWO is not available to the wider law enforcement and prosecution community, except by referral to an ‘enforcement authority’ but this could become an important tool to tackle waste crime and should its effectiveness should be closely monitored.³⁰

Waste legislation

Both industry and regulators alike consider that current legislation covering the handling and movement of waste in tackling serious and organised waste crime is not fit for purpose. The forthcoming Resources and Waste Strategy is a golden opportunity for reform, specifically to tackle some of the following issues:

Complexity

Our review found that the complexity of waste legislation, which includes several Acts of Parliament and a number of different European Union regulations, compounds the difficulty in tackling organised crime by slowing the response of the regulatory regime.

29 A UWO is a civil power and an investigation tool. It requires the respondent to provide information on certain matters (their lawful ownership of a property, and the means by which it was obtained). It is important to note that, as an investigation power, a UWO is not (by itself) a power to recover assets. It is an addition to a number of powers already available in POCA to investigate and recover the proceeds of crime and should therefore not be viewed in isolation. (Home Office Circular 003/2018: unexplained wealth orders, Feb 2018).

30 The National Crime Agency, HMRC, the Financial Conduct Authority, the Serious Fraud Office, or the Crown Prosecution Service.

Environmental focus

Much of this legislation also concentrates on environmental harm – yet the majority of organised waste crime is, in essence, fraud.³¹ Indeed, the environmental harm of waste crime is often limited in comparison to its economic and community impacts.³² The Agency does not have the powers or expertise to investigate fraud and relies on HMRC to take forward significant investigations (Figure 6).

The emphasis on environmental legislation also limits the penalties a court can apply on any prosecution, which concentrates on bringing illegal activity back into regulator control.³³ Where a site has no permit, Agency intervention often requires proof of environmental harm; this takes time to develop and a culprit to prosecute. Further, the Agency can be liable for significant compensation costs if an intervention, such as a stop notice, is subsequently found to have been incorrectly applied.

Main organisations and activities involved in tackling serious and organised waste crime

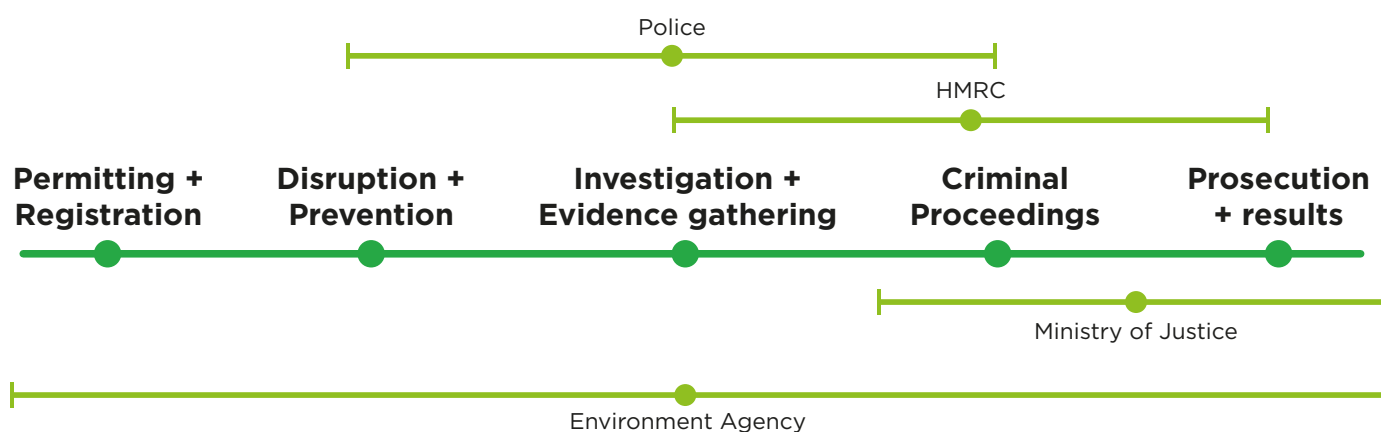


Figure 6: Where powers lie within organisations and showing the breadth of work undertaken by the Agency.



Waste is illegally tipped into a farmer’s field. As the dumped waste does not pose a serious or immediate environmental threat, the penalty of any successful prosecution brought by the Environment Agency is likely to be insignificant compared to the gains available to the criminal. In addition, illegal sites often have no previous operators and the culprit has disappeared, so the case cannot be brought to court at all. The farmer is liable for clearing up the waste, including the Landfill Tax.

