



National Audit Office



Investigation into government's actions to combat waste crime in England

Department for Environment, Food & Rural Affairs,
Environment Agency

REPORT

**by the Comptroller
and Auditor General**

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What this investigation is about

1 Waste crime is a serious problem comprising a range of illegal activities. In October 2021, the Environment Agency (the Agency) reported an estimate that waste crime costs the English economy more than £900 million per year. The Agency's 2021 National Waste Crime Survey found that industry stakeholders – local councils, service providers, the waste industry, the farming community, and landowners – perceived waste crime to be widespread, with those from the waste industry estimating that 18% of all waste is illegally managed. Recent data suggest that the costs of addressing fly-tipping and illegal waste sites, the costliest types of waste crime, are increasing.

2 Waste crime can have considerable impacts on the environment and people's lives. Serious breaches of the conditions of environmental permits and exemptions for supposedly legal waste sites can pose a significant risk to human health and the environment, for example, if hazardous waste is inappropriately processed. Illegal waste sites, illegal dumping and fly-tipping can result in waste, again potentially hazardous, being dispersed into the environment. Waste fires can cause significant air, water and land pollution, and affect roads, train lines and amenities, which can greatly affect people living locally. Waste crime puts those waste producers and processors who comply with regulations at a competitive disadvantage.

3 A range of organisations are involved in combatting waste crime in England. The Department for Environment, Food & Rural Affairs (Defra) has policy responsibility for waste, including waste crime, within government. The Agency, an executive non-departmental public body sponsored by Defra, is the principal body responsible for regulating the waste sector. The Agency is responsible for investigating certain types of waste crime and taking action against the perpetrators, including illegal waste sites, illegal dumping (the most serious fly-tipping incidents) and breaches of environmental permits and exemptions. Responsibility for clearing waste ultimately sits with the landowner or land manager, including local authorities and other public bodies such as National Highways. Local authorities also have powers and duties relating to fly-tipping, and deal with the majority of smaller incidents. HM Revenue & Customs (HMRC) has responsibility for pursuing the evasion of landfill tax in England. The Agency works with the police and other partners to investigate and prosecute serious criminality in the waste sector with links to other types of crime.

4 In 2018, the government published a range of documents setting the course for waste crime policy. In its 25-Year Environment Plan, government set the ambition to eliminate waste crime and illegal waste sites within 25 years.¹ The Resources and Waste Strategy reiterated that goal and set out government's approach and planned action to combat waste crime over the short to medium term.² The strategy built on the findings of the *Independent review into serious and organised crime in the waste sector*,³ commissioned by Defra and published in 2018, and Defra's post-implementation review of the Waste (England and Wales) Regulations 2011.⁴ The Environment Act (2021) includes changes to elements of the law on waste enforcement and regulation.

5 We have carried out this investigation in response to concerns expressed to us by MPs about government's oversight of the waste industry and how action is taken to address illegal activity. Their concerns related partly to a HMRC investigation into suspected systematic abuse of the landfill tax system referred to as Operation Nosedive, which cost more than £3 million but ended in plans to pursue prosecutions being abandoned.

6 Our report examines:

- the prevalence of waste crime across England, recent trends, and the economic costs of waste crime. We report on seven categories of waste crime, based on categories used by the Agency and HMRC (**Figure 1** overleaf);
- how the Agency, HMRC and local authorities are tackling waste crime, the outcomes of their waste crime investigations, subsequent enforcement actions and the involvement of organised crime groups; and
- government's progress against its waste crime targets and the waste crime actions set out in the 2018 Resources and Waste Strategy, and progress against issues related to waste crime that we raised with Defra and the Agency in 2019 (Appendix Two).

7 We cover waste crime in England. Our report is factual and does not seek to examine and report on value for money. We have not sought to assess the effectiveness or adequacy of waste regulation. We do not examine littering, which is covered by the government's separate 2017 Litter Strategy for England.

