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Report on UK

**EVALUATION REPORT ON THE
EIGHTH ROUND OF MUTUAL EVALUATIONS**

**‘The practical implementation and operation of European policies on
preventing and combating environmental crime’**

REPORT ON THE UNITED KINGDOM

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1. EXECUTIVE SUMMARY

Despite the efforts made by the Department for Environment, Food and Rural Affairs (Defra), the evaluation team was not able to meet all the relevant actors involved in tackling waste crime. No meetings were organised with judges or with the competent authority in respect of the illegal production or handling of dangerous materials, and many of the meetings that did take place were held via conference call. In particular, the evaluation team did not meet the environmental regulators of Scotland, Wales and Northern Ireland in person and spoke with them only in conference calls, which made it difficult to communicate. Some information relating mainly to dangerous materials was sent after the evaluation visit, but refers mainly to some websites, which the experts found quite difficult to consult in the absence of clarification from the relevant authorities. Therefore, the present report may lack some relevant information.

The United Kingdom Government committed to a national resources and waste strategy as part of its 25-year environment plan for the UK published in January 2018, setting out what the UK authorities will do to improve the environment within a generation. The Resources and Waste Strategy for England was published in December 2018. The main aims outlined in the strategy with respect to waste crime are to prevent and detect waste crimes and deter waste criminals. The experts consider the plan and the strategy best practice because, firstly, they allow a long-term and harmonised perspective, and secondly, review systems are put in place to adapt the strategy.

Across the UK each nation undertakes a range of projects with regard to waste crime. For example, the Scottish Environment Protection Agency (SEPA) leads the EU LIFE SMART Waste Project, in partnership with Natural Resources Wales (NRW) and partners in Europe.

Regarding the budget, no information was provided to the evaluation team on domestic budget allocations within Northern Ireland and Scotland.

In England, the Environment Agency (EA) budget is composed as follows: funding (GBP 60 million since the 2014/2015 financial year to the end of the 2021/2022 financial year) allocated from Her Majesty's Treasury for waste crime enforcement work; grant-in-aid funding from Defra; fees for the granting of permits (about GBP 20 million per year); one third of the confiscated proceeds of waste crime and money from notifications.

The fee-funded costs of the EA regarding the notification procedure seems to be an interesting means of involving economic stakeholders and could be highlighted as good practice. The same applies with regard to the third of proceeds-of-crime receipts that is allocated to the EA. However, the budget is not very flexible and the money acquired through this system cannot be used for enforcement.

The Welsh Government has allocated specific grant-in-aid funding to NRW to develop and implement work towards establishing the Disrupt, Deter, Detect Action Plan targeting waste crime.

No overall statistics are kept by the UK government, with each authority responsible for keeping statistics. As a result, the UK did not provide a coordinated statistical analysis regarding the four nations. Additionally, no data were provided by Scotland, Wales or Northern Ireland. England provided data related to the period from 1 January 1997 to 31 March 2018, but just as raw records. The evaluation team was thus not able to evaluate this aspect properly.

The following main trends have been reported: offences ranging from fly-tipping of waste to large-scale illegal dumping; deliberate misclassification of waste, tax evasion and fraud; burning of waste; illegal landfills; storing of waste without a permit; abandonment of sites and illegal export of waste.

With regard to organised crime groups (the National Crime Agency (NCA) defines what is meant by an ‘organised crime group’), the EA has established a formalised scheme to handle the phenomenon. In July 2018 the EA reported 20 organised crime groups to the NCA for mapping. UK-wide there are an estimated 70 such groups involved in waste crime. Though formally a procedural scheme is helpful, investigating organised crime may be challenging for an environmental authority not trained in this field and not even provided with the relevant investigative powers.

Various pieces of legislation across the nations of the United Kingdom deal with the prevention of waste crime. Offences are divided into three categories: offences that have to be taken to court within a maximum of six months; offences which can be heard in either a magistrate’s court or the Crown Court and indictable-only offences, which can be tried only in the Crown Court. Offences can be tried summarily or under indictment, depending on their seriousness. In addition, the regulators have other enforcement tools available to them to deal with more minor offences, such as fixed penalty notices.

Waste crime is in general prevented by the regulatory set-up and ongoing supervision based on a strategic approach and an inspection plan. The Waste Shipments Inspection Plan was published by Defra in December 2016. This document applies to the territory of England, Scotland, Wales and Northern Ireland, including the UK Continental Shelf.

The four competent authorities responsible for conducting inspections of shipments of waste within the UK are: the EA (England); NRW (Wales); SEPA (Scotland) and the Northern Ireland Environment Agency (NIEA, Northern Ireland).

Each competent authority determines its own package of inspection-based activities based on local and regional priorities.

Local authorities such as municipalities play a small role in inspection and enforcement in relation to waste crime. They are responsible for investigation and enforcement for the vast majority of fly-tipping cases (there are 1 million cases a year in England), and they can issue fixed penalty notices for small-scale fly-tipping and prosecute more significant instances.

Her Majesty's Revenue and Customs (HMRC) and the police do not play an active role in the inspection of waste shipments because the environment agencies are the designated competent authorities. However, the environmental regulators can flag shipments of waste so that HMRC and the police can hold them for inspection. In addition, as the environmental regulators do not have the power to stop waste transport, they have a close working relationship with the police regarding road inspections.

With a view to ensuring that the shipment of waste between Member States, and between Member States and third countries, is managed in an environmentally sound manner throughout the period of shipment, as well as in the recovery or disposal of waste, the UK has planned that in future information about green-list waste and respective notifications will be mandatory, subject to consultation. Additionally, in England the EA plans to increase the number of inspections at the borders.

Problems have been reported with regard to the taking back of illegal waste shipments by SEPA, the EA and NRW.

The EA, NRW, the NIEA and SEPA, besides being the competent authorities for prevention, are also responsible for investigating waste crimes. In fact, only the environmental regulators deal specifically with waste crimes (except for fly-tipping), while the other authorities (HMRC and border officials) deal with crimes that can be linked to waste crimes. Despite being the investigative authorities for waste crimes, the environmental regulators do not have all the investigative powers that the police have, including special means of investigation and road inspection.

The evaluation team considers that enforcement led by the environmental regulators ensures a high level of expertise in the relevant sector. However, not providing the investigative authorities with all the investigative powers that other bodies have can hinder some investigations. This system requires routines to be checked in order to avoid double jeopardy in case environmental authorities investigate crimes linked to waste crimes (such as fraud and tax evasion) when the police are also investigating the same crimes. It should also be added that the EA does not have access to relevant police databases, which should be granted in full in order to allow it to conduct proper investigations. A report commissioned by the UK Secretary of State for Environment, Food and Rural Affairs and published in November 2018 raised similar concerns.

The four environmental regulators belong to an intelligence-sharing network called GAIN (Government Agency Intelligence Network). Poor performance is a risk indicator for detecting not only simple environmental crimes but also organised crime. Involving intelligence units in waste investigations is considered good practice. Nevertheless, the evaluation team wishes to encourage the UK authorities to not only involve intelligence units in ongoing investigations but also use intelligence data in order to generate new proceedings.

The environmental regulators also have certified laboratories, which is considered good practice. However, the inspectors and investigators usually rely on paperwork and rarely take samples of waste during normal inspections of permitted facilities. The evaluation team considers that an approach focusing only on paperwork, even if led by intelligence, is not the most effective way to fight waste crime, in particular if it is committed in an organised way by misclassification, mixing of hazardous waste with non-hazardous waste or other attempts to erase all traces of the waste. Only an organoleptic approach can identify hazardous waste which was previously misclassified. However, the economical approach of concentrating on poor-performing companies – used in particular in England – seems to be helpful.

In order to discourage waste disposal, the UK imposes a landfill tax and is considering taxing companies that do not use at least 30 % recycled plastic in their containers. This provision can be considered good practice as these taxes can be a deterrent for waste disposal and, conversely, an incentive for waste recovery. On the other hand, taxing waste disposal seems to act as an incentive to commit crime as the taxes are very high and criminals evade them by disposing of waste illegally, such as by fly-tipping. In fact, most waste crime seems to be a direct consequence of the high taxes on waste disposal, such as the landfill tax.

As regards the justice system, there are three levels: the magistrates' courts and the Crown Court, the High Court and the Supreme Court. None of them have specialised units or judges who specialise in dealing with environmental crimes.

In order to provide judges with some guidance, the Sentencing Council has established definitive sentencing guidelines for environmental offences. These have been in effect since 1 July 2014 and have to be followed by each court. This seems to be helpful for the courts, as a large number of cases are decided by magistrates' courts and sentencing would otherwise be very free within the range of sentences provided for by criminal law. On the other hand, with respect to the obligation for judges to follow the sentencing guidelines, it seems doubtful that all relevant matters can be considered in advance. In any case, these guidelines cannot be considered sufficient to remedy judges' lack of specific expertise.

The EA and NRW have their own prosecutors who deal with waste crimes, therefore the agency's expert knowledge is immediately available in court. Giving the environmental regulators of England and Wales competence to both investigate and prosecute can be considered good practice, as in principle it avoids possible gaps, facilitates full control of the case and guarantees a high level of specialisation in the relevant field. However, problems can arise whenever a waste crime case is linked to another serious crime for which environmental regulators do not have competence (or even expertise in the field). Double jeopardy can be avoided through checking routines.

In Scotland, SEPA only investigates waste crimes, while the Crown Office and Procurator Fiscal Service (COPFS) brings cases to court. In Northern Ireland, while the NIEA investigates and collates all the necessary evidence, it is the Public Prosecution Service of Northern Ireland which prosecutes the case in the courts.

The high level of knowledge with respect to enforcement, investigation and prosecution within England's EA is impressive. However, when it comes to investigation and prosecution of serious and/or organised crime, specific capacities in the field are needed. The police and other law enforcement authorities might support the EA, but only with information acquired within their remit, as they are not allowed to act on the EA's behalf. The EA's original focus was not on organised crime but on environmental matters.

Responsibility for restoring the environment and repairing damage caused by the offender lies primarily with the offender. However, in principle the environmental regulators can undertake remediation work and seek to recover the cost from the offender if successful in court. Nevertheless, it was reported to the team that the state does not usually clean up or restore illegal dumping sites or other premises where an environmental crime has occurred, but holds the owner of the property liable. Only in cases where there is a danger to the public and the landowner is not able to remove the danger do the UK authorities support the landowner or even remove the hazardous waste themselves at their own expense (with the possibility of recourse to the landowner). The evaluation team considers that, when illegal disposal of waste is detected, samples should be taken and the area cleaned up as soon as possible, even if the perpetrator is not identified..

No single body is responsible for training in relation to environmental crime and, in particular, waste crime. Each agency trains its own staff. The industry also offers many waste management compliance courses and some investigative training is provided by the police. As a consequence, there is no uniformity among the different regulators. The different legislative frameworks (for example, SEPA does not provide its own public prosecutors in court) and different skills may cause offenders to ship waste internally prior to cross-border shipments, so as to avoid more effective inspections. As there are no border controls between the nations of the UK, a consistent level of knowledge should be ensured, including through closer cooperation concerning training. The EA has provided training to both SEPA and the Procurator Fiscals, but the team was not informed about training provided to NRW and the NIEA.

NGOs do not play a particular role within the waste crime framework according to the law. The only significant activity (in addition to raising awareness, for example via information campaigns) is the possibility to report specific crimes to the environmental regulator.

In the field of international cooperation, the UK competent authorities have agreed formalised working arrangements with the Dutch, Belgian and Irish competent authorities. In some cases cross-border cooperation is guaranteed, for example the EA, NRW, the NIEA and SEPA are members of IMPEL. The EA and NRW reported that they often make use of the European Investigation Order as well as of letters of request.

Experience resulting from the use of various environmental networks is reported as positive. SEPA participates in working groups with a focus on organised crime within the waste industry, and coordinates participation in the various work files developed under the EMPACT programme. SEPA has also participated in the Interpol Pollution Crime Working Group (PCWG) since 2015 and is currently vice chair of the PCWG Board.

On the other hand, difficulty in contacting established contact points in non-EU countries has been reported. However, the EA has good cooperation with Nigeria and SEPA reported a recent success in making contact with authorities in Hong Kong.

The UK has established a waste electrical and electronic equipment (WEEE) producer responsibility system to reduce the amount of WEEE going to landfill and encourage separate collection and subsequent treatment, re-use, recovery, recycling and environmentally sound disposal. Responsibility for compliance is shared by the producer, manufacturer or importer placing electrical or electronic equipment on the UK market and the UK distributor, including by any means of distance selling (for example the internet).

Regarding cooperation with the private sector, the EA reported meeting regularly with waste industry representatives to discuss steps to fight waste crime and having a close working relationship with shipping lines in order to gather intelligence and block illegal exports. The EA and NRW sponsored the information campaign ‘Right Waste, Right Place’ to help small businesses and establishments find the most practical ways to meet their duty-of-care obligations.

Awareness-raising campaigns such as ‘Right Waste, Right Place’ have been run in the UK regarding the danger to the environment caused by waste. Moreover, the UK authorities have released a guide for the waste industry to promote proper classification of hazardous waste.

In addition, there is a supplementary regulatory framework which ensures that hazardous waste is managed in an appropriate way.

A range of compliance assessment techniques including audits, inspections and data reviews is used to ensure that all conditions are met.

The EA estimates that a significant amount of hazardous waste is either misdescribed (as non-hazardous waste) or does not enter the waste chain at all through any reporting routes. In order to prevent hazardous waste from being classified as non-hazardous waste, a guide to the misclassification of waste and how to avoid it has been published by a waste classification group, led by the Chartered Institute of Wastes Management (CIWM) and the Environmental Services Association with support from the EA.

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997¹, a mechanism was established for evaluating the application and implementation at national level of international undertakings in the fight against organised crime. In line with Article 2 of the Joint Action, the Working Party on General Matters including Evaluations (GENVAL) decided on 5 May 2017 that the eighth round of mutual evaluations should be dedicated to the practical implementation and operation of European policies on preventing and combating environmental crime.

The choice of environmental crime as the subject for the eighth mutual evaluation round was welcomed by Member States. However, due to the broad range of offences covered by environmental crime, it was agreed that the evaluation would focus on those offences which Member States felt warranted particular attention.

To that end, the evaluation round covers three specific areas: waste crime, illegal production or handling of dangerous materials and hazardous waste. It should provide a comprehensive examination of the legal and operational aspects of tackling environmental crime, cross-border cooperation and cooperation with relevant EU agencies.

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives² (transposition date: 12 December 2010), Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law³ (transposition date: 26 December 2010), and Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste⁴ (date of entry into force: 12 July 2007) are particularly relevant in this context.

¹ Joint Action of 5 December 1997 (97/827/JHA), OJ L 344, 15.12.1997, pp. 7–9.

² OJ L 312, 22.11.2008, p. 3.

³ OJ L 328, 6.12.2008, p. 31.

⁴ OJ L 190, 12.7.2006, p. 1.

On 30 May 2018, the Council and the European Parliament adopted the waste package legislation composed, inter alia, of Directive (EU) 2018/851 of 30 May 2018 amending Directive 2008/98/EC on waste⁵ (transposition date: 5 July 2020) and Directive (EU) 2018/849 of 30 May 2018 amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment⁶ (transposition date: 5 July 2020).

In accordance with the decision taken by GENVAL, the evaluation round does not cover criminal activities linked to other types of environmental crime, such as illicit wildlife trafficking, the illicit timber trade, the illicit fish trade or air pollution.

Furthermore, Directive 2008/98/EC requires the Member States to create national waste prevention programmes by 12 December 2013. The objective of these programmes is to present a coordinated national approach to waste prevention, defining targets and policies, and aiming to decouple economic growth from the environmental impact of waste generation.

Experience from past evaluations shows that Member States will be in different positions regarding the implementation of the relevant legal instruments and programmes, and the current process of evaluation could also provide useful input to Member States that may not have implemented all aspects of the various instruments.

Moreover, the Council conclusions of 8 December 2016 on countering environmental crime⁷ recognise that combating environmental crime requires a comprehensive multidisciplinary approach at all levels, better cooperation and exchange of information between the competent authorities, including third countries, and enhanced dialogue and cooperation with relevant international organisations.

⁵ OJ L 150, 14.6.2018, pp. 109–140.

⁶ OJ L 150, 14.6.2018, pp. 93–99.

⁷ 15412/16, ENFOPOL 484 ENV 791 ENFOCUSTOM 235.

Taking all the above elements into consideration, the evaluation aims to be broad and interdisciplinary and to focus not only on the implementation of various instruments for fighting environmental crime, but mainly on the related operational aspects in the Member States. Therefore, in addition to cooperation between prosecution services and Eurojust, it will also encompass how police and customs authorities cooperate at national level, as well as with Europol and Interpol, and how information from the relevant actors is channelled to the appropriate police and specialised agencies. The evaluation also covers operational practices in the Member States with regard to waste treatment operations and establishments and undertakings which collect and transport waste on a professional basis.

The order of visits to the Member States was adopted by GENVAL on 5 May 2017. The UK was the last Member State to be evaluated during this round of evaluations. In accordance with Article 3 of the Joint Action, a list of experts has been drawn up by the Presidency. Member States nominated experts with substantial practical knowledge in the field pursuant to a written request from the GENVAL Chair dated 28 January 2017.

The evaluation teams consist of three national experts, supported by staff from the General Secretariat of the Council and observers. For the eighth round of mutual evaluations, GENVAL agreed with the Presidency's proposal that the European Commission, Eurojust and Europol should be invited as observers.

The experts charged with undertaking the evaluation of the United Kingdom were: Mr Marc Sotelsek, prosecutor, Bochum, Germany; Mr Hendrik Uithol, environmental inspector, Netherlands; and Mr Marco Avanzo, Carabinieri colonel, Italy. The following observers were also present: Mr Sergio Tirro (Europol), together with Ms Carmen Giuffrida from the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in London between 25 February and 1 March 2019, and on the UK's replies to the evaluation questionnaire, together with its answers to ensuing follow-up questions.

3. GENERAL MATTERS AND STRUCTURES

3.1. National strategy or similar strategic documents against waste crime

The United Kingdom has adopted a national strategy against waste crime. Her Majesty's Government published a 25-year environment plan for the UK in January 2018, setting out what the UK authorities will do to improve the environment within a generation. This plan includes a landmark strategy regarding resources and waste, outlining out how the UK authorities aim to preserve material resources by minimising waste, promoting resource efficiency by moving towards a circular economy. The plan was established following consultations with industry and stakeholders.