31 Fraud is defined in the Fraud Act 2006 as being through false representation, failing to disclose information and/or abuse of position.
 32 The Environment Agency provides internal guidance to its enforcement teams to consider offending Serious Offending (in financial terms) when there is a substantial financial impact (as a guide >£250k) of either gain and / or saving for the perpetrator, or loss to others. And / or involves a substantial environmental based fraud. Above £250K should be considered a Major Investigation.
 33 Environment Agency Policy enforcement outcomes: stop illegal activity from occurring and continuing; put right environmental harm or damage, also known as restoration and remediation; bring illegal activity under regulatory control, and so in compliance with the law; punish offenders and deter future offending by the offenders or others.

Exemptions

Some waste sites are ‘exempt’, meaning that they do not require a permit from the Agency, on the basis that they handle low-risk (‘inert’) or small-volume waste. These create an opportunity to hide illegal criminal activities.

Financial provisions

Waste site operators are not currently required to put in place any financial provisions, such as a bond, to assist in the clearance of the site if it is abandoned or the operator declares bankruptcy.³⁴ Costs for clearance and legal proceedings can run into the millions. A similar liability exists for notified shipments of primarily hazardous wastes, which must be repatriated if the receiving country rejects it.

Weaknesses in relation to carriers, brokers and dealers

One striking feature we observed during this review was the extent to which waste is handled by an increasing number of, often opaque, intermediaries. Opportunities for criminals to profit are facilitated by repeated subcontracting throughout the supply chain, including to brokers who do not take possession of the waste at any time.

However, the legislation governing waste processing does not account for how the industry has evolved in recent years. Regulation covering carriers, brokers and dealers is particularly weak, with few controls in place to ensure that they operate legally, or that waste is effectively tracked and managed (we further discuss the registration of carriers, brokers and dealers in section 6, and electronic tracking of waste in section 5).

Recommendation 3:

The Environment Agency should be equipped with the necessary tools and powers to pursue and disrupt organised crime.

Defra should amend Section 108 of the Environment Protection Act (1995) to: allow the Environment Agency to search premises and seize materials (including computers, digital storage and mobile phones); remove the requirement to give occupiers seven days’ notice to enter residential properties; and remove requirements for officers to show authorisation at unmanned or remote sites.³⁵

Defra should introduce a low level financial penalty, such as a Fixed Penalty Notice, for the clear and deliberate mis-description of waste, set at a level that enables it to be used easily and quickly to disrupt criminality.

Defra should update vehicle seizure provisions to allow the police to seize a vehicle involved in waste crime without Agency officers being present, and to require the offender to cover the costs of storage and recovery of their vehicle.

The Home Office should provide regulations under Part 3 of the Investigatory Powers Act 2016 to allow the Agency to acquire communications data to tackle serious and organised waste crime, mobile phone records being an example.

There should be a deeper exploration of how the Agency and its partners can better use POCA and civil recovery opportunities, including unexplained wealth orders, to seize and otherwise deny criminals access to their financial assets.

³⁴ Some large-scale landfill sites are an exception to this.

³⁵ The Scottish Environmental Protection Agency (SEPA) has already updated its Section 108 powers, and Natural Resources Wales (NRW) is currently consulting on the same updates.

Recommendation 4:

Waste sector legislation should be amended to allow for more effective prevention and disruption of organised crime.

Waste management legislation should be consolidated where possible as the legislation is modernised, to allow for a quicker response of the regulatory regime. At the very least we recommend consolidating Carriers, Brokers and Dealers under one regulatory regime.

The requirement for the Agency to demonstrate a 'significant risk of serious environmental harm' before staging interventions should be removed, to facilitate crime prevention and reduce the risk of compensation liability.

Defra should remove the top risk waste exemptions, those most exploited by criminals, and bring currently exempt sites into the permitting system.

Defra should add a requirement for a financial provision to site permits and exports where feasible, to cover the clear-up costs if the operator ceases to trade and sites are abandoned, or if exported waste requires repatriation.

5. Technology and data

Appropriate use of technology and data is important for effective regulation monitoring and enforcement. However, in the course of our review, we found little meaningful use of technology in any aspect of the wider approach to waste crime.

Digital recording systems

Our review found that the lack of digital record-keeping in the waste industry is frequently exploited by organised criminals, as it provides ample opportunity to hide evidence of the systematic mis-handling of waste.

The lack of digital records also undermines efforts to improve transparency, as it presents a significant

barrier to information access by interested members of industry, academia and the public.

Waste tracking

Systems for tracking household and commercial waste are largely paper-based. Domestic tracking relies on ‘waste transfer notes’, which are filled out by hand, often in triplicate, passed to hauliers, handlers and processors, and retained for records (Figure 7). Companies are required to retain these for two years: even a medium-sized company handling just 50 loads a day could comfortably accumulate 12,500 paper notes in a year. The tracking system for waste exports is similarly opaque, involving ‘Annex VII’ forms in place of waste transfer notes (see section 2).