1 HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment*, January 2018.

2 HM Government, *Our waste, our resources: a strategy for England*, December 2018.

3 Department for Environment, Food & Rural Affairs, *Independent review into serious and organised crime in the waste sector*, November 2018.

4 The Waste (England and Wales) Regulations 2011 are available at: www.legislation.gov.uk/ukSI/2011/988/resources

Figure 1
Categories of waste crime covered in this report

Category	Description
Landfill tax non-compliance	Includes falsifying records so landfilled waste is not declared, and misclassifying landfilled waste as less polluting material so that it is subject to a lower level of landfill tax. There is overlap with other types of waste crime such as illegal waste sites where these engage in illegal landfilling.
Illegal waste sites	Waste sites operating without a permit from the Environment Agency. These sites may involve a range of activities, including illegal storage of waste and illegal burning of waste.
Illegal export of waste	This includes misdescribing waste to avoid notification requirements, restrictions or prohibitions. For example, claiming that a shipment of household waste is cleaned and sorted plastic.
Abuse of exemptions to the requirements for waste permits	Operating without a waste permit or relying on an exemption when this does not apply. For example, storing a larger quantity of a specific type of waste, or for longer, than an exemption would allow.
Offences related to producer responsibility obligations	Primarily fraud against schemes to enable producers of certain types of waste to fulfil their obligations to finance a share of the collection and treatment of their product. For example, by falsely claiming to have recycled relevant waste to receive funding from a producer compliance scheme. May also include some related permit breaches.
Fly-tipping and illegal waste dumping	Both involve illegally depositing waste not as part of a waste site. Fly-tipping incidents, dealt with by local authorities, range in size from a single black bag or a single item (for example, a mattress or fridge) upwards. The most serious incidents, such as those involving multiple lorry loads, are dealt with by the Environment Agency and are termed illegal dumping.
Serious breaches of waste permit conditions at legal waste sites	Non-compliance with permit conditions at regulated waste sites, where the Environment Agency judges this could foreseeably result in at least a significant impact or effect on the environment, people or property.

Source: Environment Agency and HM Revenue & Customs documents

Summary

Key findings

The scale of waste crime across England

8 The Environment Agency (the Agency) and the Department for Environment, Food & Rural Affairs (Defra) do not currently have the data they need to understand the full scale of waste crime. While they understand its nature and complexity, they acknowledge that the waste crime data they currently collect do not give an accurate picture of the actual incidence of waste crime because of under-reporting of, for example, fly-tipping incidents on private land and undiscovered activity such as illegal waste sites. Defra acknowledged the seriousness of the national deficiency in high-quality data on waste, regarded as essential to effective policymaking, in its Resources and Waste Strategy. As well as developing electronic waste tracking proposals, Defra and the Agency are developing new waste crime metrics (paragraphs 1.2 and 3.3 to 3.5).

9 There are particular gaps in the Agency's understanding of the scale of waste that is illegally exported and producer responsibility offences. The Agency intercepts between approximately 200 and 450 containers per year containing waste that does not comply with waste export regulations, such as untreated and hazardous waste that cannot legally be exported for disposal. The scale of waste that is illegally exported without interception is not known. Illegally exported waste can cost considerable amounts to return to England; can result in significant environmental damage and harm to human health in the destination countries; and leads to lost income for legitimate waste operators. Producers of packaging, electrical equipment, batteries, hazardous substances and vehicles are required to minimise the waste generated by their products and financially support the products' ultimate recycling. The Agency has recently improved its understanding of producer responsibility offences, such as generating false evidence of recycling, but it has not estimated their prevalence (paragraphs 1.8, 1.9 and 1.12).

10 The number of active illegal waste sites known to the Agency has steadily gone down over the past three years. The Agency stops illegal activity by closing illegal waste sites or working with the operators to bring the sites into compliance. At the end of 2020-21, the Agency was aware of 470 active illegal sites across England, down from a recent peak of 685 at the end of 2018-19. The Agency cautions that, because of the COVID-19 pandemic, the number of illegal waste sites reported for 2020-21 is unrepresentative. The number of reports fell and the Agency's officers were less able to travel to substantiate them (paragraph 1.7).