According to the plan, the actions that the UK will take relate to:

- using and managing land sustainably;
- recovering nature and enhancing the beauty of landscapes;
- connecting people with the environment to improve health and wellbeing;
- increasing resource efficiency and reducing pollution and waste;
- securing clean, healthy, productive and biologically diverse seas and oceans;
- protecting and improving the global environment.

Minimising waste, promoting resource efficiency and moving towards a circular economy are combined actions with a positive impact in relation to environmental crime.

The main aims outlined in the plan with respect to waste crime are to prevent and detect waste crimes and deter waste criminals. Firstly, prevention of waste crime in the first place should be facilitated by ensuring the regulatory framework is clear and robust with appropriate checks in place for those applying to operate in the sector. Secondly, waste crimes should be detected quickly and swift action promoted by working across enforcement bodies with intelligence and data to put things right through appropriate enforcement actions. Thirdly, it is proposed that waste criminals be deterred by making sure that those who commit crimes are caught and that the punishments match the severity of the crimes committed, and by publishing law enforcement success stories and cooperating with industry.

Additionally, the Secretary of State for Environment, Food and Rural Affairs commissioned a review of serious and organised crime in the waste sector in 2018. The report was published in November and its recommendations were taken into account when establishing the strategic approach to waste crime.

Each nation within the UK has developed such a strategy: for example, in its 2018/2019 business plan, ‘Managing today’s natural resources for tomorrow’s generations’, NRW prioritises the protection of people, business and the environment by reducing environmental crime and tackling poor-performing sites. This is very important, demonstrating an effort to ensure the net number of poor-performing permitted waste and industrial sites is stable or reduced in 2018/2019 compared with 2017/2018. Furthermore, all poor-performing sites have a specific improvement plan in place and this is implemented to an agreed timetable.

The inspection plans only of England and Wales were provided to the evaluation team.

In its business plan, NRW sets out its priority actions for protecting people, business and the environment by reducing environmental crime and tackling poor-performing sites:

- work towards establishing the Disrupt, Deter, Detect Plan for offenders and their crimes by the end of 2018/2019;

- reduce the impact and numbers of poorest-performing permitted waste and industrial sites by working to ensure the net number of poor-performing permitted waste and industrial sites is stable or reduced in 2018/2019 compared with 2017/2018;
- ensure all poor-performing sites have a specific improvement plan in place and that this is implemented to an agreed timetable;
- all high-fire-risk sites will have Fire Prevention and Mitigation plans in place;
- undertake the industrial and commercial waste survey, to provide an updated picture in relation to industrial and commercial waste arising in Wales and how it is managed compared to previous surveys undertaken in 1998/1999, 2002/2003 and 2006/2007.

With regard to cooperation it should be mentioned that UK-wide priorities and emerging issues are discussed at meetings of the UK's Compliance and Enforcement Group. This group in turn informs the individual inspection programmes undertaken by the four competent authorities.

3.2. National programmes/projects with regard to waste crime

Across the UK, each nation undertakes a range of projects with regard to waste crime. For example, Scotland's SEPA leads the EU LIFE SMART Waste Project, in partnership with NRW and partners in Europe. The project-specific objectives are:

- to develop and demonstrate innovative intelligence gathering and analytical approaches to identify and understand waste crime issues associated with 'challenging' waste streams, problem waste operators and illegal waste activities;
- to design innovative intelligence-led interventions, and demonstrate how these can be used to tackle waste crime issues and reduce their impacts in targeted areas;
- to communicate the project results and learning to others, selling the benefits of the approach in tackling waste crime, and to influence European policy and legislative changes.⁸

⁸ <https://www.sepa.org.uk/regulations/waste/life-smart-waste/about-life-smart-waste/>

3.3. Statistics

3.3.1. Main trends with regard to waste crime

All the environmental regulators agreed on the following key types of waste crime:

- offences ranging from fly-tipping of waste to large-scale illegal dumping involving thousands of tonnes;
- the deliberate misclassification of waste, tax evasion and fraud;
- the burning of waste;
- waste management sites operating wholly outside the permitted system, including illegal landfills;
- storing of waste without a permit and the abandonment of sites;
- illegal export of waste, for example exporting of hazardous waste, including WEEE and end-of-life vehicles (ELVs), to non-OECD countries.

In 2015, illegal waste activity was estimated to have cost over GBP 600 million in England alone.

About 120 to 150 cases per year, including minor offences, are taken to court. Waste crime costs an estimated GBP 1 billion per year in the UK through unpaid taxes, lost revenue for legitimate businesses and the associated impacts on people and the environment. In the financial year 2015 to 2016, an estimated GBP 100 million of tax revenue was lost due to waste operators incorrectly describing waste in order to pay the lower rate of landfill tax.

Low barriers to market entry for brokers, waste carriers and sites operating under exemptions from requirements regarding permits, together with the opportunity to make large amounts of money through illegal waste activities, have to be considered drivers of waste crime. This makes the waste market more and more attractive to organised crime groups (OCGs), which typically commit large numbers of different crimes and not only – but increasingly – waste crimes. With regard to organised crime groups, the EA has established a formalised scheme to handle the phenomenon.

The EA, and in particular its intelligence unit, reviews and assesses OCGs using the following approach:

- Identification – any officer in the EA can suggest that a group be considered an OCG and fill out a trigger form. It tends to be officers in enforcement and intelligence who initially identify a group. The identification of OCGs is based on the following definition: ‘individuals planning, coordinating and committing serious offences, whether individually, in groups and/or as part of transnational networks’;
- Research – when the trigger form is received the group members and companies will be fully researched in the Intel Unit across all relevant EA systems and checks will also be made on police systems;
- Adopt or Reject – a recommendation will be taken to the governance group and if it agrees to adopt the OCG then a Lead Responsible Officer (LRO) will be formally appointed to manage the group;
- Score and Share – the LRO will work with the Intel Unit to score the new OCG on the Police National Database (PND). This information is then available via the PND to all other participating law enforcement agencies in the UK;
- 4P Management Plan – the LRO will use the results of the initial research and the ongoing intelligence picture to establish a management plan around the following four themes: prepare, prevent, pursue, protect;
- Review/Re-score – the OCG will be reviewed in line with the tier level of activity, informed by the 4P plan: monthly/three-monthly/six-monthly;
- Prioritisation/Joint working – the OCG scores and banding can be used to help determine priority for resources allocation. Also, where crossovers are identified via the PND dataset, for example the same targets being worked on by different agencies at the same time, then joint working opportunities can be explored;
- Archive – where an OCG is determined to be no longer active it should be archived.

Evidence suggests that organised criminals operating in the waste sector often operate behind legitimate companies. In particular in the sector of industrial waste disposal, waste processors need documents proving that the waste was disposed of properly, as such documents are requested by environmental regulators. Providing waste processors with such documents is only possible if legitimate companies are used.

In July 2018 the EA reported 20 OCGs to the NCA for mapping. UK-wide there are an estimated 70 OCGs. All groups are involved in other types of crime, involving drugs, finance and violence. Analysis indicates that 70 % of the groups are involved in cash-based business and 55 % are involved in public sector fraud and business tax fraud. On average, each OCG is linked to seven other companies, including investment businesses and food importation.

England reported illegal fly-tipping sites to be a major problem and during the visit presented one to the evaluation team, the large size of which confirmed the scale of the problem.

As a countermeasure, a strategic assessment map is updated on a monthly basis. In general, the EA uses the following categories of waste crime: fly-tipping to large-scale illegal dumping; deliberate misclassification of waste; tax evasion and fraud; illegal burning of waste; waste management sites operating wholly outside the permitted system, including illegal landfills; storing of waste without a permit and abandonment of sites; illegal export of waste, for example exporting of hazardous waste, including WEEE and ELVs, to non-OECD countries. In England, the EA also reported that risks caused by organised crime groups increasingly occur, misdescription in connection with the illegal mixing of hazardous waste with non-hazardous waste is a trend, as well as high-risk abandoned sites, cross-border shipments and in particular illegal waste exports, illegal actions by carriers and misuse of permits. Additionally there is a trend of landfill tax evasion, leading to huge risks for the environment. With regard to landfill tax, there has been a move away from landfill. Consequently, the waste sector has become more fragmented and the range of treatment options for waste has greatly increased.

The NIEA reported the following trends in waste crime: illegal landfilling at old surface mining sites in connection with evasion of landfill tax (due to recent changes to tax legislation, illegal landfilling is taxable as well) and illegal acquisition of exemptions from the requirement to register as a waste disposal undertaking.

Scotland's SEPA did not report any trends other than those mentioned previously with regard to waste crime. Asked about the market structure, SEPA reported that municipalities are in charge of the collection of household waste. After collection, in many cases household waste is handed over to the private sector, which is responsible for its disposal or recovery. However, there are several local authorities who continue to operate recovery and disposal sites themselves.

The same applies to industrial waste, which is immediately given to the private sector. Industrial waste consists of, for example, waste from the Scottish offshore oil and gas industry, which is mostly hazardous and for the most part disposed of or recovered on the domestic (Scottish) waste market. Other sectors, such as the construction industry, account for a significant proportion. The rest is transferred to other parts of the United Kingdom. The healthcare sector also generates hazardous waste.

NRW also mentioned landfill tax as an important driver of waste crime.

NRW also reported that cheating on the exemption system with regard to the requirement to acquire permits is a trend in waste crime. However, more detailed data could not be provided when requested.

In order to discourage waste disposal, the UK imposes a landfill tax and is considering taxing companies that do not use at least 30 % recycled plastic in their containers. This provision can be considered good practice as these taxes can be a deterrent for waste disposal and, conversely, an incentive for waste recovery. On the other hand, the taxing of waste disposal seems to be an incentive to commit crime because the taxes are very high and criminals evade them by disposing of waste illegally, such as by fly-tipping. In fact, most waste crime seems to be a direct consequence of the high taxes on waste disposal, for example the landfill tax. This became most apparent during the visit to a large-scale fly-tipping site on an industrial site near London.

3.3.2. *Number of registered cases of waste crime*

No overall statistics are kept by the UK government, with each authority responsible for keeping statistics. The only statistics provided to the evaluation team were from England.

There is a statistics team within the Department for Environment, Food and Rural Affairs (Defra), but it collects data only on illegal fly-tipping. The EA in England has a statistics team as well, which monitors illegal waste sites and prosecution data.

The data can be broadly categorised based on types of waste crime, such as illegal waste sites, illegal dumping, illegal waste exports, etc. The data is contained in different documents and consists of data held in the case-management system on recorded inspections, offences and prosecutions by category (approximately 18 500 records) in the period from 1 January 1997 to 31 March 2018. It is difficult to draw any conclusions on the number of waste crimes from these documents.

The following statistics on waste crime cases in England in 2017/2018 were also provided:

- 673 active illegal waste sites (267 high-risk sites)
- 812 illegal waste sites closed
- 1 012 inspections of waste exports
- 16 223 tonnes prevented from being illegally exported
- 226 large, serious and organised illegal dumping incidents
- an estimated 100 organised crime groups involved in waste
- 103 waste prosecutions
- GBP 400 010 in fines
- 19 custodial sentences

With respect to law enforcement and prosecution of waste crime, the EA in England has established the following scheme:



3.4. Domestic budget allocated to preventing and fighting waste crime and support from EU funding

In England, the EA receives grant-in-aid funding from Defra for its activities not funded by income from fees, fines and other sources. In addition, Her Majesty's Treasury has, since the 2014/2015 financial year, allocated further funding to the EA specifically for waste crime enforcement work. This amounts to approximately GBP 60 million to the end of the 2021/2022 financial year.

Moreover, fees are collected for the granting of permits (about GBP 20 million per year).

In addition, the EA also gets some money from notifications. The fee-funded costs of the EA regarding the notification procedure seems to be an interesting means of involving economic stakeholders and could be highlighted as good practice. The same applies to the third of proceeds-of-crime receipts that is allocated to the EA (POCA). However, the budget is not very flexible. The money is used for enforcement but, historically, not for funding core services as the income is variable and therefore not suitable for paying for permanent staff.

The only financial resources deployed in investigations are those provided by the state. It is suggested that a more flexible reallocation of the budget would allow it to be used in accordance with actual needs.

Enforcement of waste law additionally receives approximately GBP 15 million per year in state funding. This is a fixed allocation: if the budget is spent, there is no scope left for additional enforcement or prosecution measures. The evaluation team was told that every pound spent on enforcement has a return of five pounds. The state is the main beneficiary. However, when it comes to enforcement and prosecution, the EA's costs are not covered by fees or fines paid by offenders but by the general budget allocated to the EA by the state. It seems doubtful that this is an effective incentive for enforcement and prosecution, though one third of proceeds-of-crime receipts is allocated to the EA (POCA).

Fees for permits (covering normal operation and monitoring of waste plants) are cost-covering for the EA, while the budget for enforcement and prosecution is fixed and can be neither exceeded nor increased by additional money acquired through certain measures. It seems doubtful that this funding scheme encourages prosecution activities, which are known to be particularly cost-intensive.

When proceeds of waste crime are confiscated, two thirds of the amount goes to the UK treasury and one third to the EA.

The Welsh Government (WG) has allocated specific grant-in-aid funding to NRW to develop and implement work towards establishing the Disrupt, Deter, Detect Action Plan targeting waste crime. The WG funds projects such as Fly-tipping Action Wales, which NRW coordinates.

No information was provided to the evaluation team on the allocation of the domestic budget within Northern Ireland and Scotland. The only information provided was that Scotland and Wales participate in EU-funded projects such as the LIFE SMART Waste Project.

3.5. Prevention of waste crime

Waste crime is in general prevented by the regulatory set-up and ongoing supervision based on a strategic approach and an inspection plan.

The four competent authorities responsible for prevention within the UK are:

- in England and the English marine area: the EA;
- in Wales and the Welsh marine area: NRW;
- in Scotland and the Scottish marine area: SEPA;
- in Northern Ireland and the Northern Irish marine area: the Environment, Marine and Fisheries Group (incorporating the NIEA).

All four competent authorities undertake a range of inspection activities in order to help reduce illegal shipments of waste from their jurisdictions.

Each competent authority determines its own package of inspection-based activities based on local and regional priorities. These reflect existing waste shipment flows to and from different regions of the UK, as well as data and information gathered from the information sources identified in the previous section.

UK-wide priorities and emerging issues are discussed at meetings of the UK's Compliance and Enforcement Group, which in turn inform the individual inspection programmes undertaken by the four competent authorities.

The UK authorities try to facilitate prevention of waste crime by improving the performance and credibility of the carrier, broker and dealer regime, ensuring waste is properly and consistently described through the resource chain, strengthening the responsibilities of businesses along the resource chain and the links between them, looking at the technical competency requirements for those who transport, manage and describe waste, and exploring the financial disincentives and penalties that should be issued for the misdescription of waste.

An awareness-raising campaign called ‘Right Waste, Right Place’ was run as a preventive measure. Further information about that campaign was not provided. Additionally, England’s EA proactively publishes success stories regarding waste crime cases in order to effectively deter criminals from committing waste crimes.

Defra has committed to implementing financial provisions across the waste industry – although the extent of this and the mechanisms needed to implement it have yet to be decided on and consulted on. A substantial amount of money to be paid should deter unscrupulous operators from deliberately stockpiling waste and then abandoning a site. It should also deter poor-performing operators from entering the market.

In Scotland, the SEPA uses a ‘whole supply chain’ approach whereby waste flows are tracked from waste producers, through brokers and then to the final site of recovery. By understanding this flow, SEPA’s Producer Compliance and Waste Shipment Unit seeks to intervene at the most effective point in the chain to prevent illegal exports and change the behaviours of the parties involved in the chain. SEPA prioritises waste shipment inspections at waste management sites as the most effective way to prevent and deter illegal shipments from Scotland. SEPA also undertakes port inspections and works with partner agencies to conduct inspections on the public road network and at railheads.

In Northern Ireland, the NIEA has a team monitoring waste shipments. There is an intelligence-led inspection regime at the port exit points for export shipments. It coordinates inspections of waste imports with colleagues in Ireland. It has established a Coordination Unit which coordinates the work of four groups:

- enforcement group
- assessment group (dealing with analysis at strategic level)
- serious organised crime group with respect to waste crimes
- non-serious cases group

The NIEA conducts a range of inspections upstream and downstream, to ensure waste shipped is to the standard required by the regulations or is as consented to for shipment.

The NRW inspection programme was established six years ago. Within the agency there are crime analysts who analyse information and release a strategic assessment report. NRW uses an intelligence-informed approach to identify priority waste streams for export. Most of this waste comes from sites which it supervises under environmental permitting legislation (either waste management facilities or industrial installations) and it monitors waste exports using a risk-based approach to compliance at these sites where appropriate. This may also include information gathering regarding green-list waste. The amount of waste shipped directly from Welsh ports is low and NRW undertakes desk-top assessments of notified waste shipped from Welsh ports as part of movement tracking. Most other waste exported from Wales goes via other UK ports outside NRW jurisdiction. NRW shares intelligence with the other competent UK authorities.

In addition, where NRW identifies possible unauthorised waste exports or is informed of concerns by other competent authorities, it undertakes reactive compliance checks to inform any repatriation or enforcement responses.

Local authorities such as municipalities play a small role in inspection and enforcement in relation to waste crime. They are responsible for investigation and enforcement for the vast majority of fly-tipping cases (there are 1 million cases a year in England), and they can issue fixed penalty notices for small-scale fly-tipping and prosecute more significant instances.