Waste Transfer Notes

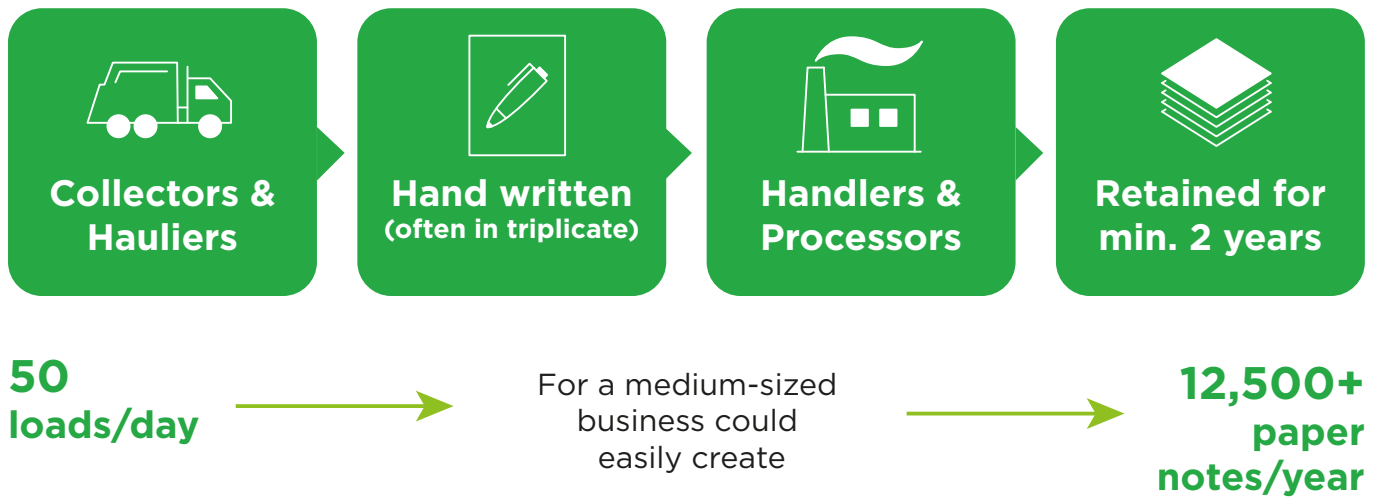


Figure 7: Showing the current system of waste transfer notes and the impracticality of the system these create.

However, there is potential for developing technological solutions. The ‘big seven’ waste contractors all run digital tracking systems,³⁶ with at least one developing an electronic version of the waste transfer note which will create an instantly searchable database and prevent the overuse of meaningless terms like ‘muckaway’ to describe waste.³⁷

Broker registration

We have previously discussed the extent to which waste is increasingly being handled by intermediaries such as brokers (see section 4) – many of whom operate outside the regulatory system and, in some cases, outside the law.

36 The ‘big 7’ waste companies are: Veolia ES, Biffa Group, Viridor, SUEZ, FCC, DS Smith Recycling, and Cory.

37 ‘Muckaway’ is a catch-all description used by hauliers and construction workers. It has no defined meaning; it is slang covering anything vaguely resembling rubble. It accounts for the majority of construction waste and has scope for mis-description of hazardous waste.

The lack of any searchable database of registered waste brokers in the UK facilitates organised waste crime, by making it easier for unscrupulous brokers to conduct large-scale illegal activity within otherwise compliant supply chains.³⁸



In 2017, a known organised crime group (OCG) made an illegal profit of over £1 million by posing as waste brokers and targeting legitimate waste companies. Having offered to remove and properly dispose of some 28,000 tonnes of baled waste at a reduced cost, they instead illegally dumped the waste at a series of farms and industrial units across the country.

Agency access to data

Serious and organised crime involves the coordination of a wide range of illegal (or sometimes superficially legitimate) activity, which can only be uncovered by joining multiple dots. Without effective interrogation and linking of databases, Agency intelligence staff lack a crucial component in their understanding of, and ultimately their ability to deal with, organised waste crime.

Police databases

At the time of our review, the Agency does not have direct access to the Police National Database (PND), which links information on police incidents, known individuals and organisations across the country. However, the Home Office has since granted access to the PND on the condition that the Agency updates its IT infrastructure to meet technical requirements. In addition, the Agency does not have full access to the Police National Computer, which contains records of all recorded crime.³⁹

The inability of the current level of access to meet the business needs of the organisation was highlighted by the HM Inspectorate of Constabulary (HMIC) following an inspection of the Agency in December 2015.