3.6. Conclusions

- The United Kingdom adopted a 25-year environment plan for the UK in January 2018, setting out what the UK authorities will do to improve the environment within a generation. The 25-year plan is considered to be good practice because, firstly, it allows a long-term and harmonised perspective, and secondly, review systems are put in place to adapt the strategy.
- The four competent authorities responsible for conducting inspections of shipments of waste within the UK are: the EA (England); NRW (Wales); SEPA (Scotland); and the NIEA (Northern Ireland).
- Across the UK each nation undertakes a range of projects with regard to waste crime. For example, SEPA leads the EU LIFE SMART Waste Project, in partnership with NRW and partners in Europe.
- In England, the EA budget is composed as follows: funding (GBP 60 million since the 2014/2015 financial year to the end of the 2021/2022 financial year) allocated from Her Majesty's Treasury for waste crime enforcement work; grant-in-aid funding from Defra; fees for the granting of permits (about GBP 20 million per year); one third of the confiscated proceeds of waste crime and money from notifications.
- The fee-funded costs of the EA regarding the notification procedure seems to be an interesting means of involving economic stakeholders and could be highlighted as good practice. However, the budget is not very flexible and the money acquired through this system cannot be used for enforcement.
- The WG has allocated specific grant-in-aid funding to NRW to develop and implement work towards establishing the Disrupt, Deter, Detect Action Plan targeting waste crime.
- No overall statistics are kept by the UK government, with each authority responsible for keeping statistics. The only statistics provided to the evaluation team were from England.
- The main trends reported are: offences ranging from fly-tipping of waste to large-scale illegal dumping; deliberate misclassification of waste, tax evasion and fraud; burning of waste; illegal landfills; storing of waste without a permit; abandonment of sites and illegal export of waste.

- Most waste crimes seem to be motivated by the high taxes on waste disposal, for example the landfill tax. Illegal dumping is reported to be a serious problem; this became most apparent during the visit to a large-scale fly-tipping site on an industrial site near London.
- Waste crime is in general prevented by the regulatory set-up and ongoing supervision based on a strategic approach and an inspection plan.
- UK-wide priorities and emerging issues are discussed at meetings of the UK's Compliance and Enforcement Group, which in turn inform the individual inspection programmes undertaken by the four competent authorities in relation to international waste shipments only.
- A proactive approach is taken to publishing success stories in the investigation of waste crimes, which should effectively deter criminals from committing waste crimes.
- The prioritisation of inspections on poor-performing companies in England is good practice as there is a high risk of these becoming waste crimes.
- In England, the EA's funding strategy focusses on getting money from inspections. On the one hand this can be considered best practice because in this way it can obtain sufficient funds to perform its activities. On the other hand there is a risk that only waste producers included in the producer responsibility schemes will be inspected, as they are the only ones paying a fee for the inspection.

4. NATIONAL STRUCTURES

4.1. Judiciary (prosecution and courts)

4.1.1. Internal structure

The EA and NRW each have their own prosecutors who deal with waste crimes, meaning that each regulator's expert knowledge is immediately available in court. In England, the EA has an in-house legal department, comprising about 37 prosecutors (lawyers), that handles waste crime cases. However, only cases before the magistrates' court may be handled by the EA; the Crown Prosecution Service (CPS – the prosecution service for England and Wales) takes over prosecution of cases before the High Court. NRW and the EA employ specialised in-house prosecutors who may bring waste crime cases before any court.

By contrast, SEPA does not have its own prosecutors, specialised or otherwise, so the Crown Office and Procurator Fiscal Service (COPFS – Scotland's prosecution service) brings all waste crime cases to court in Scotland. A Wildlife and Environmental Crime Unit was set up within the Crown Office and Procurator Fiscal Service in August 2011 to investigate and manage precisely these sort of cases.

The UK has five courts. All cases start in the magistrates' court, consisting of lay magistrates supported by a legal adviser or a qualified district judge, but more serious cases are sent to the Crown Court. Appeals from the Crown Court are sent to the High Court, consisting of professional judges assisted by laypeople, or the Court of Appeal. Above those tiers, the Supreme Court acts as the highest court of appeal.

The courts in the UK do not have specialised units or judges for dealing with environmental crimes. To provide them with some instructions, the Sentencing Council established definitive sentencing guidelines for environmental offences which have been in effect since 1 July 2014; these must be followed by all UK courts.

These sentencing guidelines can help judges to make a considered decision, but using them almost requires specialised knowledge of environmental laws. Moreover, Scotland does not even have such guidelines. Sentencing guidelines were produced in 2012 for the judiciary in Northern Ireland as regards penalties imposed for convictions under Article 4 of the Waste and Contaminated Land (NI) Order 1997.

The sentencing guidelines make a distinction between fining organisations, on the one hand, and individuals, on the other. Each stipulated step towards just and proportionate sentencing is applicable to offences of ‘unauthorised or harmful deposit, treatment or disposal etc. of waste’, as well as in cases of ‘illegal discharges to air, land and water’.

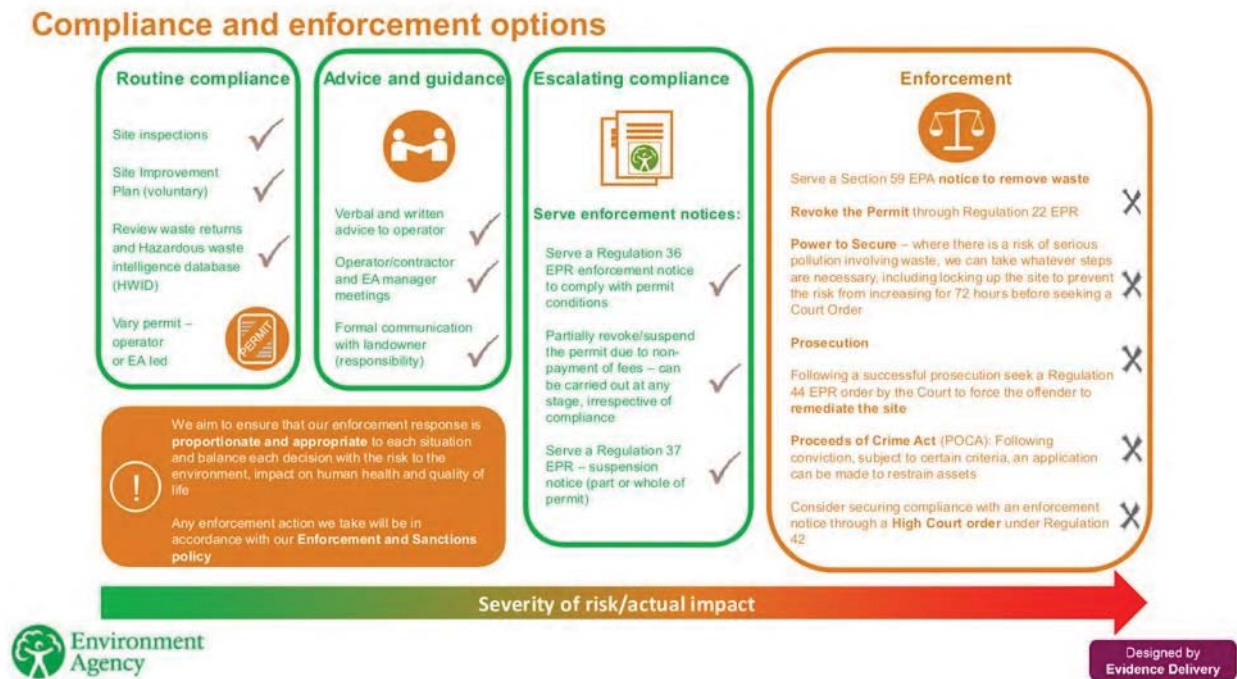
It seems relevant to underline that decisions of administrative authorities, e.g. those relating to permits, are not binding for the criminal courts, whose decisions can therefore deviate from those made by administrative authorities.

4.1.2. Capacity of and obstacles to prosecution and sanctioning of waste crime

Assigning the prosecution of waste crimes to the environmental regulators (the EA, the NIEA, SEPA and NRW) guarantees that those dealing with such crimes are highly specialised in the relevant field. However, it can also cause problems in cases where a waste crime is linked to other crimes. In such cases, the EA reported issues related to the prohibition of double jeopardy, i.e. if an offender has committed an act that may be considered both a general offence and a waste crime – which is often the case with regard to organised (poly)criminals – if they are convicted of the general offence, it is then no longer possible to charge them for the waste crime. Similarly, if the offender is convicted for the waste crime, it is then no longer admissible to charge them for the general offence, even if that offence is murder.

In order to avoid this problem, better information exchange with other law enforcement authorities has been established, but this is only helpful to a certain extent as some cases required closed court proceedings, and there could be a multitude of law enforcement authorities involved.

As a general overview on compliance and enforcement options, the EA provided the evaluation team with the following schematics:



Compliance and enforcement options



The EA also sent this information about tightened enforcement of environmental law in Greenwich Peninsula, a district of south-east London:

Appendix 1 - Compliance Band Assessment explanation



The EA’s prosecution unit reported to the evaluation team that the mindset of the judges can be an obstacle to significant fines or imprisonment. Typical arguments heard in court are that the company on trial is reputable or that an environmental offence is not a serious crime in comparison to e.g. murder cases.

4.2. Law enforcement authorities

4.2.1. *The structure and cooperation between investigative authorities involved in preventing and combating waste crime*

The UK has a dual regulatory regime for authorising waste activities. The local authority planning regime controls the development and use of land, imposing requirements on developers to control traffic movement, noise and other factors that may have an impact on the local environment and community. This is complemented by the environmental permit regime, which protects the environment and human health by controlling the day-to-day operations at a given site. These regimes can impose a range of criminal sanctions to tackle serious risks of pollution. In England and Wales, local authorities also have powers under the Town and Country Planning Act 1990 to issue stop notices which prohibit activities breaching planning control specified in a related enforcement notice. A stop notice can only be served at the same time as or after the enforcement notice is served, and can take effect no earlier than three days and no later than 28 days after it has been served.

Responsibility for tackling waste crime lies with a number of different authorities (the EA, SEPA, NRW and the NIEA; local authorities; the police; HMRC). However, the environmental regulators are the only bodies that deal specifically with waste crimes, while the other authorities deal with crimes that can be linked to waste crimes (for example, HMRC deals with landfill tax fraud and the police deal with general fraud and money laundering). It seems the authorities work together only on an incidental basis – for example, when the EA asks the police to enter and investigate a waste site or to arrest a suspect, or asks HMRC to intercept a waste shipment. The environmental regulators do also flag shipments of waste for HMRC to intercept.

Defra sets the UK's environmental legislative and policy framework for certain UK-wide systems such as Producer Responsibility and Transfrontier Shipments of Waste. Environmental policy on a number of issues such as permits, carriers, landfill and duty of care have been devolved to the governing administrations of Scotland, Wales and Northern Ireland.

In England, the EA also deals with water pollution and its impact on water quality, fishing, wildlife, etc. The EA is independent and has its own board; only its directors are appointed by the state. It is responsible for performing a range of environmental functions across England, including the prevention of waste crime on the ground. It is in charge of: permits and registration; disruption and prevention; investigation and evidence gathering; and criminal proceedings and prosecution.

The EA's enforcement work is largely carried out by a National Enforcement Service, 14 Area Enforcement Teams, and Area Environment Officers. The National Enforcement Service, which includes the National Intelligence Team (approx. 30 full-time equivalents – FTEs), the National Investigations Team (approx. 25 FTEs) and the National Prevention and Disruption Team (approx. 10 FTEs), takes an intelligence-led approach, using a case-management system, a system compiling notifications and an intelligence-management system (MEMEX). The EA also hires former police officers to share their knowledge about investigation tactics and strategies. Possible measures that can be taken are warnings and notices, formal letters, suspension of site permits, withdrawal of permits, fines, and taking operators to court to order them to close sites, clear waste and recover costs.

In Wales, NRW is responsible for the day-to-day regulation of waste sites and for taking action against those who fail to meet the required standards or who operate outside the law. It came into being through a merger of three former government bodies. It is the main waste regulator in Wales and its tasks include granting permits and investigating larger-scale waste crimes (smaller-scale cases are handled by the Welsh municipal authorities). Enforcement is achieved through working with operators and, where necessary, serving compliance or enforcement notices, or issuing stop and suspension notices. NRW also has the ability to change or revoke a permit⁹.

⁹ NRW regulatory responsibilities: <https://naturalresources.wales/about-us/what-we-do/how-we-regulate-you/regulatory-responsibilities/?lang=en>.

NRW supervises a domestic waste market that involves mostly small- and medium-scale undertakings, shipping companies and companies handling both recyclable and recycled waste. They regulate and inspect 26 landfill sites and two incineration plants – one which is already operational and one which is currently being built. After construction and household waste (16 % of the overall waste generated in Wales), soil and industry (in particular the steel, chemical and healthcare sectors) are the main sources of waste dealt with by NRW.

There are several material-recovery sites in Wales. Depending on the market prices for the respective materials, waste of almost any type is treated at these sites.

NRW states that it has been granted the same investigative powers as the EA. NRW runs its own prosecution office, as well as a small intelligence team.

The Regulatory Enforcement and Sanctions Act 2008 gave the EA and NRW the power to impose non-criminal sanctions (fines that do not go through the courts), in addition to criminal sanctions, on companies with over 250 employees for a number of corporate environmental crimes. Imposing these sanctions can be cheaper and easier than taking a company to court and can provide a way of recouping the costs of environmental crime. The first civil penalty was imposed in 2016 (England only).

The NIEA is in charge of drafting environmental legislation, carrying out compliance and enforcement work (using approximately 30 inspectors) and prosecuting environmental crime. It cooperates with the police and financial authorities based on MOUs. It also runs an assessment team and a coordination group in order to gain a strategic overview.

The NIEA does not have access to other authorities' data, but Northern Ireland's investigative authorities do share investigation results on a regular basis. The NIEA is also not permitted to investigate mobile phone data. Information is shared through authorised channels and where there is a lawful mechanism for doing so

Numbers of reported waste crimes seemed stagnant, but the NIEA representative shared their opinion that there is now a trend of more incidents being reported due to a higher level of awareness among the public and market participants.

When the NIEA deals with organised crime groups (OCGs), it usually requests an assessment of the relevant OCG by the police, as investigating and prosecuting organised waste crimes can be challenging for the agency. OCGs are also often involved in crimes other than environmental crimes, which in itself establishes police competence, but of course this is not always the case.

The NIEA's staff come from a wide variety of professional backgrounds, including engineering, chemistry, investigation and more. Analysts provide the NIEA with risk and tactical assessments.

SEPA is the environmental regulator in charge of enforcing environmental law in Scotland. It runs an inspections team.

SEPA is aware of the phenomenon of OCGs, but could not provide the evaluation team with more detailed information. OCG members are known as polycriminals; such individuals are not only active in the field of environmental crime – mainly illegal landfilling – but also in other fields of crime.

SEPA's staff include both criminal analysts (who investigate OCG structures with regard to waste crime) and environmental analysts (who deal with permits, files on undertakings and waste notifications). Thus, a range of skills is available to facilitate SEPA's work.

4.2.2. Investigative techniques/tools

Despite being the investigative authorities for waste crime, the environmental regulators do not have all the investigative powers that the police usually have.

The Regulation of Investigatory Powers Act 2000 (RIPA) defines the extent of the powers of the EA and NRW. As an example, where appropriate, NRW is permitted to carry out ‘directed’ surveillance, which is covert, targeted and likely to obtain private information, but is not permitted to access any telephone subscriber details or intercept phone calls. The use of electronic devices is difficult, as in some circumstances this can be interpreted as interference with property, which NRW cannot lawfully perform. NRW do not currently deploy electronic devices. The environmental regulators were granted the power to seize two years ago, but it has been rarely used: the EA usually orders any manipulation or transfer of waste to be avoided, and infringement of such an order is a crime.

SEPA sometimes uses covert surveillance techniques like GPS tracking.

4.2.3. Capacity of and obstacles to successful investigation of waste crime

The UK’s environmental regulators are part of the UK’s Government Agency Intelligence Network (GAIN), which facilitates intelligence-sharing between different law enforcement bodies, particularly in relation to serious and organised crime. This allows agencies to work together on some instances of waste crime, particularly when focused on organised crime groups. In combination with an upstream approach, this seems to be helpful.

Other measures Defra is working on include strengthening operator competence (in terms of site-management systems, technical competence, past performance and financial provisions) and reviewing the exemptions regime (tightening up on the use of some exemptions, ending other exemptions and requiring permits). Defra has also committed to tightening regulation of waste carriers, brokers and dealers, and duty of care, in order to strengthen powers in relation to the waste supply chain.

Another way in which the UK ensures successful investigation of waste crime is by facilitating the detection of waste crimes through electronic waste tracking. The English authorities identified the following data – detected through electronic waste tracking – as useful: waste disappearing or not reaching the next stage in its scheduled transit (illegal dumping); waste descriptions changing (hinting at landfill tax avoidance); and strange transfer patterns (fraud schemes).

NRW employs crime analysts. These analysts do not provide the agency with analytical products, but they do provide strategic assessment.

SEPA carries out a threat assessment called METRIX.

The environmental regulators also have certified laboratories, which is considered good practice. However, the inspectors and investigators usually focus their investigations on paperwork alone, and they rarely take samples of waste, except for the NIEA, which reported that it routinely collects and analyses samples. At the initial investigation stage, balance sheets and accounting data are inspected. At the next stage, an intelligence-led approach is taken in order to be able to accuse or convict individuals of e.g. fraud, failing to dispose of waste in an environmentally sound manner, etc.

Moreover, permits issued by the EA, as well as data gathered by the EA itself and from abroad, are listed in the agency's intelligence-processing system (MEMEX) and are then shared with the agency's staff and other authorities and institutions. The EA's intelligence team reported that this intelligence is provided to interested parties upon request and to support ongoing longer investigations. Usually an assessment document is drawn up when proceedings or investigations start, and after that the team's intelligence support is rather reactive, but they aim to be more proactive in future.

The evaluation team considers that an approach focusing only on paperwork, even if that approach is intelligence-led, is not the most effective way to fight waste crime, in particular if it is committed in an organised way involving the misclassification of waste, the mixing of hazardous waste with non-hazardous waste, or other attempts to erase all traces of the waste involved. Analysing waste is the only way to identify hazardous waste that has been misclassified.

The approach of concentrating on companies performing poorly in economic terms seems to be helpful, particularly in England.

An additional challenge reported by the EA relates to insufficient monitoring of market participants, as the registration requirement for carriers, dealers and brokers of waste under the European Waste Framework Directive does not require a great deal of information to be recorded. Consequently, the English authorities are considering reforming the system to introduce tougher requirements for carriers, dealers and brokers to gain the authorisations needed to operate.

A further problem for the EA is ro-ro ferries, as the companies operating these vessels provide the authorities with a loading list at very short notice – only about 40 minutes before departure. This data is not yet exchanged electronically, but the EA reported that efforts are being made to achieve this.