Full access to both systems will enable the Agency to operate more effectively by putting together a more comprehensive threat assessment to engage with partners (as authorised by the Secretary of State as a non-police prosecution body).

Database connectivity

We saw little evidence of effective cross-referencing between different databases. This largely reflected the low level of computerised record keeping and the isolated nature of each agencies' operation: neither staff nor computers from the Agency, HMRC, police forces, Local Authorities, Trading Standards or DVSA communicated effectively enough. Patchy examples of good practice in this regard served mostly to highlight the overall weakness.

Recommendation 5:

Mandatory electronic tracking of waste, and a national database of registered brokers, should be introduced at the earliest opportunity.

At a minimum this should digitise the current waste transfer note system and Annex VII system for international shipments. It is important to note that any industry-wide tracking system must involve standardised formatting of data, to facilitate analysis and inspection by regulators.

It should include all international waste shipments, to enable tracking of waste prior to shipment and through to final destination.

Waste transfer and registration data should be published on data.gov.uk, allowing industry, campaigners, researchers and officials to analyse and develop it.

Recommendation 6:

The Environment Agency should be granted full access to relevant police databases.

The JUWC should be permitted full access to the Police National Database (PND) and the Police National Computer (PNC). A request from the Environment Agency dating back to August 2016 for further access to the PNC has yet to be progressed.⁴⁰

We acknowledge the issues surrounding granting this access, but Government should revisit the powers given to the Agency. At the very least, the co-ordination of existing powers should be made more effective. We recommend that we review what power changes are practical and appropriate once the JUWC is fully operational.

When the PND and PNC are replaced in future by the Law Enforcement Database (LEDS) full access permissions should be continued.

6. Duty of care

Those who handle waste at any point from its production to its disposal have a duty to take all reasonable steps to ensure that when it is transferred, it is managed correctly.⁴¹ They must do this by checking the next waste holder is authorised to take the waste, understanding where their waste is going and undertaking more detailed checks if they suspect it is not being handled correctly, and requesting evidence that their waste has arrived at the intended legitimate destination and that it has been accurately described.

In other words, everyone – whether it be a business, a local authority or a householder – is responsible for the waste in their care, including for its destination.

Accountability

Our review identified a high level of concern amongst industry stakeholders regarding the lack of accountability from waste producers for the destination of their waste products. It was felt that this lack of accountability represents an inherent unfairness in the system, as waste producers can effectively discharge their duty of care to intermediaries, such as brokers.

Commercial waste producers

Commercial waste accounts for a significant proportion of the volume of waste produced each year. Producers, construction and demolition companies are technically responsible for ensuring their waste is handled responsibly. However, due to the complexities of several layers of sub-contractors being involved in many cases, this responsibility is, in practice, devolved from waste producers. Many producers are very careful in the way their waste is disposed of, but even within legitimate waste businesses, construction waste can easily be inaccurately described as ‘inert’, enabling it to avoid the higher band Landfill Tax. Of the 120m tonnes of construction waste that leaves building

sites every year a significant proportion – possibly even a majority – is described as ‘muckaway’ on Waste Transfer Notes. ‘Muckaway’ is an essentially meaningless term which implies ‘inert’ rubble but can in fact include everything from steel to asbestos. The Agency highlighted that this issue was ‘ubiquitous’ within the construction sector and waste sector as a whole.⁴²

We know that many commercial waste producers carefully choose carriers, brokers and dealers, and must place trust in those handlers of their waste to act responsibly. For major operations, the large number of local waste sites make it difficult to avoid using carriers, brokers or dealers, and this review has been told that despite best efforts, it is likely that some parts of the chain can break down.

Local authorities

The Agency reported that local authorities and other public bodies have different protocols around procurement of waste services, meaning some perform better than others in their background checks and information held about companies they contract. As with commercial waste producers, this can easily lead to poor or illegal handling of waste after a multi-year contract has been awarded.

Householders

Householders have only a limited duty of care, and this is rarely enforced, with local authorities usually assuming it on their behalf.

However, householders remain vulnerable to a direct approach from criminals or rogue traders, and over two thirds of fly tipping incidents involve household waste. This can develop into serious crime. During our review, we saw proposals to launch a ‘fly-tipping toolkit’ to enhance partnership working between organisations at a local level.

41 This duty of care is imposed under Section 34 of the Environmental Protection Act (1990). A government code of practice sets out how to meet its requirements. Failure to comply is an offence subject to an unlimited fine on conviction.

42 Kent and South London Area, Environment Agency, August 2018

A recent Defra industry consultation⁴³ found that 97% of respondents did not believe that householders understood their duties and the risk of prosecution when passing their waste to unauthorised persons. Efforts to increase awareness and create a stronger understanding of duty of care around waste among the public have been limited.⁴⁴



Organised fly-tipping can accumulate into serious crime. Criminals advertise ‘waste clearing services’ to local households and businesses, but the waste they are paid to remove is dumped at illegal sites, which are usually situated on public or private land and accessed using force, threats, intimidation and violence. It can cost anywhere from £10,000 to £500,000 to clear a single site, and criminals often return once a site has been cleared, repeating the cycle.

Waste brokers

The increasing handling of waste by brokers has been discussed previously (see sections 4 and 5). The lack of regulation of waste brokers leaves the system in which they operate open to abuse by organised criminals. The Environmental Services Association has highlighted a number of weaknesses in the current regime.⁴⁵

Registration

Brokers and handlers of waste are licensed by the Environment Agency. Compliance costs for brokers are minimal and registration as a legitimate carrier, broker or dealer is only £154 for three years with no prequalifying checks.

Registrations may only be refused or revoked by the Agency if the applicant has an offence or prosecution related to environmental and metal offences under specific legislation.⁴⁶ In the context of preventing organised waste crime, which is often committed by individuals involved in unrelated areas, this is a particular shortfall.

Inspections

There are very limited funds for duty of care inspections of waste producers or carriers, meaning significant parts of the waste management system operate ‘under the radar’.

We also heard of waste companies operating legitimately in part of their dealings, in order to provide a front for crime. Legitimate businesses want a strengthened duty of care in order to protect their own business models.

Awareness

While the industry-led ‘Right Waste Right Place’ campaign aimed to raise awareness of the duty of care requirements with waste producers across the public and private sectors, with a particular focus on small to medium size businesses, we have not seen examples of any such campaigns targeting carriers, brokers and dealers.

There has also been little work done to make commercial site owners and landlords, whose properties are often exploited as illegal waste sites, aware of their liability should these sites be abandoned.

43 Review of proposals to tackle crime and poor performance in the waste sector & introduce a new fixed penalty for the waste duty of care, Summary of responses to consultation, July 2018, Defra.

44 The only campaign aimed at the general public that we identified was the Crime not to Care campaign by Keep Britain Tidy, hazardous waste.

45 Rethinking Waste Crime, 2017, commissioned by the Environmental Services Association and written by Eunomia, and from conversations.

46 The Proceeds of Crime Act (2002); the Fraud Act (2006); the Theft Act (1968) and the Customs and Excise Management Act (1979).



Landlords can inadvertently become involved in organised waste crime – and potentially liable for huge clear-up costs – if their premises are used to dump waste. In one case, criminals approached landowners with a view to renting premises to store clean plastic waste for eventual use in a waste-to-energy scheme. In reality, all of the rented sites were quickly filled with mixed municipal baled waste and then abandoned. One of the largest of these was in Newark, where a disused poultry farm was filled with approximately 60,000 to 70,000 tonnes of waste.

Recommendation 7:

Registration and duty of care requirements for carriers, brokers and dealers should be reformed (including in relation to hazardous waste).

The Environment Agency should increase its existing charges for broker, carrier and dealer registrations, to provide funding for background checks on applicants and investigations into applicants' previous violations and prosecutions, including widening the existing relevant offences.

A two-tiered registration system should be made more robust for carriers, brokers and dealers, to differentiate between those that carry small quantities of their own waste and those for whom transporting waste is a major component of their business, as recommended by CIWM, ESA and UROC.

Government should mandate competency checks on directors, proof of reasonable financial provision, and a requirement for photographic ID for carriers, brokers and dealers in the waste sector. These should be linked to the required national database of registered brokers and any trusted trader scheme.

Government should require exporters of waste to be registered as a legal entity recognised in the UK.

Government should require carriers, brokers and dealers to provide evidence on the fate of their waste, to the producer or previous holder of the waste as recommended by CIWM, ESA, and UROC.

Government should enable the Environment Agency to revoke authorisations based on infringements rather than requiring, as now, specific criminal convictions for environmental offences.

Recommendation 8:

Waste producers should be held accountable for the end destination of their waste products.

Introduce stricter duty of care liabilities on waste producers, facilitated by the mandatory electronic record of waste transfers as described in Recommendation 5.

Investigate the use of more exhaustive inspections and penalties for waste producers to promote compliance with a stricter duty of care regime, and introduce a requirement on producers to contribute to the cost of clearing up if their waste is found to be deposited illegally.