Other obstacles to the successful investigation of waste crime mentioned by the EA during the evaluation visit were: the definition of waste; sampling; access to private waste sites without a warrant; and gathering evidence to prove waste is hazardous.

Representatives of the EA stated that waste crime is one of the agency's top priorities. This became apparent to the evaluation team during a visit to an abandoned fly-tipping site in the vicinity of London's city centre. The EA's prosecution department reported that no aid is granted to owners of high-risk abandoned sites apart from what is necessary to remove any danger to the public. Besides that, no removal of waste is conducted by the EA.

The evaluation team considers that the fact that enforcement is led by the environmental regulators ensures that enforcers have deep expertise in the relevant sector. This is combined with an upstream approach whereby enforcers seek to start monitoring the disposal process at a very early stage and then continue to track the waste right up until its final disposal.

However, in more and more cases, waste crime is being committed by organised criminals and OCGs. The evaluation team was told that about 70 waste-related OCGs are currently mapped in the UK, most of them committing illegal dumping offences, others exporting waste illegally. The EA has estimated that waste-related OCGs in the UK earned between GBP 160 million and GBP 530 million in 2017. The agency also estimates that there are about 6 000 OCGs operating in the UK, involving about 40 000 individuals. Since 2014, the EA has been exchanging information with the UK's National Crime Agency as part of an OCG mapping project.

Due to the above, expertise in the waste crime field is not sufficient: broader investigative expertise is needed. Special investigative measures – which environmental regulators are not allowed to implement – are also necessary.

The EA is trying to acquire the required expertise by hiring staff with a background in law enforcement, such as former policemen.

In 2018, the Secretary of State for Environment, Food and Rural Affairs commissioned an independent review into serious and organised crime in the waste sector. The report, which details the extent of organised waste crime, was published in November 2018. It sets out to answer two questions. First, what is the threat and impact of serious and organised waste crime in England? Second, does the EA have the capability, resources and powers to tackle serious and organised criminality in the waste sector?

The review gave rise to the following recommendations:

- a UK-wide Joint Unit for Waste Crime (JUWC) should be established;
- strategic relationships between the EA and police and crime commissioners (PCCs) should be strengthened;
- the EA should be equipped with the necessary tools and powers to pursue and disrupt organised crime;
- waste sector legislation should be amended to allow for more effective prevention and disruption of organised crime;
- mandatory electronic tracking of waste, and a national database of registered brokers, should be introduced at the earliest opportunity;
- the EA should be granted full access to relevant police database;
- registration and duty-of-care requirements for carriers, brokers and dealers should be reformed (including in relation to hazardous waste);
- waste producers should be held accountable for the end destination of their waste products;
- plans for additional 2018-22 EA funding should be reviewed to ensure consistency with plans for a Joint Unit for Waste Crime;
- government should reform funding for the regulation and policing of the waste sector at the earliest opportunity.

4.3. Other authorities/institutions

No other authority is specifically tasked with investigating waste crimes. However, the police occasionally offer their more extensive investigative powers to support the environmental regulators. For example, only the police are entitled to stop vehicles, meaning that cooperation is needed between the environment regulators and the police in order to carry out road inspections.

HMRC can also play an important role, since the environmental regulators are not responsible for inspecting ports. However, as HMRC's main task is collecting taxes, their main concern is landfill tax fraud. HMRC are also a member of GAIN.

4.4. Cooperation and exchange of information among national authorities

4.4.1. Cooperation and coordination

The United Kingdom faces the challenge of ensuring cooperation between several regulators, each representing one of the four nations of the UK. In this context, a multi-agency group has been set up, based on a multilateral MOU, to facilitate the sharing of intelligence in cases that span UK internal borders. So far, this group has not had to handle any such cases.

A Joint Unit for Waste Crime (JUWC) is being established in England. Participants comprise representatives of the EA, the police and border forces. Moreover, the National Crime Agency (NCA) also cooperates with the EA, in particular with regard to OCGs and the National Fly-Tipping Prevention Group.

With regards to information exchange with other law enforcement authorities, the EA reported that it has access to police computer systems, and that while it does not have the ability to manage covert sources of information itself, it does use covert intelligence from partner organisations. Information provided by informants on a voluntary basis without any form of payment in return is also considered useful. This kind of information helps ongoing investigations and can prompt new investigations to be opened. The EA's enforcement team is provided with training on leading informants and acquiring intelligence. The EA's intelligence team reported that it is usually involved in ongoing investigations, but the aim for the future is for the team to initiate more investigations and open proceedings on the basis of intelligence data.

There may be cooperation with other authorities too, including local authorities. In the Greenwich case study presented to the evaluation team, for example, there was cooperation with the London Fire and Emergency Planning Authority (local), the Health and Safety Executive (national) and the Royal Borough of Greenwich (local).

The EA's key partners include those listed below.

- National Crime Agency (NCA).
- Government Agency Intelligence Network (GAIN) – GAIN becomes involved once an enforcement decision has been made, in order to provide support and enable the best possible response. GAIN offers disruption and intelligence possibilities and is also the EA's link to the NCA's national tasking.
- HMRC – this body is one of the main 'victims' of waste crime, losing at least GBP 100 million per year of tax revenue due to waste operators deliberately misclassifying their waste in order to pay a lower rate of landfill tax. HMRC therefore helps the EA to take the money out of waste crime. The two bodies have also joined forces to tackle organised crime, whether it be waste crime or tax evasion, including by bringing illegal waste sites within the scope of landfill tax as of 1 April 2018.
- Police – engagement with the police occurs mainly at local level between the EA's 14 Area Enforcement Teams and the UK's 43 local police constabularies.

- Driver and Vehicle Standard Agency (DVSA) – the DVSA ensures drivers and vehicle operators follow road-worthiness standards. The DVSA is the enforcement agency that supports traffic commissioners, who are responsible for the licensing and regulation of vehicle operators. This includes operators of heavy goods vehicles (HGVs), which are routinely used to transport waste. Those who commit waste crime are dependent on vehicles to transport waste from the point of production to final disposal. Partnership work with the DVSA enables the EA to use the two agencies' combined enforcement powers to disrupt the transport of waste to illegal or poorly performing permitted sites. The two agencies also have an MOU on cooperation on information gathering and enforcement in relation to waste shipments.

The NIEA has cooperated on cases concerning illegal cross-border shipments of waste with other nations of the UK as well as with other countries.

SEPA reported that its information exchange with partners worked smoothly.

NRW meets with the EA once a fortnight. Meetings with the other nations' authorities are held on a case-by-case basis. NRW has established a protocol of investigation responsibility with local authorities, of which details were not provided. In addition, the Welsh tax authorities have delegated the duty to investigate cases of landfill tax evasion to NRW. It is a member of GAIN and cooperates closely with the Welsh police. It is also a member of the interagency working group for waste crime and a UK regulators' analyst group.

4.4.2. Access to information and focal points on intelligence

The UK's environmental regulators do not have access to the Police National Database (PND). However, through interagency liaison and information-sharing protocols, this deficiency is being managed, though it can be a slow process.

In England, a number of systems and databases have been identified that the EA needs to gain access to (PND), introduce (automatic number-plate recognition – ANPR) or enhance (Police National Computer (PNC), Powercase (similar to HOLMES)).

A single intelligence team is the EA's sole point of contact for waste crime.

Life+ SMART Waste is developing a pilot to test a flagging system that would allow intelligence on individuals/companies held in the intelligence database of one of the UK's environmental regulators to be accessed by another.

4.5. Training

No single body is responsible for waste-crime-related training. Each regulator trains its own staff. The industry in general also offers many waste management compliance courses, and some investigative training is provided by the police

The EA runs several training courses for NRW staff, including an essential enforcement course and a regulatory course. All officers attend the same training lectures, regardless of whether they are working in the enforcement team or the regulatory team.

According to Defra, the environmental regulators' prosecutors are trained in legal and environmental matters. However, the evaluation team was shown no overarching training scheme and could not ascertain if they are only trained in legal matters or also in matters relating to the environment and inspections.

The quality of training and education within the environmental regulators seems to be very high.

In some cases, a regulator's basic level of expertise is improved by recruiting personnel who already specialise in a related field, e.g. financial crime. However, when it comes to investigating and prosecuting serious and/or organised crimes, specific capacities in the field are needed.

NIEA staff are trained through a combination of in-house training and training provided by the Police Service of Northern Ireland and external training providers.

These training courses have facilitated expert knowledge-sharing with NIEA staff, but no joint training courses have been conducted yet.

SEPA reported that it was ‘repackaging’ its training concept and making certain additions – such as basic investigation skills, knowledge about evidence standards, spot inspections and enforcement skills – to the training schedule. Inspectors are offered a special training course on investigation strategies. Police and SEPA staff have joint training courses with prosecutors, but Police Scotland has also provided training courses for SEPA alone.

4.6. Conclusions

- The UK has five courts: the magistrates’ court; the Crown Court; the High Court; the Court of Appeal; and the Supreme Court. None of these courts has specialised units or judges for dealing with environmental crimes.
- To provide judges with some instructions, the UK Sentencing Council established definitive sentencing guidelines for environmental offences, which have been in effect since 1 July 2014 and which every court in the UK has to follow.
- Sentencing guidelines seem to be helpful for the UK courts, as a large number of cases are handled by magistrates’ courts and sentencing would – without the guidelines – therefore be very free (within the range of sentences stipulated by criminal law). On the other hand, it is unlikely that the guidelines address all possible sentencing scenarios, and they are not, in any case, sufficient to remedy judges’ lack of relevant expertise.
- Decisions of administrative authorities, such as those relating to permits, are not binding for the criminal courts, whose decisions can therefore deviate from those made by administrative authorities or courts.

- The environmental regulators in England, Northern Ireland and Wales have their own prosecutors who deal with waste crimes.
- The system of making the environmental regulators of England, Wales, Scotland and Northern Ireland responsible for the investigation and prosecution of waste crime can be considered best practice, as in principle it should avoid possible gaps and facilitate the full control of each case. However, problems can arise when a waste crime case is linked to another serious crime, as these crimes are not within the remit of the regulators (nor even of experts in the field) and there is a risk of double jeopardy.
- In Scotland, SEPA only investigates waste crimes, while the Crown Office and Procurator Fiscal Service (COPFS) brings the cases to court. However, COPFS does not have any specialised prosecutors in the environmental field. Specialisation and advanced training should be promoted.
- Responsibility for tackling waste crime lies with a number of authorities: the Environment Agency (EA – England), SEPA (Scotland), Natural Resources Wales (NRW – Wales), the Northern Ireland Environment Agency (NIEA – Northern Ireland), local authorities, the police, and HMRC. However, only the environmental regulators deal specifically with waste crime, while the others deal with crimes that can be linked to waste crime.
- Investigations carried out by the environmental regulators are conducted by real experts in the field, so this can be considered best practice.
- On the other hand, the environmental regulators do not have the typical investigative powers that the police have, including special means of investigation and road inspection. This means that they cannot conduct proper investigations, particularly when the waste crimes under investigation are linked to more serious crimes. This system also runs the risk of resulting in double jeopardy when environmental regulators investigate a crime linked to waste crimes (such as fraud or tax evasion) and the police investigate the same crime.

- The high quality of the EA's expertise in the fields of enforcement, investigation and prosecution is impressive. However, when it comes to investigating and prosecuting serious and/or organised crimes, specific capacities in the field are needed. Investigations into OCGs require expert knowledge on organised crime, investigation strategies and intrusive measures, and a lot of experience as well, and the EA is not properly empowered to lead such investigations itself. Police and other law enforcement authorities may support the EA, but only by providing information obtained within their remit, as they are not allowed to act on behalf of the EA. Generally, the EA's original focus was not on organised crimes, but on environmental matters.
- Moreover, support from the police for investigations into OCGs is only granted if the offences in question fall within the police's remit. This may occur when OCGs commit not only environmental but also other offences, but this is not necessarily the case.
- The four environment regulators are part of a national intelligence-sharing network called GAIN. Through this network, they are able to, for example, focus on sites that are performing poorly in economic terms. Involving intelligence units in waste crime investigations is considered best practice. The evaluation team wishes to encourage the UK's regulators to not only involve intelligence units in ongoing investigations, but also to use intelligence data to open new proceedings.
- The environmental regulators also have certified laboratories, which is considered good practice; however, the inspectors and investigators usually focus their investigations on paperwork alone, rarely taking samples of waste, except for the NIEA, which reported that it routinely collects and analyses samples.

- The evaluation team considers this approach to be insufficient. Only an organoleptic approach is suitable for identifying hazardous waste which has been misclassified. It is recommended that the competent authorities collect more samples when investigating and attempting to detect waste crimes, as the only way to classify waste properly is through close contact with the material.
- It is not helpful that the environment regulators are not granted access to the police database.
- Though road inspections related to waste crime require cooperation between the environmental authorities and police, it is nevertheless recommended that the number of such inspections be increased.

5. LEGAL ASPECTS

5.1. Substantive criminal law

5.1.1. *Description of national legislation pertaining to waste crime*

Offences are divided into three categories: offences that have to be taken to court within a maximum of six months; offences which can be heard in either the magistrates' court or the Crown Court; and indictable-only offences which are only triable in the Crown Court.

Various pieces of legislation across the nations of the United Kingdom deal with the prevention of waste crime. The key legislation is as follows:

England:

- Control of Pollution (Amendment) Act 1989 (as amended)
- Part 2 of the Environment Protection Act 1990 (as amended)
- Hazardous Waste (England and Wales) Regulations 2005 (as amended)
- Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 (as amended)
- Waste (England and Wales) Regulations 2011 (as amended)
- Controlled Waste (England and Wales) Regulations 2012 (as amended)
- Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015
- Household Waste (Fixed Penalty and Penalty Charge) Regulations 2015
- Unauthorised Deposit of Waste (fixed penalties) Regulations 2016
- Environmental Permitting (England and Wales) Regulations 2016 (as amended)
- Waste Enforcement (England and Wales) Regulations 2018
- Environmental Protection (Miscellaneous Amendments) (England and Wales) Regulations 2018
- Environment Act 1995

Wales – same as England, plus:

- Hazardous Waste (Wales) Regulations 2005 (as amended by the Waste (England and Wales) Regulations 2011)
- Waste (Wales) Measure 2010
- Environment (Wales) Act 2016 – Part 4 Collection and Disposal of Waste

Northern Ireland:

- Waste and Contaminated Land Order 1997 (as amended)
- Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999
- Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 (revoked see SR 2013 No. 255)
- Waste Management Licensing Regulations (Northern Ireland) 2003 (as amended)
- Hazardous Waste Regulations (Northern Ireland) 2005 (as amended)
- Waste Regulations (Northern Ireland) 2011 (SR 2011 No. 127)
- Controlled Waste and Duty of Care Regulations (Northern Ireland) 2013 (as amended) (SR 2013 No. 255)
- Food Waste Regulations (Northern Ireland) 2015 (SR 2015 No.14)

Scotland:

- Waste Management Licensing (Scotland) Regulations 2011
- Waste (Scotland) Regulations 2011
- Waste (Scotland) Regulations 2012
- Special Waste Regulations 1996 (as amended)

Furthermore, in the UK there is a duty of care as regards waste. The waste duty of care code of practice sets out practical guidance on how to meet waste duty of care requirements. This code applies to anyone who imports, produces, carries, keeps, treats, disposes of or, as a dealer or broker, has control of controlled waste in England or Wales.

A separate duty of care applies to householders (occupiers of a domestic property), limited to taking all reasonable measures available to them to ensure their waste is only transferred to an authorised person.

Some examples of the system of offences and penalties for infringements which would constitute waste crime in legislation are detailed below.

The Waste (England and Wales) Regulations 2011 state that no person may act as a broker or dealer in controlled waste unless registered with the EA or NRW. The Regulations also state that a person is guilty of an offence if they fail to comply with the requirement to register, or if they fail to comply with a compliance notice, stop notice or restoration notice. Such an offender is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale. The Regulations also make it an offence not to take all reasonable measures to apply the waste hierarchy, to ensure separate collection of the stipulated waste streams, or to prevent the mixing of separately collected waste. Persons breaching these regulations are similarly liable –

(a) on summary conviction, to a fine not exceeding the statutory maximum (GBP 5 000);
and

(b) on conviction on indictment, to an (unlimited) fine.

To ensure that Article 36(2) of the Waste Framework Directive is transposed into UK law, section 34 of the Environmental Protection Act states that it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a dealer or broker, has control of such waste, to take all such measures applicable to them in that capacity as are reasonable in the circumstances to prevent the escape of the waste from their control or that of any other person; and on the transfer of the waste, to secure that the transfer is only to an authorised person or to a person for authorised transport purposes.

Any person who fails to comply with this duty of care will be liable –

(a) on summary conviction, to a fine not exceeding the statutory maximum (GBP 5 000);
and

(b) on conviction on indictment, to an (unlimited) fine.

Section 41 of the Clean Neighbourhoods and Environment Act 2005 states that a person who commits an offence under Section 33 of the Environmental Protection Act is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding GBP 50 000 or both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

The Act also introduced provisions for courts to order a person convicted of a section 33 offence to pay costs relating to investigation and enforcement (section 42) and clean-up costs (section 43).

Penalties for offences under section 34 of the Environment Protection Act 1990 (breach of the waste duty of care) are listed under paragraph (6) of the same section. Anyone who commits such an offence shall be liable:

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

Regulation 69 of the Hazardous Waste (England and Wales) Regulations 2005 and the Hazardous Waste (Wales) Regulations 2005 states that a person who commits an offence under regulation 65 shall be liable, on summary conviction, to a fine not exceeding level 5 (GBP 5 000) on the standard scale. A person who commits an offence under regulation 65 or 68 in connection with any other requirement under these Regulations shall be liable to

- (a) on summary conviction, to a fine not exceeding the statutory maximum (GBP 5 000); or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

Under the Environmental Permitting (England and Wales) Regulations 2016, a person must not, except under and to the extent authorised by an environmental permit –

- (a) operate a regulated facility; or
- (b) cause or knowingly permit a water discharge activity or groundwater activity.