Consult with waste producers using appropriate forums such as UK Green Building Council on proposals to make their procurement processes and audit trail more transparent.

The Local Government Association needs to engage with and consult on how they might improve local authority procurement processes so there is more transparency on companies they contract for disposal of waste.

The waste industry should consider developing an assurance scheme to increase transparency in the sector.

Duty of care awareness campaigns, such as 'Right Waste, Right Place', should be extended to householders and commercial landlords.

7. The business model

The business model of the Environment Agency determines how its enforcement activities, industry contributions, cost recovery and criminal proceedings are funded.

Current funding

The Agency has two principal sources of funds for waste regulation and enforcement, charges on operators who hold permits and authorisations, and grant-in-aid (GIA) funding provided by government through Defra.

Total funding from both these sources has fluctuated between £15 and £18 million per year since 2011-12. Funding for the current financial year is £15.5 million (see box below for a breakdown of distribution⁴⁷).



Breakdown of funding for current financial year:

- £6.7 million on the National Enforcement Service (NES; 127 FTE), over £3 million of which is spent on intelligence for active serious, significant or major investigations;⁴⁸
- £5.6 million on Area Enforcement Teams (AET; 117 FTE), tackling illegal sites and dumping; and
- £3.2 million on enforcement by local area waste regulation teams (88 FTE), which concentrate on assessment and low risk cases.

Currently, the Agency and local authorities have the powers to deal with a backlog of abandoned waste sites which require additional funding to deal with each year. However, the cost of clearing these sites is extensive and could run into the tens of millions per year if they were all cleared. The Agency has powers to recover costs after clearance but it has almost never used these powers due to limited success in recovering costs. As a result the Agency only clears land in exceptional circumstances if it poses a risk to the public and the environment.

These sites are often situated on prime industrial land, affect local residents and the nearby environment, and take up resources from the local emergency services, local authorities, and Environment Agency.

HM Treasury has been supportive of bids to deal with the highest priority sites, however, this funding cycle has to be agreed on a yearly basis and is not able to resolve the issue permanently.

Future funding

In Autumn 2017, it was announced that between 2018-19 and 2021-22, funding is due to increase following an additional £30 million allocation from the Treasury.

We understand this additional funding was secured to tackle three problem areas: illegal waste sites, illegal waste exports, and deliberate mis-description of waste (see box below for a breakdown of funding plans).



We have been presented with the following funding plans for additional £30 million by the Environment Agency:

- £10 million up to 2020 will fund existing work (approximately 100 FTE – 40 in area teams, 40 in NES, ten in legal and five in the Environment and Business Directorate)
- £20 million up to 2022 will fund new work:
 - £960,000 programme management over four years
 - £300,000 system thinking in year one
 - £5.6 million operational prevention over four years (engagement with local authorities, waste producers, regulatory staff to tackle mis-description of waste)
 - £12.8 million operational disruption over four years (environmental crime officers, disclosure officers, assessments and intelligence, tactics, training for staff)
 - £340,000 frameworks and support over four years (IT, equipment)

Potential areas of reform

Throughout our review we have heard that the response to serious and organised crime in the waste sector requires a revised approach to enhance powers, organisation, technological capacity and enforcement regulation. We have heard the same message in relation to funding, with a clear view emerging that funding to tackle criminality in the waste sector needs to be made more flexible and more reliable. Three priority areas were identified for potential reform:

Permit fees

Treasury rules on spending public money require that income received by regulators from the sale of permits is spent on the regulation of those being billed.⁴⁹ As such, the charges for permits and licences are set at the level required to secure 'compliance'. This does not include 'enforcement' activities, such as investigation or prosecution. Enforcement at illegal sites, exempt sites and for illegal waste carriers, brokers and dealers – who do not pay an annual subsistence fee – depends entirely on government funding (Figure 8).

49 Managing Public Money, HM Treasury, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742188/Managing_Public_Money__MPM__2018.pdf.

Current costs and recovery rates for enforcement and compliance for legal and illegal sites

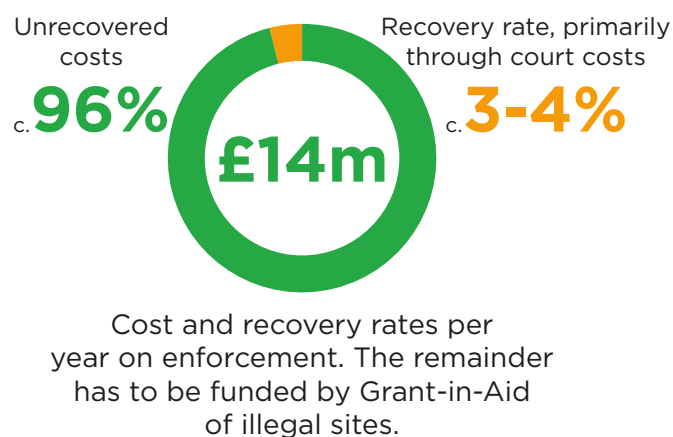
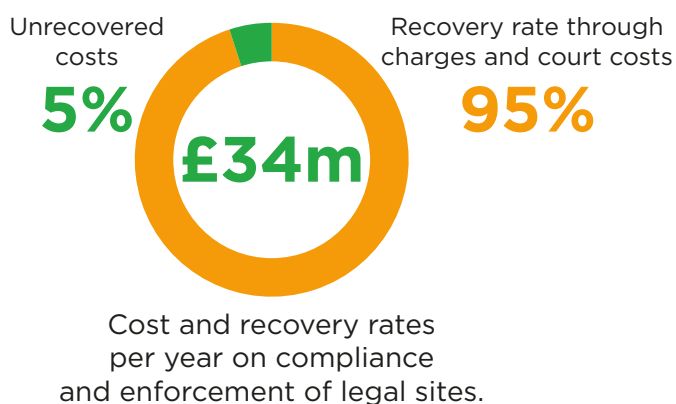


Figure 8: Showing the difficulty in recovering costs from illegal sites.

The flexibility of permit income could be significantly increased by applying rules on spending public money and cost recovered to the 'sector', rather than on an individual site-by-site basis.

Indicative assessments which we have undertaken with the Agency suggest that in order to cover the cost of enforcement and prosecution at permitted sites, an increase of around 5% to the cost of permits would be needed. This would be applied to the circa 12,000 current permitted sites and makes the assumption that the cost of enforcement for the Agency would remain the same.

If we expanded this so that permit revenues would cover the cost of all waste crime enforcement, the permit fees would need to increase by around 50%. It should be noted that these are indicative figures and we recommend that a full analysis be performed.

Tax allocation

The Landfill Tax, which forms the basis of the current business model for the entire waste industry, has generated an average of £1 billion each year for the past ten years. However, this system relies on the integrity of the waste market but this has been exploited in the past.

To defend the gains made since the introduction of the Landfill Tax – to the Exchequer, the industry and the environment – more rigorous regulation

and effective policing of the sector is required. Tax revenues could provide an important source of funding for this.

Role of industry

Our conversations with industry suggest that they recognise the value of strengthening defences against illegal activity which undercuts their margins. We heard support in principle for the introduction of a voluntary contribution in the form of a levy or similar as industry recognised the benefits which enforcement brings to the legitimate industry.

A voluntary levy, would be subject to a full impact assessments and consultation. The levy would avoid the complications of Treasury rules, and as principal beneficiaries of better policing, legitimate businesses have an incentive to contribute. It would need to be accompanied by governance that balances industry involvement with protections for the operational independence of law enforcement agencies.

Recommendation 9:

Plans for additional 2018-22 Environment Agency funding should be reviewed to ensure consistency with plans for a Joint Unit for Waste Crime.

Comprehensively reassess the future funding outlined in 7.2 complete with a business plan specifying objectives and performance data.

Agree the most suitable funding model or combination of models as described in recommendation 10.

Review the future funding allocation to ensure they accommodate all the required secondments from the police and HMRC.

Ensure flexibility to permit senior management within JUWC to re-allocate resources as business priorities change.

Develop clear accessible performance metrics to track how resources are allocated, for what purpose and with what results.

Establish metrics for measuring serious and organised waste crime over time, including type and other relevant descriptors.

Recommendation 10:

Government should reform funding for the regulation and policing of the waste sector at the earliest opportunity.

We present three options for consideration – these are not mutually exclusive:

Fee income. The Environment Agency could explore options to raise funds for enforcement by broadening its fee income. The Agency and HM Treasury should calculate the cost of ensuring compliance across the sector as a whole, including enforcement action against illegal sites, and consider whether the additional income might be raised in association with the permitting system.

Tax revenues. Government could commit a proportion of Landfill Tax revenues to Environment Agency waste crime efforts. The Agency has recently received £30 million of additional funding over four years for this purpose. If pursued, this funding approach must include multi-year settlements.

Voluntary levy. Industry could contribute a voluntary levy to support the function of JUWC, or wider enforcement, once the correct measures were in place and could be shown to be working. This could supplement tax revenues and permit fee income; if it does, it will need to convince the sector of its value.