Secondly, it is an offence for a person to fail to comply with or to contravene an environmental permit condition. Offenders are liable, on summary conviction, to a fine not exceeding GBP 50 000 or imprisonment for a term not exceeding 12 months, or to both; or, on conviction of indictment, to a fine or imprisonment for a term not exceeding 5 years or to both.

It is an offence to make a statement which the person knows to be false or misleading in a material particular, or to make a statement which is false or misleading in a material particular, being reckless as to whether it is, where the statement is made for the purpose of obtaining an environmental permit. A person guilty of this offence is liable, on summary conviction, to a fine not exceeding the statutory maximum; or to a fine or imprisonment for a term not exceeding 2 years, or to both.

Regulation 40 of the Producer Responsibility Obligations (Packaging Waste) Regulations 2007 states that:

(3) An operator of a scheme who fails to comply with his recovery and recycling obligations in contravention of regulation 12(1) is guilty of an offence.

(4) A person who contravenes a requirement of regulation 23 or who is in breach of either of the conditions specified in paragraph 1(a) or 1(d) of Schedule 5 is guilty of an offence.

(5) A person who furnishes any information to the appropriate Agency in connection with its functions under these Regulations or furnishes information to which regulation 19 applies to an operator of a scheme shall be guilty of an offence if, in furnishing the information, he –

(a) knows the information to be false or misleading in a material particular; or

(b) furnishes such information recklessly and it is false or misleading in a material particular.

(6) A person who fails without reasonable excuse to comply with any requirement imposed in a notice under regulation 31(3) shall be guilty of an offence.

(7) A person who intentionally delays or obstructs a person authorised by the appropriate Agency in the exercise of powers referred to in regulation 35 is guilty of an offence.

(8) Where in accordance with Schedule 8 there is a group registration the holding company is guilty of an offence if –

(a) it does not comply with its recovery and recycling obligations referred to in paragraph 5(c) of Schedule 8; or

(b) it does not furnish a certificate of compliance in accordance with paragraph 5(d) of Schedule 8.

(9) A person guilty of an offence shall be liable to –

- (a) on summary conviction to a fine not exceeding the statutory maximum (£5,000); or
- (b) on conviction on indictment, to a fine.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced powers to remove the cap of GBP 5 000 on the statutory maximum to make it an unlimited fine.

Section 33 of the Environmental Protection Act 1990 states that a person who commits an offence under this section (Prohibition on unauthorised or harmful deposit, treatment or disposal etc. of waste) is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding GBP 50 000 or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

Scotland's enforcement and penalty system is similarly based on the Environmental Protection Act 1990 as described above. The Regulatory Reform (Scotland) Bill provides SEPA with a more strategic range of enforcement tools, including direct measures such as fixed and variable monetary penalties and enforcement measures. This ensures that SEPA has access to the right range of interventions to tackle poor performance in a proportionate manner and better protect the environment for the benefit of everyone.

In Northern Ireland, the penalties in place are broadly similar to those set out above for England. In some instances, Northern Ireland's requirements are more stringent than those in the rest of the UK. For example, waste transfer notes must be carried along with the waste they refer to; failure to do this or to produce a waste transfer note on request if stopped by an authorised officer is an offence. This is because some of the most serious environmental crime in Northern Ireland has been waste-related.

5.1.2. Other rules or judiciary instructions

The UK's Sentencing Council has released sentencing guidelines¹⁰ that the courts are legally obliged to follow.

These sentencing guidelines also influence investigation procedure, since if the court is to determine the correct sentence, any evidence being investigated must meet not only all the criteria stipulated in the relevant criminal law itself, but also the criteria laid down in the sentencing guidelines.

Other examples of judiciary instructions include the Hampton Review¹¹ and the Regulators Code¹² (both Wales).

The EA has established internal guidelines to facilitate making the distinction between administrative offences (for which the enforcement unit is responsible) and waste crime offences (for which the prosecution unit is responsible). Beyond this, the Crown Prosecution Service is responsible if the case is brought before the High Court and not before the magistrates' court. These rules are laid down in the Environment Protection Act, sections 33 ff.

Special regulations on confiscation are applicable in cases in which the offender leads a criminal lifestyle, indicated by more than four convictions of more than six months imprisonment. In these cases, any of the offender's assets may be confiscated.

5.1.3. Determination of the seriousness of waste crime

The seriousness of waste crime is not a separate element of UK waste crime legislation. However, the penalties for different offences indicate the perceived seriousness of the offences.

¹⁰ https://www.sentencingcouncil.org.uk/wpcontent/uploads/Final_Environmental_Offences_Definitive_Guideline_web1.pdf

¹¹ <http://www.assembly.wales/laid%20documents/gen-ld10285/gen-ld10285-e.pdf>

¹² <https://naturalresources.wales/about-us/what-we-do/how-we-regulate-you/regulatory-principles/?lang=en>

5.1.4. Links with other serious criminal offences

Waste crime in the United Kingdom is reported to be closely linked to the following crimes: illicit evasion of landfill tax; money laundering; criminal conspiracy; and running a criminal organisation.

5.1.5. The role of the NGOs

NGOs don't play a particular role within the waste crime framework according to the law. For example, they cannot act join legal proceedings as a *parte civile* because the public interest is considered to be already represented by the EA. The only significant action that NGOs can take (in addition to raising awareness through e.g. information campaigns) is to report specific crimes to the EA.

There is an NGO called Crime Stoppers that runs an anonymous telephone line in order to obtain information that can then be passed on to the UK law enforcement agencies. However, it is not specifically dedicated to waste crimes.

5.2. Procedural, jurisdictional and administrative issues

5.2.1. Difficulties encountered with regard to the admissibility of evidence

The EA mentioned that gathering evidence to prove that waste is hazardous is difficult, even if specialised laboratories are available. Furthermore, it is sometimes difficult to ascertain whether material is waste or not. The prosecution unit must present evidence to prove the waste's impact on the environment; a visible impact may be sufficient. The sentencing guidelines can play an important role.

The principle of strict liability, which is applicable to environmental crime, relieves the prosecution service of having to prove that the perpetrator acted intentionally. Some elements of the burden of proof have been removed by strict liability but the onus remains on the prosecution to prove all the essential elements of an offence. However, some evidence-related problems still remain, e.g. when the samples used as evidence have been taken in an inadmissible way.

Problems can also arise with regard to the distinction between a product and a by-product. If a material is identified as waste, there may be doubt as to whether it is hazardous. In this respect, issues concerning the taking and analysis of samples can arise. As an example, the EA reported a case of illicit exports of WEEE, in particular X-ray tubes from used TV screens. If needed, evidence can be sent to an accredited laboratory.

5.2.2. Measures other than criminal or administrative sanctions

The UK can seize items used in illegal activity, impose compensation orders, confiscate proceeds of crime, disqualify an individual from being a company director, disqualify a person from driving and order the restoration of a polluted site.

5.2.3. Treatment of seized objects

The UK authorities seize and store items during an investigation at their own cost, but they can seek the recovery of these costs from the offender by application to the court.

The Control of Waste Dealing with Seized Property Regulations 2015 (England) sets out how seized property must be dealt with in England and Wales, where property is seized under section 5 of the Control of Pollution (Amendment) Act 1989 (chapter 14) (power to require production of authority, stop and search etc.) or section 34B of the Environmental Protection Act 1990 (chapter 43) (power to search and seize vehicles etc.). The EA, NRW, a waste collection authority or a local authority in Wales ('a seizure authority') can seize property under these powers¹³.

¹³ <http://www.legislation.gov.uk/ukxi/2015/426/contents/made>.

5.3. Environmental restoration

Responsibility for restoring the environment and repairing damages caused by the offender lies primarily with the offender. However, in principle, the environmental regulators can undertake some remediation work and seek to recover the costs from the offender if successful in court. Costs can be recovered from successful prosecutions of the offender under the Proceeds of Crime Act (POCA) by obtaining a confiscation order.

Nevertheless, large-scale illegal fly-tipping presents challenges for the UK. The evaluation team was shown an illegal dumping site in the vicinity of London's city centre where waste had accumulated within a short period of time, allegedly dumped by members of an itinerant ethnic minority. It was reported to the team that the state will not clean up or restore illegal dumping sites or other premises where environmental crime has occurred, but will instead hold the owner of the property liable. Only if there is an immediate danger to the public and the landowner is not able to remove the waste causing it will the English authorities support the landowner or even remove the hazardous waste themselves at their own expense (with the opportunity to seek recovery of the costs from the landowner).

5.4. Jurisdiction

5.4.1. Principles applicable to the investigation of waste crimes

The UK can prosecute crimes committed partially/entirely outside UK territory but no explanation was given regarding legal provisions.

5.4.2. Rules in case of conflicts of jurisdiction

Apart from Council Framework Decision 2009/948/JHA of 30 November 2009, no other mechanisms to resolve conflicts of jurisdiction with other Member States that specifically address cross-border waste crime cases exist in the UK.

5.5. Conclusions

- Offences are divided into three categories: offences that have to be taken to court within a maximum of six months; offences which can be heard in either the magistrates' court or the Crown Court ('either-way offences'); and offences which are only triable in the Crown Court.
- Various pieces of legislation across the nations of the United Kingdom deal with the prevention of waste crime.
- In addition, the Sentencing Council has released sentencing guidelines that the courts are legally obliged to follow. They regulate both criminal sanctions and civil sanctions.
- The EA has established internal guidelines to facilitate making the distinction between administrative offences (for which the enforcement unit is responsible) and waste crime offences (for which the prosecution unit is responsible).
- Waste crime in the UK is reported to be closely linked to the following crimes: illicit evasion of landfill tax; money laundering; criminal conspiracy; and running a criminal organisation.
- Difficulties relating to evidence in court and administrative proceedings arise when the samples used as evidence have been taken in an inadmissible way. Difficulties with regard to the distinction between a product or a by-product can also arise.
- Responsibility for restoring the environment and repairing damages caused by the offender lies primarily with the offender.
- Large-scale illegal fly-tipping presents challenges for the UK. The environmental regulators generally do not intervene in cases involved illegal waste sites, e.g. fly-tipping sites, except in the event of immediate danger to the public. This can lead to years of pollution of the surrounding land and water.
- Seizure and confiscation of equipment and of proceeds of crime are considered best practice, as these measures effectively deter criminals from committing waste crime.

6. COOPERATION

6.1. International cooperation

6.1.1. Forms of cooperation in cross-border cases

In compliance with Article 50(5) of the EU Waste Shipment Regulation, which obliges EU Member States to cooperate with each other, the UK competent authorities have agreed formalised working arrangements with the Dutch, Belgian and Irish competent authorities. These arrangements set out areas for cooperation, including exchanges of best practice, enforcement information and intelligence, and the conducting of joint inspections and other enforcement activities against suspected illegal shipments.

As regards instruments of cooperation, the EA and NRW reported that they often make use of the European Investigation Order and of rogatory letters.

In some cases cross-border cooperation is achieved by joining international associations. For example, the EA, NRW, the NIEA and SEPA are members of IMPEL.

Joining the Interpol Pollution Crime Working Group helped SEPA to enhance its ability to deal with cross-border cases.

6.1.2. Channels for the exchange of information and the use of EU databases

Specific channels are provided for information sharing, either directly or through liaison with IMPEL and Interpol via the UK national central bureaus.

UK environmental regulators do not have direct access to EU databases, although they do occasionally ask IMPEL to check their databases.

6.1.3. Difficulties faced in judicial cooperation relating to waste crime

The EA mentioned the difficulty of establishing contact points in non-EU countries, e.g. China. An example of a positive exception is the strong cooperation with Nigeria concerning trafficking of end-of-life vehicles.

SEPA, too, finds it difficult to establish suitable points of contact with these countries, particularly in Southeast Asian countries that accept significant quantities of waste from the UK. This makes it very difficult to fully establish the suitability of recovery sites in these countries beyond basic checks such as whether they have a permit. SEPA recently succeeded in making contact with the authorities in Hong Kong.

6.1.4. Operational performance of JITs in waste crime

The EA reported only one case in which JITs were established: the National Investigations Team in the Environment Agency has worked with Dutch and Belgian authorities over some 18 months in the form of a JIT, on the cross-border investigation ‘Op Mordent’. The EA consider the case as a significant example of the considerable benefits of working as a JIT rather than sending enquiries to and fro via International Letters of Request or EIOs.

6.2. Cooperation with EU Agencies and networks

6.2.1. Cooperation with Europol and Eurojust

As a requesting country, the United Kingdom opened two operational environmental crime cases at Eurojust in the period from 1 January 2004 until now. Both cases are already closed. One of the cases was bilateral and the other one was multilateral. Both cases dealt with facilitation of execution of MLA requests in investigations concerning illicit trafficking in endangered animal species.

As a requested country, the United Kingdom was involved in 22 operational environmental crime cases in total in the same period. Nine cases are currently ongoing and the other 13 cases are already closed. Most of the cases (18 cases from the total of 22) are multilateral, i.e. the United Kingdom is one of multiple requested parties; the remaining four cases are bilateral.

The cases deal with various types of environmental crime:

6 cases – air pollution,

3 cases – illegal trading/processing of fuel oils/chemicals,

2 cases – illegal waste trafficking,

2 cases – sea pollution,

6 cases – illicit trafficking in endangered animal or plant species,

1 case – violations in fisheries,

2 cases – no details on the involved environmental crime are available in the Eurojust Case Management System.

The cases were referred to Eurojust for facilitation of cooperation, coordination and exchange of information between the involved Member States, third states and, in one case, with OLAF, in relation to ongoing investigations and prosecutions. Three cases (one case on illicit trafficking in endangered animal species, one case on air pollution (CO₂ emissions rights fraud) and one case on illegal processing of fuel oils) concerned setting up JITs.

6.2.2. Experience resulting from the use of various environmental networks

Experience resulting from the use of various environmental networks is reported as positive. The networks can bring together professional and competent individuals to share best practices, experiences, data, information and knowledge and thus provide tangible support in tackling waste crime. A joint conference between ENPE and Eurojust is to be held in October 2019. ENPE is funded by a LIFE project managed by the Environment Agency.

EUROPOL's EMPACT Programme is ongoing, with a focus on organised crime within the waste industry. SEPA participates in working groups in this area and coordinates participation in the various work files that the EMPACT programme is developing.

The EA intelligence department contributed (albeit minimally) to the production of the Environmental Crime Threat Assessment (2013) and take advantage of such publications where applicable.

SEPA is represented within the EnviCrimeNet Forum.

6.3. Cooperation between the United Kingdom and Interpol

SEPA has participated closely within the Interpol Pollution Crime Working Group (PCWG) since 2015 and currently holds the vice chair position within the PCWG Board. The Interpol PCWG is actively involved in tackling waste crime and was responsible in 2017 for the '30 Days of Action' tackling waste crime, involving 38 countries from every region of the world. It resulted in more than 1.5 million tonnes of illicit waste being detected, among 664 cases, of which 238 were cases of illicit waste sites and 423 were cases of illicit waste trade (3 cases were unspecified); 483 individuals and 264 companies were reported for waste crimes and violations by national authorities. This initiative saw the formation of regional hubs worldwide, which led to enhanced cooperation and joint working between participating states.

The UK also participated in the European regional hub for '30 Days at Sea', which was facilitated jointly by Europol and Interpol. This model of cooperation and regional focus will be expanded further in 2019.

Work is ongoing within Interpol Global Pollution Team/PCWG and the EU LIFE SMART Project to explore joint threat assessment work on the criminal impact of the China Waste Restriction globally and it is hoped that this will form the basis of future intervention initiatives in 2019/20. SEPA is the project lead for this work.

6.4. Cooperation with the private sector

6.4.1. *The involvement of the private sector/Public Private Partnership (PPP)*

The UK has established a WEEE producer responsibility system to reduce the amount of WEEE going to landfill and to encourage separate collection and subsequent treatment, re-use, recovery, recycling and environmentally sound disposal. Responsibility for compliance is shared by the producer, manufacturer or importer placing EEE on the UK market, and the UK distributor, extending to any means of distance selling (e.g. internet). WEEE is processed at Authorised Approved Treatment Facilities (AATFs) operating under permits/licences from the environment regulators.

The producer must

- register with one of the UK Environment Regulators;
- join an approved producer compliance scheme (PCS) if placing more than five tonnes of EEE on the market;
- make information about the amounts of EEE placed on the market available to the PCS;
- mark all EEE placed on the market with the ‘crossed-out wheeled bin’ symbol;
- make information available to treatment facilities;
- appoint an authorised representative in any other Member States in which the producer places products on the market to fulfil the obligations of that producer.

A distributor must

- provide information to consumers about the environmental impact of EEE and WEEE and about the separate collection of EEE;
- facilitate the taking back of WEEE from consumers free of charge either by joining the UK Distributor Take-back Scheme or by taking back WEEE in-store on a ‘like-for-like’ basis;
- for retail outlets with an EEE sales area over 400m², take back any small item of WEEE without an obligation for the customer to buy anything.

6.4.2. Liability in case of non-compliance with an obligation to pass on information to competent authorities

The private sector is not subject to any specific responsibility/liability under national law in case of not having met an obligation to pass on information to LEAs or other competent authorities.

6.4.3. Experience of cooperation with the private sector

In England the waste industry, the EA and Defra meet regularly to discuss steps to fight waste crime. For example the Environmental Services Association Educational Trust (ESAET) and the Environmental Services Association have commissioned the report ‘Rethinking Waste Crime’ and supported the Right Waste, Right Place campaign. The report highlights that illegal waste operators blight local communities, damage the environment, harm legitimate businesses and deprive the government of tax revenue. The authors stress that weak regulation is a major cause of waste crime. Suggesting there is no simple fix, Rethinking Waste Crime recommends a package of changes that will modernise England’s out of date waste management system. They are grouped into four areas:

- modernising the regulatory regime;
- improving enforcement efforts;
- developing secure sources of enforcement funding;
- improving cross-regulatory cooperation and raising awareness.

The EA has a close working relationship with shipping lines to gather intelligence and block illegal export: this has been done not because of legal standards but because of mutual conviction. The EA trust in the data that are provided by the shipping companies. This is a good practice.

The EA and NRW sponsored the ‘Right Waste, Right Place’ information campaign to help small businesses and establishments meet their duty-of-care obligations as practically as possible.

6.5. Conclusions

- Experience resulting from the use of various international environmental networks is reported as positive.
- The instruments of cooperation frequently used are the European Investigation Order and rogatory letters. The National Investigations Team in the EA has worked with Dutch and Belgian authorities over some 18 months in the form of a JIT, on a cross-border investigation, Op Mordent.
- The NIEA has an MOU with authorities from Wales, England, Scotland, Northern Ireland, the Netherlands and Belgium.
- All of the UK competent authorities are members of IMPEL and participate in a working group on waste crime.
- SEPA is a member of PCWG, in the position of vice chair.
- English authorities reported that the waste industry, the EA, and Defra meet regularly to discuss steps to fight waste crime.
- Within England and Wales there is close cooperation with the private sector on preventing and investigating waste crimes. Some initiatives have been funded and undertaken collectively to cooperate with the private sector.

7. ILLEGAL TRAFFICKING OF WASTE

7.1. National structure

7.1.1. Authorities involved in preventing and fighting against illegal shipment of waste

The Transfrontier Shipment of Waste Regulations 2007 designate EA, SEPA, NRW and NIEA as the competent authorities for England, Scotland, Wales and Northern Ireland respectively to enforce the regulations, and provide them with powers to do so. These powers comprise serving information notices or enforcement and prohibition notices and powers to seize waste.

The UK has in place a waste shipment Compliance and Enforcement Group (CEG), which is convened and chaired by Defra.

The objective of the CEG is to provide strategic direction, oversight and challenge to the waste shipment compliance and enforcement activities of the UK competent authorities in relation to waste exports, with particular emphasis on non-notified exports of waste, and provide a forum for discussion on issues relating to exports of waste.

The CEG is comprised of representatives from a core group of organisations that have either a direct role or direct interest in the effective enforcement of waste shipment regulations. The core group, which meets biannually, consists of:

- Defra;
- the four UK competent environmental regulators;
- the Department for Business, Energy and Industrial Strategy;
- HMRC;
- UK Border Force.

Other organisations are invited to participate on an ad hoc basis depending on the subjects to be discussed. The CEG's activity may be considered good practice.

In order to face the challenge of cooperation a multi-agency group has been set up to share intelligence in cross-internal-border cases. So far, the cooperation group has not had to handle any joint cases. This cooperation is established on the basis of a multilateral MOU.

As there is a limited amount of waste treatment facilities in England, the amount of waste imported for treatment in England is low. Lower waste treatment costs elsewhere in Europe also encourage the export of waste from the UK to elsewhere in the EU.

Additionally, the EA reported that there is good communication between the EA and shipping lines on waste exports. As the UK imports more goods than it exports, vessels departing from the UK are usually not fully loaded.

7.1.2. Detection of illegal shipments of waste

To detect illegal shipments of waste the EA follows an intelligence-led and risk-based approach, in particular involving shipping lines. Inspections of ports are carried out, based on the loading lists of the ships, with suitable measures to succeed in the fight against illegal shipments of waste.

In 2017, 1 000 inspections were carried out, as a result of which 7 000 tonnes of hazardous waste to be illegally shipped were found and 367 tonnes were taken back from other countries abroad. Overall, 19 million tonnes of hazardous waste are shipped from the UK each year, mostly to Asia and the Far East.

The EA and the DVSA have established a Memorandum of Understanding regarding the cooperation, enforcement and sharing of information in relation to waste-industry-related vehicles.

Obstacles include:

- limited available resources;
- data gaps;
- difficulty of working in partnership with non-EU countries to prevent illegal shipments;
- operators trying to disguise the nature of the waste they export;
- difficulty tackling organised crime because of the lack of skills in this particular area and the unavailability of the relevant police databases.

SEPA undertakes its regulatory work using an intelligence-led approach, particularly when carrying out inspections of waste destined for export. This can be intelligence provided by third parties to SEPA, which SEPA officers act upon, or it can be intelligence collected by SEPA in the course of its regulatory work.

SEPA's approach is not limited to carrying out simple 'end of pipe' inspections of waste at ports. In adopting a 'supply chain' approach, which involves carrying out inspections during the earlier stages of the supply chain, for example at waste treatment/collection sites, SEPA gains a better understanding of the risks surrounding waste from different supply chains and also the likelihood that any issues which may arise from the waste may be present from an export perspective. Inspections at port can thus be more targeted based on what SEPA believes to be higher-risk waste streams from particular supply chains, leading to increased success in intervening and disrupting illegal exports.

Obstacles include:

- operators trying to disguise the nature of the waste they export (e.g. dressing of bales);
- failure to submit Annex VII forms in advance of shipment to SEPA as required by the Regulations (this means SEPA can be blind to certain exports at the point where intervention would be possible);

- Scottish operators can move the point of export from Scotland to England to try to evade detection by SEPA;
- limited intelligence on illegal operators/activity is submitted to SEPA from the waste export sector;
- UK markets for many waste streams are limited and reliance on exports for UK to deal with waste and meet recycling targets drives exports (including illegal exports) to continue;
- repeat offences by the same companies;
- difficult to work in partnership with non-EU countries to prevent illegal shipments – this is particularly an issue with respect to green-list exports of paper and plastic to countries such as China, Malaysia, Vietnam etc., where better sharing of info/intelligence would be welcomed;
- challenges in verifying the suitability of reprocessing sites in non-EU countries and assessing whether waste exported from Scotland has actually been received by the reprocessor and is, ultimately, recovered and handled in an environmentally sound manner;
- need for a more coordinated approach to waste shipments within the UK;
- apathy from operators in relation to quality of material, procedure/process/documentation and legislation;
- enforcement of legislation and the willingness of prosecutors (Procurator Fiscal) to pursue criminal cases;
- difficulty tackling organised crime because of the lack of skill in this particular area and the unavailability of the relevant police databases.

NRW relies on intelligence and has in the past been involved in multi-competent-authority ‘compliance-checking’ initiatives. NRW investigates any occurrences of non-compliance involving waste from Wales that are detected (by other parties or competent authorities) outside Wales.

Obstacles include:

- limited available resources;
- many exports from Wales leaving the UK from English ports, which are outside NRW jurisdiction, limiting the ability of NRW to conduct port inspections on Welsh waste;
- data gap around ‘green-list’ (Article 18) exports, limiting ability to detect illegal exports;
- difficult to work in partnership with non-EU countries to prevent illegal shipments;
- operators trying to disguise the nature of the waste they export;
- difficult to tackle organised crime because of the lack of skill in this particular area and the unavailability of the relevant police databases.

The NIEA undertakes its regulatory work using an intelligence-led approach. Detection occurs as a result of complaints from members of the public, proactive inspection, routine vehicle check points, proactive operational work and partner agency detection and referral.

Inspections are carried out at waste facilities producing waste for export or receiving imported waste as well as routine port and road inspections. Inspections up the waste chain and intelligence provided by the NIEA’s Assessment Unit (which coordinates intelligence from complaints received, information provided by other agencies and local knowledge) provide a targeted inspection regime.

Obstacles include:

- the existence of 200 border crossings along 310 miles between Northern Ireland and the Republic of Ireland makes detection of illegal shipments difficult;
- operators trying to disguise the nature of the waste they export (e.g. dressing of bales);
- it can be difficult to work in partnership with non-EU countries to prevent illegal shipments which is particularly an issue with respect to green-list exports of plastic to east Asian countries, where better sharing of information and intelligence would be welcomed;

- challenges in verifying the suitability of reprocessing sites in non-EU countries and assessing whether exported waste has actually been received by the reprocessor and whether it is ultimately recovered and handled in an environmentally sound manner;
- difficulty tackling organised crime because of the lack of skill in this particular area and the unavailability of the relevant police databases.

HMRC and the police do not have an active role in the inspection of waste shipments. However, the environmental regulators can flag shipments of waste so that HMRC and the police can hold them for inspection by the environment regulators. In addition, as the environment regulators do not have the power to stop waste transports, they have a close working relationship with the police regarding road inspections.

7.1.3. Specificity of illegal shipment of waste

Intelligence has revealed that paper and plastics waste is mostly exported to the Far East, used tyres mostly to India and WEEE mostly to West Africa. The evaluation team was informed that more hazardous waste is exported to third countries than in the opposite direction, i.e. to the UK. This has led the UK to conduct more inspections on shipments departing from the UK than on shipments arriving there. As the UK is located at the borders of the common European market, it has a special responsibility to prevent imports of hazardous waste from illegally entering the common market. Consequently, more inspections on imports which, although declared as non-hazardous waste or even products, could comprise hazardous waste have to be recommended.

Moreover, in recent years the environmental authorities investigating waste crime have detected more and more organised crime groups, which besides waste criminality are also involved in car theft, money laundering and other criminal offences.

The EA's prosecution service stated that waste imports only occur on a very small scale as there are not many facilities to treat specific waste in England.

The Scottish authorities reported that current intelligence suggests that waste movements related to serious organised crime and involving Scotland are restricted primarily to the transportation of wastes within the UK. SEPA may gather further intelligence as it focuses, through relevant sector plans, on sections of the waste industry that are known to be infiltrated by organised crime.

Most illegal activity encountered by SEPA's Producer Compliance Waste Shipment Unit involves the export to South-East Asia of green-list waste (mainly paper/cardboard/plastic) which is contaminated to an extent which makes it unsuitable for green-list export.

English authorities reported that poorly sorted and/or contaminated material exported as green-list waste remains a significant problem, both in terms of poor compliance and outright illegal activity. There is a perception that the risk of detection and sanctions if detected are both low. Organised criminals have therefore moved into the waste export sector to exploit these opportunities.

Recent trends include the transiting of green-list waste exported as part of the packaging producer responsibility system via countries in the EU such as the Netherlands or Turkey. Operators specify EU countries as an end destination in order to avoid requirements to provide evidence of environmental standards when in reality waste only transits via these countries and is exported elsewhere.

A new threat is the use of roll-on/roll-off shipments via curtain-sided lorries on ferries to export waste to mainland Europe. Exports via this route are harder to target than traditional exports on shipping containers because hauliers do not need to pre-notify exports with the shipping lines.

The Welsh authorities reported that misclassification of waste as green-list and shipping of that waste under Article 18 controls is a major problem. NRW's Waste Shipments Unit has limited information on organised crime groups or individual perpetrators involved in serious crime.

The Northern Irish authorities reported that misclassification of waste or ‘top dressing’ of lorry loads to disguise the nature of the waste and obtain fraudulent benefit is the main common modus operandi. The involvement of organised/serious crime groups is common as the criminal benefit to be derived is massive and by definition such criminality is serious.

7.1.4. Measures on shipment of wastes

With a view of ensuring that the shipment of waste between Member States, as well as to and from Member States to third countries, is managed in an environmentally sound manner throughout the period of shipment, as well as in the recovery or disposal of waste, information about green-listed waste and respective notifications from exporters will be mandatory in the UK in future. Additionally, the EA plans to increase the number of inspections at the borders.

Difficulties identified are a light-touch approach for managing exports of green-list waste and widespread non-compliance, as well as outright illegal activity, (missing) assurance of overseas sites, interception of waste exports on ro-ro ferries and repatriations because of difficulties in identifying responsible parties when waste is unloaded overseas and because no funding is available.

The four nations of the UK reported the following.

Scotland

Recently SEPA has had some limited success in making contact with authorities in Hong Kong. This resulted in inspections, in Hong Kong, on containerised waste, with non-conforming waste returned to the UK. SEPA's regulatory work would benefit enormously from a closer working relationship with the relevant authorities in third countries.

England

The EA follows the well-established notifications procedure to manage exports and imports of all wastes other than green-list. This process ensures that waste is correctly managed during transit and disposal/recovery. The EA also requires those exporting waste as part of the packaging and WEEE producer responsibility system to provide this assurance.

There are currently lower levels of control in place for the exports of other green-list waste from England. Currently, the EA does not require operators to submit information provided on the Annex VII form and therefore relies on an intelligence-based approach to identify and tackle illegal activity.

Wales

For notified wastes these checks are largely inherent in the assessment process. NRW has a more limited oversight of green-list shipments and so generally relies on intelligence and/or reacts to instances of identified non-compliance or illegality. NRW takes part in some compliance-checking initiatives.

Northern Ireland

The authorities consider that their regulatory work would benefit enormously from a closer working relationship with the relevant authorities in third countries.

7.2. Inspections

7.2.1. Methodology of inspections and follow-up

In England, all waste inspections including checks on suspected illegal waste exports are carried out by the EA, which has an established programme of port inspections to determine if waste is exported legally. The EA has invested in gathering intelligence to support its evidence-based approach to tackling illegal exports. This is managed by the EA intelligence team, who have continued to detect and prevent illegal waste exports, supported by a team of field intelligence officers.

Illegal exports have been a priority for the past few years, and the EA has improved the quality and quantity of its criminal intelligence, increasing the number of inspections:

- at sites suspected of illegal waste exports;
- of shipments prior to export.

The EA carries out targeted door side inspections as they generally have intelligence on the load point.

The EA can have containers scanned or sent to its yard for further investigation if required.

In order to gain the powers needed to carry out road traffic inspections, in September 2017 the EA established a Memorandum of Understanding with the DVSA in relation to waste-industry-related vehicles in England; the DVSA has the power to stop vehicles.

SEPA carries out inspections across the supply chain. Such inspections may involve inspection of waste at the storage and treatment facilities that handle different waste streams, as well as inspections of waste brokers involved in the export of waste and in particular what checks they have put in place to ensure they are involved only with compliant exports.

SEPA also carries out inspections of others in the supply chain as required. This may include freight forwarders, shipping lines and waste producers such as commercial companies or local authorities. Some of these interactions are to remind the parties of their duty-of-care responsibilities when handling waste and passing it on to other parties.

SEPA regularly and routinely engages with other authorities with regard to any irregularities detected.

It has not applied confiscation measures, though repatriation of waste is a typical outcome.

NRW uses any available information or intelligence to target inspections, but for certain compliance-checking initiatives where such information or intelligence is not available (e.g. on certain ferry routes) random spot checks have been undertaken. Random spot checks did not seem a good use of limited resources. A more comprehensive picture on waste exports from Wales would be useful and would be greatly helped if green-list shipments reporting become mandatory (for exporters to provide to NRW).

The NIEA carries out desk-top audits across the supply chain, checking various data sets it has received to verify consistency. Physical checks are carried out at waste facilities, including sample analysis to check for contamination levels. Checks at roads and ports include checking the paperwork accompanying the waste, inspecting the load using telescopic cameras and if necessary removing waste at designated points, to check for contamination.

7.2.2. Specific inspections with regard to waste electrical and electronic equipment (WEEE) and end-of-life vehicles (ELV)

The responsibility for compliance is shared by the producer, manufacturer or importer placing EEE on the UK market, and the UK distributor, extending to any means of distance selling (e.g. internet).

The UK regulations transposing the recast WEEE Directive into UK law have 14 broad categories, comprising large household appliances, small household appliances, IT and telecommunications equipment, consumer equipment, lighting equipment, electrical and electronic tools (with the exception of large-scale stationary industrial tools), toys, leisure and sports equipment, medical devices (with the exception of all implanted and infected products), monitoring and control instruments, automatic dispensers, display screens, cooling appliances, gas discharge lamps and LED light sources and, lastly, photovoltaic panels. Under the UK regulations responsibility for compliance is shared by the producer, manufacturer and/or importer placing EEE on the UK market, and the UK distributor, extending to any means of distance selling (e.g. internet).

The producer must register with one of the UK environment regulators, join and approve a producer compliance scheme if placing more than five tonnes of EEE on the market, make information available about the amounts of EEE available to the producer compliance scheme, mark all EEE placed on the market with the ‘crossed-out wheeled bin’ symbol, make information available to treatment facilities and appoint an authorised representative in any other Member States in which they place products on the market to fulfil the producer’s obligations.

Furthermore, local authorities can choose to register their household waste recycling centres as designated collection facilities. Doing so ensures that the cost of collecting and recycling WEEE at these sites is fully funded by producers via membership of the producer compliance scheme, and that local authorities can retain responsibility for all or some types of WEEE received at their sites. AATFs process WEEE operating under permits and licenses from the environment regulators, and only an AATF (approved company) can issue evidence notes showing that WEEE has been recovered and recycled with reference to the 14 EEE categories, whereby producer compliance schemes use the evidence notes to show that obligations have been met.

Distributors are obliged to provide information to consumers about the environmental impact of WEEE as well as of EEE and about the separate collection, to facilitate the take-back of WEEE from consumers free of charge either by joining the UK distributor take-back scheme or by taking back WEEE in-store on a like-for-like basis. Finally, retail outlets with an EEE store of more than 400 m² have to take back any small item off WEEE without an obligation for the customer to buy anything.

The environmental regulators regulate many aspects of the WEEE system, and their responsibilities include approval of the compliance fee. Product marketing, design and distributor obligations are enforced by the office for product safety and standards.

Physical collections are done in exchange for a compliance fee that the Secretary of State for Environment, Food and Rural Affairs can approve each year. Funds generated are used for local authority WEEE improvements and strategic research projects. These measures should help to raise the Member State collection rate from a target of 45 % EEE placed on the market (up to 2019) to either 65 % of WEEE placed on the market or 85 % of WEEE generated (from 2019 on). In 2016, the UK achieved a collection rate of 57 %.

England became aware of 190 illegal sites dealing with ELVs, 90 of which were ranked as high-risk sites. All those sites have been closed down. Furthermore, WEEE theft has been identified as an issue. Consequently, projects on unreported EEE and WEEE were established in order to identify WEEE that is mixed with other metal waste streams and then treated.

On the other hand, the industry has a strong self-interest in getting rid of illegal competitors. Over the last year the EA received about 650 complaints from market participants, and in more than 400 cases there was a follow-up.

Looking forward, the publication of the post-implementation review of the 2013 WEEE regulations will be published later in 2019 and the consultation on the reform of the WEEE regulations by the end of 2020, in the light of the commitments made in the resources and waste strategy.

As regards prosecution, the EA reported that a prison sentence of seven-and-a-half years had been imposed following a case of illegal disposal of WEEE with a value of GBP 2.5 million, which had been dispatched to Nigeria. Proceeds-of-crime orders have also been made in this case.

The ELV vehicles regulations of 2003 and the ELV producer responsibility regulations of 2005 set out a general policy framework for the treatment and recovery of ELVs, which is led by Defra. The regulations cover all cars with up to nine seats and small vans of up to 3.5 tonnes, including components made for them, ELVs being motor vehicles categorised as waste generally due to age or accidents.