In addition, Government should investigate options for covering the costs of both compliance and enforcement with permit fee charges. This would involve redefining prevention and disruption activities as ‘compliance’.

Summary of recommendations:

Recommendation 1	The Joint Unit for Waste Crime (JUWC) should be established.
Recommendation 2	Strategic relationships between the Environment Agency and PCCs should be strengthened.
Recommendation 3	The Environment Agency should be equipped with the necessary tools and powers to pursue and disrupt organised crime.
Recommendation 4	Waste sector legislation should be amended to allow for more effective prevention and disruption of organised crime.
Recommendation 5	Mandatory electronic tracking of waste, and a national database of registered brokers, should be introduced at the earliest opportunity.
Recommendation 6	The Environment Agency should be granted full access to relevant police databases.
Recommendation 7	Registration and duty of care requirements for carriers, brokers and dealers should be reformed (including in relation to hazardous waste).
Recommendation 8	Waste producers should be held accountable for the end destination of their waste products.
Recommendation 9	Plans for additional 2018-22 Environment Agency funding should be reviewed to ensure consistency with plans for a Joint Unit for Waste Crime
Recommendation 10	Government should reform funding for the regulation and policing of the waste sector at the earliest opportunity.

8. Conclusion

During the course of this review, we heard much about the detrimental impact of organised waste crime. We heard from business owners who regularly lose contracts because criminal operators undercut them on price; we heard from individuals rendered insolvent by their liability to remove others' illegally deposited waste, and we saw the damage done to neighbourhoods, communities and the natural environment by the deliberate mis-management of waste by criminal networks.

We observed the degree of effort required to regulate and police this increasingly complex sector and a commendable dedication to do whatever it takes. But we also heard from every side that the Environment Agency lacks the necessary authority, relevant powers or current business model to counter criminal groups operating without fear in an industry with low barriers to entry and very few serious penalties.

We also heard that the waste industry would welcome improved regulation and enforcement if it uncovered and tackled illegal activity and poor compliance. We suggest how a more effective permitting and registration regime, including better background checks and increased charges, and stronger duty of care regulations for all participants, need to be introduced at the earliest opportunity. There was consensus that these measures in combination could be powerful and we are keen to reassess the impact of these in 6-12 months.

We believe that an intelligence-driven approach that targets the criminal, not just the crime, will yield results – but only if the correct agencies work together in a formal structure. Thus, the necessity to replace the waste crime elements of the National Enforcement Service with our suggested Joint Unit for Waste Crime with tripartite representation from, and cooperation between, the Environment Agency, the police and HMRC.

One unifying theme throughout was the clear view that prevention and disruption is a more important focus for effort than criminal sanctions. Preventing criminal activity is likely to be far more effective than protracted and costly prosecutions, some of which are unsuccessful.

Our ten recommendations describe what needs to change if we are to manage this growing problem. A problem that if left unchecked will continue to undermine the legitimate waste sector as well as the stewardship of our natural environment, and to cause real and unnecessary misery for individuals and many communities.

Annex A: Advisory Panel member biographies

Colin Church, Former Chief Executive Officer, Chartered Institution of Wastes Management

Dr Church was CEO of CIWM until October 2018, and has recently moved to the Institute of Materials, Minerals and Mining. Prior to that, he was a Civil Servant for 21 years, with his final post being Director of Environmental Quality at Defra. Here he was responsible for policy on a range of environmental issues including resource and waste management and air quality, and led for Defra on climate change mitigation. He also worked as Director of National Climate Change, where he oversaw the setting of the fourth UK carbon budget. He was a non-executive director of WRAP, the waste reduction and resource efficiency body.

Julia Mulligan, Police and Crime Commissioner for North Yorkshire

As a Police and Crime Commissioner, Ms Mulligan is responsible for the efficient and effective policing of North Yorkshire. Julia was a founding member of the National Rural Crime Network, and has been Chair of the network since 2014. She Chaired the Police Reform and Transformation Board, helping to set the future direction of policing in the UK, and also has national responsibilities for integrity amongst police and crime commissioners, which includes transparency, ethics and police complaints.

Craig Naylor, Deputy Chief Constable in Lincolnshire Police

DCC Naylor is the National Police Chiefs Council lead for Wildlife and Rural Crime and drives the national effort to provide a better policing service to rural communities. During his career he has worked in a number of roles across the former Lothian and Borders Police, the Scottish Crime and Drug Enforcement Agency and Police Service of Scotland. A significant amount of his career has been spent in the Criminal Investigation Department including intelligence, major crime and public protection at Detective Superintendent level. Craig's current role as Deputy Chief Constable in Lincolnshire is the lead for operations in the county.