Responsibility for ELVs lies with the producer, which is the manufacturer or importer placing the vehicle or component on the UK market. They have to register with Defra. Private individuals importing vehicles are exempt. Vehicles must only be treated by individuals holding the respective environmental permits and on sites known as authorised treatment facilities. The EA and its counterparts in Northern Ireland, Scotland and Wales are responsible for issuing and regulating environmental permits in their respective territory.

Furthermore, the Driver and Vehicle Licensing Agency is responsible for maintaining the national vehicle register in the UK. AATFs accepting vehicles with intention of scrapping them are required to issue a certificate of destruction. This can be facilitated by using an electronic link, via which the respective vehicle is then instantaneously deregistered from the national vehicle register.

Vehicle manufacturers are obliged to maintain a network of authorised treatment facilities into which last owners, including local authorities, may deliver their vehicles, subject to certain conditions and free of charge. Most vehicle manufacturers have contracted with service providers such as Autogreen and CarTakeBack in order to meet these obligations.

Due to this effort, Defra has achieved a 95 % recovery rate for vehicles to be recycled since 2015.

The main issue on the domestic market is the dismantling of ELVs. The UK authorities therefore check eBay and other internet auction websites for offers of used car parts as well as for overseas buyers without suitable authorisation to receive waste.

Webshops located outside the UK are difficult to inspect in order to enforce the rules and agreements of the WEEE producer responsibility system. The same applies to webshops selling ELVs regarding the legislation on disposal of ELVs.

The EA cooperates successfully with the Nigerian authorities and in one case was able to block financial transactions intended to remunerate the Nigerian offenders in their home country.

Additionally, the UK authorities reported good cooperation with shipping lines.

SEPA focuses some effort on operators who are involved in the export of second-hand electrical equipment. With most exporters based in west central Scotland, SEPA has engaged with this sector for a number of years with the aim of reducing illegal shipments. Compliance rates have improved over the past few years through a combination of a good understanding of which exporters present the biggest risk (obtained through frequent unannounced audits to check their records on portable appliance testing (PAT)) and then better targeting these containers at port to disrupt illegal activity. A number of operators are now proactively contacting SEPA to advise when they are loading containers of second-hand electrical waste and welcome SEPA audits to provide them with confidence that they are operating within the law. For those operators who continue to flout the regulations SEPA takes action in line with its published enforcement policy, including submitting reports to the Procurator Fiscal recommending prosecution.

Using an intelligence-based approach, SEPA does carry out inspections on exports potentially involving ELVs which can involve either the export of whole vehicles or the export of vehicle parts. SEPA has encountered vehicle parts which have not been properly depolluted, and in some of these cases the parts have originated from facilities that are not suitably licensed to carry out the depollution and dismantling of motor vehicles. It is still common for operators to fail to classify ELVs and vehicle parts as waste.

SEPA's metal sector plan has identified illegal ELV treatment sites as the number one compliance priority within that sector. SEPA estimates there are more than 100 illegal sites and is working with businesses and trade bodies within the sector to identify and tackle illegal treatment sites.

NRW's ProRes Unit regulates WEEE producer responsibility activities within Wales. AATFs, producers and accredited exporters (AEs) within Wales are subject to periodic compliance inspections and they must provide proof of WEEE recycled (by AATFs & AEs) and 'placed on the market' (by producers). NRW utilises intelligence to identify illegal flows and will investigate accordingly.

ELV sites are subject to periodic inspections by NRW officers to check compliance with their site permits. Any identified export sales (of ELVs or parts) may be considered as part of these inspections and/or referred to NRW's Waste Shipment Unit. NRW has seen some illegal exports of un-depolluted (i.e. hazardous) ELVs being shipped out of the UK without the appropriate waste shipment notification process being followed.

The NIEA reported very few exports of WEEE from Northern Ireland. Under the producer responsibility legislation those sites authorised as WEEE treatment facilities are regularly monitored with audits being carried out and data checked.

7.2.3. Challenges with regard to the taking back of illegal waste shipments

SEPA reported that when it detects an illegal shipment of waste (e.g. through an inspection at port where containers are detained) but establishes that there are containers of the same waste in transit (e.g. outside the UK), there is limited scope to act on returning this waste without a formal repatriation request from the competent authority of the recipient country. This works well within the EU, but is far more challenging when dealing with non-EU countries. This challenge is partly due to the difficulty of establishing suitable points of contact in those countries.

SEPA has had some recent success in the repatriation of containers from Hong Kong. However, the problem is that in most cases, when attempting to arrange for the return of containers, SEPA has no powers to require the shipping lines to return the containers; any such repatriation is done on a purely voluntary basis. SEPA would welcome a strengthening of the regulations to assist it in taking more robust action on requiring the return of suspected illegal containers in transit.

The EA reported that where English waste is found deposited overseas it is much harder to establish the origin of the waste and the parties responsible. It takes significantly longer than the 30 days allowed to repatriate waste. It is hard to establish that the waste comes from England (rather than the UK as a whole) and has been exported directly from England. It is also likely that once waste has been deposited there will not be sufficient continuity of evidence to allow the EA to bring criminal proceedings. Ensuring unsuitable wastes remain in containers or on trailers/lorries would prevent many of these difficulties. Not all countries have powers to hold waste in this way. In addition, the lack of powers in some overseas countries for holding landowners and hauliers accountable for the illegal deposit and transport of waste can further incentivise illegal activity.

Finally, there are no funds set aside as part of the regulatory framework for shipments of waste to finance the repatriation of illegally exported waste. The EA therefore relies on general enforcement funding from government to finance any repatriations – this resource is stretched and finite. The EA therefore cannot guarantee that sufficient money is available to pay for repatriations, which are rare and unpredictable.

The main challenges identified in Wales for take-back of illegal waste shipments are:

- identifying the party or parties responsible for the illegality;
- being challenged, through the legal process, by the parties served with notice to bring back waste;
- determining whether the relevant competent authority is making a formal request for ‘take-back’ for cases outside the EU.

The NIEA reported that it has limited experience in take-back requests to repatriate waste to Northern Ireland. The major issue is in cases where waste has been stopped outside the EU but the relevant competent authorities do not provide the NIEA with a formal take-back request. In these cases the return is normally arranged by the shipping lines and the notifier informally, often without the NIEA’s knowledge.

7.2.4. First inspection plan

In December 2016 Defra published the UK Waste Shipments Inspection Plan. This document applies to the territory of England, Scotland, Wales and Northern Ireland, including the UK Continental Shelf. It sets out the UK’s general approach to the inspection of waste shipments and the tasks assigned to each authority of the different territories.

The UK has no specific inspection plan for the inspection of WEEE and ELVs.

7.3. Conclusions

- The Transfrontier Shipment of Waste Regulations 2007 designate the EA, SEPA, NRW and the NIEA as competent authorities responsible for the direct regulatory work associated with preventing illegal shipments.
- A multi-agency group has been set up in order to share intelligence in cross-internal-boarder cases but so far, the group has not had to handle any joint cases.
- The competent authorities undertake their regulatory work using an intelligence-led approach.
- Difficulties identified are a light-touch approach for managing exports of green-list waste and widespread non-compliance as well as outright illegal activity, (missing) assurance of overseas sites, interception of waste exports on ro-ro ferries and repatriations because of difficulties identifying responsible parties when waste is unloaded overseas and because no funding is available.
- In order to gain the powers needed to carry out road traffic inspections, in September 2017 England's EA established a Memorandum of Understanding with the DVSA, which has the powers to stop vehicles, in relation to waste-industry-related vehicles in England.
- The producer and manufacturer must register with one of the UK environment regulators, join and approve a producer compliance scheme if placing more than five tonnes of EEE on the market.
- Since shipping lines are presumed to look at the contents of the consignments they are assigned, close contact may be helpful. However, this informal avenue of cooperation cannot always be trusted, e.g. in cases of bribery.
- Blocking financial transactions is a best practice for deterring exporters of waste from acting illegally.
- The upstream approach is also a best practice as it raises awareness and competency at the very beginning of the waste disposal chain, typically among the generators and holders of waste.

- HMRC and the police do not have an active role in the inspection of waste shipments. However the environmental regulators can flag shipments of waste so HMRC and the police can hold them for inspection by the environmental regulators. On the other hand, the environmental regulators do not have the power to stop vehicles.
- A big obstacle in investigating and inspecting waste shipments is establishing contact points outside EU countries.
- Webshops located outside the UK are difficult to inspect in order to enforce the rules and agreements of the WEEE producer responsibility system. The same applies to webshops selling ELVs regarding the legislation on disposal of ELVs.

8. MANAGEMENT OF HAZARDOUS WASTE

8.1. The classification of hazardous waste and the challenges in its management

In the UK, every consignment of hazardous waste has to be properly labelled as hazardous waste. About 12 000 sites dealing with waste are known to the English authorities, including about 3 000 sites dealing with hazardous waste, which are increasingly being targeted by criminals. 50 % of the hazardous waste is generated in the healthcare sector, 10% is contaminated soils and 40 % is miscellaneous hazardous waste.

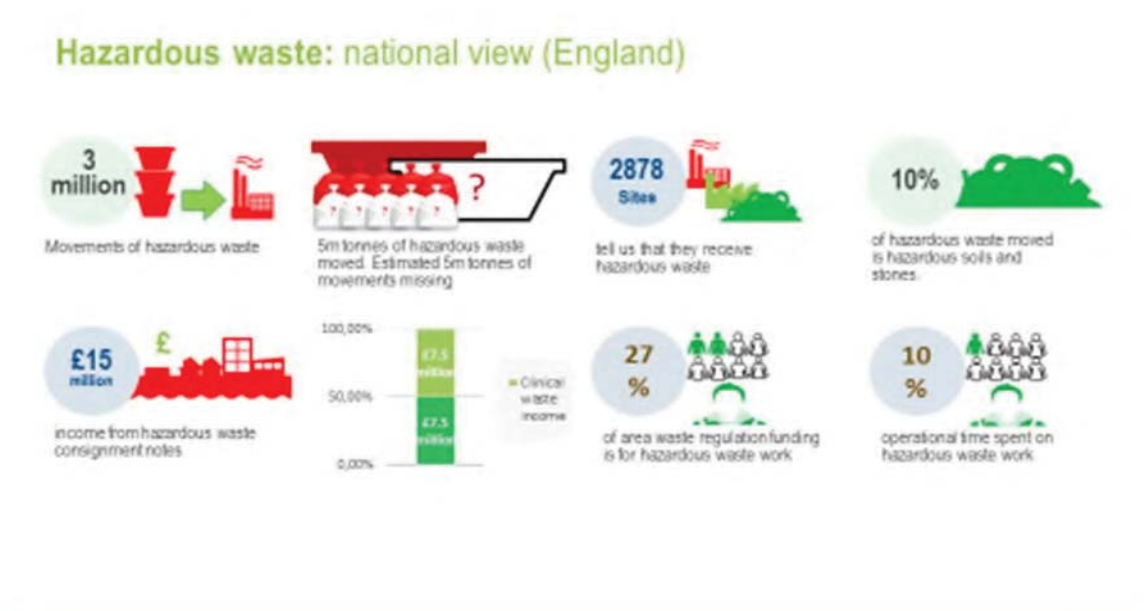
In England, all carriers of waste must be registered, all holders of waste have a duty of care, and hazardous waste must be properly classified and be consigned. In order to store, treat or dispose of hazardous waste, permits are required and there must be a technically competent manager. With regard to the waste classification, the four regulators have agreed on guidance and the classification and assessment of waste ('Technical Guidance WM3').

In order to avoid hazardous waste being classified as non-hazardous waste and any waste as inert, 'A guide to the misclassification of waste & how you can avoid it' was published by a waste classification group, led by CIWM and the Environmental Services Association with support from the EA.

The EA estimates that a significant amount of hazardous waste is either misdescribed (as non-hazardous waste) or is not entering the waste chain at all through any reporting routes. It set itself a target to increase the amount of hazardous waste that is properly consigned, reducing waste that escapes the system of legal controls. The EA reported that misclassification is central to its strategy of detecting 'missing' (misclassified or undeclared) hazardous waste.

The EA uses analysis of data reporting and intelligence to identify potential waste streams which could be subject to misclassification and build campaigns around them. For example, soil and stones from construction and demolition sites is a waste stream thought to be commonly misclassified, either deliberately or through a failure to properly assess the composition of the waste. Regulations have been adopted giving the EA enforcement tools to deal with the issue, including criminal and civil sanctions.

England provided the following national review on hazardous waste



Establishing whether a waste is considered hazardous or not (in the case of mirror codes) is especially hard as this requires sampling/testing and potentially speciation as well as actual classification. This is especially time consuming, complex and costly. On this basis, EA finds it more effective to work with industry to correct the behaviour.

The EA considers that one of the main issues is that, if the waste is recorded as non-hazardous, then this doesn't appear in the systems, and it becomes difficult to prove that it is hazardous.

In addition the EA has concerns regarding the effectiveness of conveying offences to courts. That is because the fines can be low, meaning that prosecution is not an effective deterrent.

In Scotland, the Special Waste Regulations 1996 (as amended) are the principal piece of legislation covering special waste produced in Scotland, and set out the procedures to be followed when disposing of, carrying and receiving special waste. These regulations implement many of the hazardous-waste-related articles of Directive 2008/98/EC. In particular, Article 35 is implemented by regulations 15, 15 (A) and 16, which place a number of requirements on producers, carriers and consignees (receiving sites whether it be for treatment, disposal or storage) to maintain registers and retain copies of consignment notes for specific periods.

Scotland reported that it does not have data available on hazardous waste, probably due to the fact that criminal/illegal waste disposal and treatment predominantly involves non-hazardous wastes. However, hazardous wastes have been found in some of the most serious cases detected in recent years and intelligence shows that serious and organised criminals are involved. They also reported that deliberate misclassification of waste is a widespread and common practice. This is often connected with criminal efforts to avoid landfill tax and/or circumvent the costs and additional controls associated with hazardous waste. SEPA works closely with Revenue Scotland, the competent landfill tax authority in Scotland, to detect and disrupt this activity and ensure that the appropriate tax is recovered for the public purse.

The main evidential and technical challenge that hazardous waste presents is with regard to classification. The assessment and classification process can be complex and the information needed to make a definitive assessment is not always available (e.g. classifying soils from long-derelict industrial sites where it is necessary to take a view on the activities and materials that may have contributed to soil contamination). There is a logical and scientific way to work through such assessments but SEPA lawyers and Crown prosecutors are worried about pursuing cases or taking enforcement action based on 'worst case scenario' type assumptions.

Illegally deposited hazardous wastes rarely have appropriate identification information available to confirm their hazardous properties. It is difficult to analyse and produce an evidential description of the waste without sufficient information to be able to determine which analysis would be appropriate (e.g. based on the origins of the waste and its likely composition/content). This also provides evidential difficulty when describing the potential for environmental pollution, harm to human health or true financial benefit achieved from the criminal activity.

The NIEA administers and regulates a consignment note system as required by the Hazardous Waste Regulations (Northern Ireland) 2005. Each consignment of hazardous waste must be accompanied by a consignment note. The NIEA receives a copy of the consignment note prior to movement and again once movement has taken place. The regulations require producers, carriers and consignees (receiving sites whether it be for treatment, disposal or storage) to maintain registers and retain copies of consignment notes for specific periods.

In terms of enforcement, the NIEA reported that misclassification of hazardous waste is an occasional, rather than systematic, activity. Misclassification is normally detected during the pre-notification stage or during routine inspections.

On occasion, securing specialist scientific resources (companies) to analyse & evidence analysis for court purposes can be problematic depending on the type of hazardous waste.

In addition, some wastes are difficult to trace back to the perpetrator. This has particularly been the case where laundered fuel residues have been illegally dumped. Even fingerprint analysis has been insufficient.

For the future, Defra is considering: introducing a requirement for those classifying waste to be technically competent; reviewing offences and penalties relating to the misclassification of waste; exploring approaches to mandatory electronic waste tracking; and identifying opportunities to simplify legislation.

8.2. The system of inspections and the authorities involved

The national regulators responsible for periodic inspections are SEPA, the NIEA, the EA and NRW.

In order to fight waste crime related to hazardous waste, the UK has started to develop a system to track the 200 million tonnes of waste per year generated in the country, where it comes from, where goes to, and what is done to it. As multiple separate legacy systems collect partial waste-tracking data, waste tracking cuts right across the regulatory system and even uses different media.

All carriers of waste must be registered and waste sites need a permit to store, treat and dispose of waste with a technically competent manager. Movements of hazardous waste must be reported via consignment notes. This can be considered as a good practice.

In Scotland there is no set number of inspections. The frequency of planned inspections, for any one site, depends on the outcome of a hazard and risk assessment model called DREAM (Dynamic Regulatory Effort Assessment Model) which looks at the intrinsic hazards and risks of each regulated site at a site level comparing them against others.

The output of DREAM is fewer, more targeted inspections allowing SEPA to regulate in a way which is: proportionate, consistent, fair and legally correct; transparent and accountable; and targeted, efficient and effective.

In Northern Ireland periodic inspections are carried out in line with a compliance monitoring plan. Inspections are carried out between one and two times per week at ports and sites, and two times per month at vehicle checkpoints. Intelligence-led inspections are also carried out at waste facilities, carriers and producers.

The EA carries out appropriate periodic inspections of hazardous waste producers and it is also responsible for permitting and inspecting permitted facilities (under the Environmental Permitting Regulations 2016, which implement the requirements of the Industrial Emissions Directive, Landfill Directive and parts of the Waste Framework Directive). It also holds a register of sites exempt from permitting requirements and a register of waste brokers/dealers and carriers.

The EA uses the Operational Risk Appraisal (Opra) approach to determine inspection frequency. Permitted sites are expected to be inspected at least once a year; however, this can increase according to risk.

Inspections of carrier/broker/dealers, producers and exemptions are carried out on an intelligence-led and risk-based model. This can either be through nationally led campaigns or through local decisions based on local knowledge.

To help waste carriers and sites classify their waste and prevent misclassification, ‘A Guide To The Misclassification of Waste and How You Can Avoid It’ was compiled by members of the waste and resources sector’s Waste Classification Group, led by CIWM and the Environmental Services Association (ESA) and supported by the EA.

8.3. Measures for the protection of the environment and human health in the treatment of hazardous waste

In the UK awareness-raising campaigns, such as ‘Right Waste, Right Place’, have been run in order to spread knowledge about the dangers for the environment hazardous waste can cause. Moreover, the British authorities have released a guide for the waste industry in order to promote proper classification of hazardous waste.

In addition, the regulations in force put in place a regulatory framework which ensures that hazardous waste is managed in an appropriate way.

A range of compliance assessment techniques including audits, inspection and data review are used to ensure that all conditions are being met.

In Scotland, Regulations such as the Environmental Protection Act 1990, the PPC (Scotland) Regulations 2012, Waste Management Licensing (Scotland) Regulations 2011 and the Special Waste Regulations 1996 (as amended), all of which are underpinned by the SEPA's CAS scheme, help ensure that the production, collection and transportation of hazardous waste, as well as its storage and treatment, are carried out in conditions providing protection for the environment and human health.

The aforementioned regulations put in place a regulatory framework which ensures that hazardous waste is managed in an appropriate way. This means that it does not harm the environment or human health, that any treatment or storage is carried out under an appropriate licence/permit, and any transport is tracked by a paper-based tracking system incorporating a paper consignment note which gives details about the producer, carrier and consignee (operator), includes a description of the waste and states the quantities involved.

Northern Ireland implements compliance monitoring activities, e.g. site visits, port inspections, vehicle check points and partner agency cooperation to ensure adherence to the relevant legislation.

In England, Section 34 of the Environmental Protection Act 1990 establishes a general 'duty of care' for all 'holders' of waste and the government has published statutory guidance on how to comply with it. The EA has a duty to ensure that carriers/brokers/dealers, the duty of care, and hazardous waste treatment are regulated to ensure correct production/collection and transportation.

The Hazardous Waste (England and Wales) Regulations 2005 control the management of hazardous waste. They include requirements on mixing, movement of hazardous waste through the use of 'consignment notes' (which can be paper or electronic), record keeping and reporting. These regulations establish offences and penalties, which the EA, as the competent authority, has a duty to enforce.

The storage, treatment and disposal of hazardous waste is regulated through the environmental permitting regime. A range of compliance assessment techniques including audits, inspection and data review are used to ensure that all conditions are being met. If a permit is not required at the site, then the EA and NRW look to ensure that the Hazardous Waste Regulations and other appropriate legislation are being complied with.

The EA provides inspecting officers with significant training and sufficient tools to be able to identify poor practice and deal with this issue. The aim is to ensure that the waste is handled correctly from cradle to grave.

8.4. Trends in illegal hazardous waste management

When it comes to trading of hazardous waste, in many cases brokers are involved, making the tracing and inspection of hazardous waste more difficult. In the UK, brokers only have to apply for registration, without being tracked upon their reliability. They are registered by the four national environmental regulators, which also means that the municipalities and local authorities are not in charge.

Misclassification and reclassification are the main trends within the UK, through fraudulent classification of hazardous waste as non-hazardous or through declaration of any waste as inert.

SEPA suspects that hazardous wastes are being moved between Scotland and England in a deliberate attempt to avoid scrutiny from the EPAs, and to misclassify waste and thus avoid landfill tax liabilities.

Investigations in Scotland even suggest that in some of the worst cases there is a structured and systematic approach to this, e.g. supported by professional hazardous waste assessors and laboratories.

Waste producers are reported not to be taking sufficient steps to ensure their waste is classified and handled correctly or that the final disposal or treatment of their waste is suitably safe and appropriate. This opens up opportunities for criminals to undercut and undermine legitimate waste management companies.

The EA reported exceeding of permits and dealing in falsified waste documents as trends in the field of hazardous waste management. Its prosecution department reported misdescription as an issue as well.

NRW reported to the evaluation team that misclassification and reclassification of waste is the most common modus operandi. Investigations even suggest that in some of the worst cases there is a structured and systematic approach to this, e.g. supported by professional hazardous waste assessors and laboratories.

NRW claims that waste producers are not taking sufficient steps to ensure their waste is classified and handled correctly or that the final disposal or treatment of their waste is suitably safe and appropriate, opening up opportunities for criminals to undercut and undermine legitimate waste management companies.

NRW has encountered a shift from landfill disposal of waste to incineration, in order to recover energy (caloric value) from hazardous waste. This is perceived as an effect of the landfill tax.

Northern Ireland reported that hazardous waste arising with regard to waste crimes detected within NI principally arises from toxic sludge/waste from fuel laundering activities (by organised crime groups) and other hazardous waste, such as asbestos deposited among other forms of mixed waste and illegally buried.

8.5. Conclusions

- The national authorities responsible for periodic inspections in UK are SEPA, the NIEA, the EA and NRW.
- Every consignment of hazardous waste has to be properly labelled as hazardous waste.
- The EA estimates that a significant amount of hazardous waste is either misdescribed (as non-hazardous waste) or is not entering the waste chain at all through any reporting routes.
- Awareness-raising campaigns, such as ‘Right Waste, Right Place’, have been run in order to spread knowledge about the dangers for the environment hazardous waste can cause.
- The UK authorities have released a guide for the waste industry in order to foster proper classification of hazardous waste. Publishing guidelines for the waste industry how to classify hazardous waste is considered a best practice.
- When investigating and prosecuting hazardous waste crimes, it is difficult to establish whether waste is hazardous or not. This requires sampling and potentially speciation as well as actual classification. This is especially time consuming, complex and costly.
- In Scotland, SEPA lawyers and Crown prosecutors are worried about pursuing cases involving hazardous waste because the assessment and classification process can be complex and the information needed to make a definitive assessment is not always available. Illegally deposited hazardous wastes rarely have appropriate identification information available to confirm their hazardous properties and are difficult to analyse.
- Cooperation and sharing data between the environmental regulators within the UK to avoid illegal movements of hazardous waste shipments is very important.
- The UK authorities suspect that hazardous wastes are being moved between Scotland and England in a deliberate attempt to avoid scrutiny from the EPAs, and to misclassify waste and thus avoid landfill tax liabilities.

9. ILLEGAL PRODUCTION OR HANDLING OF DANGEROUS MATERIALS

From the questionnaire it is inferable that the United Kingdom has adopted the CLP Regulation but, because of the lack of face-to-face contact with the authorities involved and of the rather general nature of the information provided so late, it is difficult to describe their framework on dangerous materials.

The UK provided many links, which were very often too generic or had too many sublinks. No information was provided concerning nuclear materials. Instead the UK referred, for the answers, to the Office of Nuclear Regulation.

9.1. The concept of dangerous materials

Dangerous materials are subject to classification under the Classification, Labelling and Packaging (CLP) requirements. The UK follows Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures, which came into force on 20 January 2009 in all EU Member States, including the UK. It is known by its abbreviated form, ‘the CLP Regulation’ or just ‘CLP’.

The CLP Regulation adopts the United Nations’ Globally Harmonised System on the classification and labelling of chemicals (GHS) across all European Union countries, including the UK.

As the GHS is a voluntary agreement rather than a law, it has to be adopted through a suitable national or regional legal mechanism to ensure it becomes legally binding. That is what the CLP Regulation does.

9.2. Types of illegal activities related to illegal production and handling of dangerous materials and current trends in that field

There have been some breaches of the legislation, particularly with regard to asbestos. The legal provisions are based around health and safety at work, but also consider the impact of work activities on those not at work, e.g. members of the public, or employees of another organisation.

The main issue in relation to the handling of dangerous goods is operator compliance. The major problems at present are insecure loads, lack of safety equipment and incorrect documentation.

9.3. Procedural aspects

9.3.1. Means of collecting evidence and of handling dangerous materials

No information was provided.

Each police area should maintain a record of all the CDG (carriage of dangerous goods) checks done. Any and all prohibitions/non-compliance incidents are shared with the UK's Health and Safety Executive (HSE) or Office for Nuclear Regulation (ONR). Foreign operators are reported to the HSE, which can forward information to the relevant authority of the operator's country.

9.3.2. Cooperation with European and international partners

Foreign operators are reported to the HSE, which can forward information to the relevant authority of the operator's country.

See also paragraphs 6.2.1, 6.2.2, 6.2.3.

9.3.3. Investigation techniques

Financial and cyber investigation techniques are available if required in these cases, but no detailed information was submitted.

9.3.4. Main obstacles to successful investigation and prosecution

The major limiting factor is the availability of specially trained police officers.

9.3.5. *Training*

Each police area is responsible for training. However, the national CDG forum does give updates as and when required to train officers in checking CDG vehicles. Most police areas should have a chemical, biological, radiological and nuclear (CBRN) response team but generally these officers are not trained in CDG/ADR.

9.4. **Conclusions**

- The United Kingdom provided very limited information regarding illegal production or handling of dangerous materials. Therefore it is difficult to draw any conclusions.
- The availability of specially trained police officers is limited.

10. FINAL REMARKS AND RECOMMENDATIONS

10.1. Suggestions from the United Kingdom

None

10.2. Recommendations

As regards the practical implementation and operation of the Directives and the Regulation, the expert team involved in the evaluation of UK was only partly able to satisfactorily review the system in the UK as not all the relevant institutions were involved in answering the questionnaire and meeting the experts.

The UK should conduct a follow-up on the recommendations given in this report 18 months after the evaluation and report on the progress to the Working Party concerned.

The evaluation team thought it fit to make a number of suggestions for the attention of the UK authorities. Furthermore, based on the various good practices, recommendations are also put forward to the EU, its institutions and agencies, and Europol in particular.

10.2.1. Recommendations to the UK

1. It is recommended that appropriate databases be set up to collect exhaustive and centralised statistics and make them available to all the relevant authorities.
2. It is recommended that the UK environmental regulators have regular meetings not only at operational level but also at strategic level.
3. In order to prevent illegal shipments and misclassification, it is recommended that the UK environmental regulators share more data on waste shipments within the UK (e.g. hazardous waste shipments from Scotland to the ports of England). In fact, knowledge about waste movements within the UK is crucial for effectively monitoring waste exports and the destinations waste imports go to in the UK.

4. It is recommended that either the system of taxing waste disposal (including the landfill tax) should be reviewed so that the cost of disposal is lower, or some incentive should be established (e.g. for recovery) to motivate the private sector to dispose of or recycle waste in a legal manner.
5. A more flexible reallocation of the budget within the EA is suggested to allow the budget to be used in accordance with investigative needs.
6. A UK-wide Joint Unit for Waste Crime (JUWC) should be established.
7. It is recommended that judges specialise in the field of environmental crime to avoid jeopardising cases that have been duly investigated and prosecuted.
8. In order to pursue and disrupt organised crime when linked to waste crime environment regulators should be trained and equipped with the necessary tools and powers, including full access to the police databases, or special units including environmental investigators and police should be established.
9. Mandatory electronic tracking of waste, and a national database of registered brokers, should be introduced at the earliest opportunity.
10. In order to prevent pollution of environment and the surrounding land and water, it is recommended that, when an illegal waste sites is discovered but the offender is not found, measures are put in place to remove waste very soon either by forcing the landlord to do it or arranging for the state to do so instead.
11. It is recommended that competent authorities collect more samples when detecting and investigating waste crime.
12. A organoleptic approach is recommended in order to identify hazardous waste which has been misclassified.
13. It is recommended that joint training courses should be organised involving all relevant authorities (judges, prosecutors, environmental regulators, police, HMRC etc.).

10.2.2. Recommendations to the European Union, its institutions, and to other Member States

14. None

10.2.3. Recommendations to Eurojust/Europol/Commission

1. Europol should encourage Joint Investigation Teams and police protocols for the setting of coordinated inspections in the framework of cross-border shipments of waste.
2. The establishment of a European database concerning the waste that every company is authorised to manage should be encouraged.

ANNEX A:PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET

Venue: Rm505, Nobel House (PM)

Date: Tuesday 26th February 2019

ITINERARY		
9.00-9.15	Welcome and Introductions	Name omitted upon UK's request
9.15-9.30	Strategic overview - roles & responsibilities across four nations - strategic approach to waste crime in England	Name omitted upon UK's request
9.30 – 10.00	National Approach – Waste Crime	Waste Crime Team
10.00-10.30	National Approach – WEEE and ELV	Producer Responsibility Team
10.30-11.00	National Approach – Hazardous Waste	Name omitted upon UK's request
11.00 – 11.30	National Approach – TFR	Name omitted upon UK's request
11.30-12.00	Legislative Framework – including offences	Name omitted upon UK's request
12.00-1.00	Lunch – will be provided	

1.00 – 1.45	<p>National Approach to Waste Crime in Northern Ireland</p> <p>Name omitted upon UK's request from Northern Ireland Executive and Name omitted upon UK's request from NIEA Waste Crime Unit</p>	Name omitted upon UK's request
2.00 – 2.45	<p>National Approach to Waste Crime in Scotland</p> <p>Name omitted upon UK's request from Scottish Government, Name omitted upon UK's request from SEPA</p>	Name omitted upon UK's request
3.00 – 3.45	<p>National Approach to Waste Crime in Wales</p> <p>Name omitted upon UK's request from Welsh Government and Name omitted upon UK's request from NRW</p>	Name omitted upon UK's request
4.00 – 5.00	Evaluation Team Review	

Venue: Rm505, Nobel House (PM)

Date: Wednesday 27th February 2019

ITINERARY		
<i>Morning session at Europa House – The London Room</i>		
9.00-9.30	Meet UK Contact Point at reception of Nobel House and set up for meeting	
9.30-10.30	Environment Agency Prosecutions	Name omitted upon UK's request, Senior Lawyer
10.30 – 11.00	Break	
11.00 – 13.30	Environment Agency Waste Management In person and by phone:	Name omitted upon UK's request
13.30-14.30	Lunch – will be provided	
14.30 – 15.50	Environment Agency National Enforcement Services	Name omitted upon UK's request National Intelligence Manager
15.30 – 16.30	Evaluation Team Review	

Agenda: 28 February – EA hosting visit

MUTUAL EVALUATION OF WASTE CRIME

Time	WHAT	WHO	Purpose of Visit
11.30	<i>Mini bus pick up – Emirates Cable car - Western Gateway, Travel to Harbet Road, Enfield. Early Lunch time – provided in the minibus</i>		
12.45-14:00	the North/South London Unit 2, Harbet Rd, EA Boundary London N18 3HU	<p>Name omitted upon UK's request (Area Director)</p> <p>Name omitted upon UK's request, Enforcement Team Leader</p> <p>Name omitted upon UK's request</p> <p>Name omitted upon UK's request</p>	<p>including transport network, development areas and some waste infrastructure. See a large scale high visual impact illegal waste site;</p> <ul style="list-style-type: none"> • Get an overview of how EA works with partners; • Understand what works well and less well in post-Serious Waste Crime targeting this type of crime; • Review Funding for Partnerships and Engagement. • 8 March – London event
14.15-14.30	Drop off Tottenham Station		
			<p>Police and DVSA to work together</p> <ul style="list-style-type: none"> • We got involved in this work when a further initiative called the London Task Force was developed in response to an unprecedented number of cyclist deaths involving HGVs. The partnership is also funded by TfL and includes the DVSA/Met Police and Freight Compliance Unit. • Understand how intelligence sharing can help target waste crime including input from DVSA secondment in NES; • What works well and what could make it more effective

Venue: Rm 401, Nobel House

Date: Friday 1st March 2019

ITINERARY		
9.00	Meet UK Contact Point at reception of Nobel House	
9.00-10.00	Follow up - Prosecutions & judgements	Name omitted upon UK's request Environment Agency Senior Lawyer
10.00-12.00	Wrap up For Delegation to sum up findings (In person with dial in as well)	Name omitted upon UK's request, Deputy Director, Environment Agency Name omitted upon UK's request, Waste Crime Team Leader Representatives from EA, Defra & four nations
12.00 – 13.00	Lunch –will be provided	
13:00	Visit ends	

ANNEX B: PERSONS INTERVIEWED/MET

UK Government Department for Environment, Food and Rural Affairs (Defra)

Lead for reserved UK waste policy and for England for devolved waste policy

Names omitted upon UK's request

Environment Agency (EA)

Competent authority for regulation of the Waste Industry in England

Names omitted upon UK's request

Northern Ireland Executive & Northern Ireland Environment Agency (NIEA)

Policy lead for devolved waste policy and competent authority for regulation of waste industry in Northern Ireland

Names omitted upon UK's request

Scottish Government & Scottish Environment Protection Agency (SEPA)

Policy lead for devolved waste policy and competent authority for regulation of waste industry in Scotland

Names omitted upon UK's request

Welsh Government & Natural Resources Wales (NRW)

Policy lead for devolved waste policy and competent authority for regulation of waste industry in Wales

Names omitted upon UK's request

The visit was supported by volunteers from Defra and the EA, namely

Names omitted upon UK's request

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

List of acronyms, abbreviations and terms	UK or acronym in original language	UK or acronym in original language	English
DEFRA			Department of Environment Food & Rural Affairs
SEPA			Scottish Environmental Protection Agency
NRW			Natural Resources Wales
EA			Environment Agency
WG			Welsh Government
NCA			National crime agency
NIEA			Northern Ireland Environment Agency
HMRC			HM Revenue and Customs
PCWG			Pollution Crime Working Group
WEEE			Waste Electrical and Electronic Equipment
EEE			End of life vehicles
CIWM			Chartered Institution of Waste Management
OCG			Organised crime groups
LRO			Lead Responsible Officer
PND			Police National Database
CPS			Crown Prosecution Service

RIPA			Regulation of Investigatory Power Act 2000
JUWC			Joint Unit for Waste Crime
GAIN			Government Agency Intelligence Network
DVSA			Driver and Vehicle Standard Agency
MOU			Memorandum of Understanding
HGV			Heavy goods vehicles
DVSA			Driver and Vehicle Standards Agency
POCA			Proceeds of Crime Act
JIT			
PPP			Public Private Partnership
PCS			Producer Compliance Scheme
LEA			Law enforcement Agency
ESAET			Environmental Services Association Educational Trust
CEG			Compliance and Enforcement Group
SWEAP			Enforcement Actions Project
AATF			African Agricultural Technology Foundation
CIWM			Chartered Institution of Wastes Management
OPRA			Operational Risk Appraisal
CIWM			Chartered Institution of Wastes Management
EC			European Regulation