11 The Agency believes there is widespread abuse of permit exemptions.

Certain waste activities can operate under a waste exemption instead of requiring a permit. Exemptions can be registered with the Agency at no cost and without any verification checks. In 2015, the Agency found that around 30% of sites examined were potentially breaching exemptions. The number of serious breaches of the conditions of environmental permits by waste operators investigated by the Agency has been increasing since 2017 (paragraphs 1.10 and 1.11).

12 Reported fly-tipping incidents have been increasing over the past decade.

The number of fly-tipping incidents reported by local authorities has been broadly increasing since 2012-13, reaching more than 1.13 million incidents in 2020-21. In 2020-21: most fly-tipping incidents involved household waste; the most common place for fly-tipping to occur was on highways; and incidents equivalent in size to a 'small van load' were the commonest category. Local authorities reported that clearing the largest categories of fly-tipped waste cost them £11.6 million in 2020-21 (paragraphs 1.13 to 1.15).

13 A large increase in landfill tax rates has increased the potential financial return to criminals. Between 2004-05 and 2014-15, the standard charge rate for waste that can generate greenhouse gases increased faster than inflation, from £15 per tonne to £80 per tonne, while the rate for inactive waste increased from £2 per tonne to £2.50 per tonne. Since then, both rates have risen with inflation. The tax has diverted waste from landfill to other less environmentally harmful methods of waste management such as recycling, as intended. However, the increase in the rate of landfill tax has increased the potential financial return from illegal actions that evade landfill tax, such as misdescription of waste, illegal waste sites and some fly-tipping. HM Revenue & Customs (HMRC) estimates that £200 million of landfill tax due was not collected in 2019-20. HM Treasury is reviewing landfill tax in England and Northern Ireland to ensure the tax continues to support the government's environmental objectives (paragraphs 1.5 and 1.6).

14 Organised crime groups have become more involved in waste crime. Based on interviews, the 2018 *Independent review into serious and organised crime in the waste sector* concluded that over preceding years there had been a steady rise in organised, large-scale waste crime. The review found that a consequence of landfill tax has been to increase the attractiveness of the market to organised crime, with very few barriers to entry. Intelligence-sharing by environmental agencies across England and the devolved nations, and the National Crime Agency through the Joint Unit for Waste Crime, has improved understanding of the involvement of organised crime groups in waste crime. Of the 60 organised crime groups monitored for environmental crime (which includes waste crime) across England, Wales and Northern Ireland, at least 41 operate within England. These 60 groups are extensively involved in other types of crime. For example, 70% are involved in specialist money laundering (paragraphs 2.17, 2.18 and 3.10).

Sanctions used against waste offenders

15 The most common sanctions are issuing advice and guidance and sending warning letters. In line with government policy for regulators to take a risk-based and proportionate approach to enforcing compliance, the Agency's policy is to give advice and guidance or issue a warning to bring an offender into compliance where feasible, only moving to more formal sanctions, such as cautions, and potentially criminal proceedings, in more serious cases or where informal approaches have not worked. Over the period 2014-15 to 2020-21, the Agency issued advice and guidance in 52% of investigations into illegal waste sites and in 53% of investigations into breaches of environmental permit conditions. Sending warning letters was the second most common action for both types of crime. The Agency's responses to illegal dumping show the same pattern. In contrast, the Agency uses civil sanctions in most cases of producer responsibility offences: between 2014-15 and 2020-21, the Agency imposed civil sanctions in 57% of the 334 producer responsibility offence cases where it investigated and took action (paragraphs 2.2, 2.3, 2.8, 2.10 and 2.11).

16 The Agency has increasingly focused its prosecutions on just the most serious cases. The Agency told us that criminal prosecutions are resource-intensive and time-consuming, requiring high evidential standards. Between 2014-15 and 2020-21, the Agency issued cautions or pursued prosecutions in around 10% of investigations into illegal waste sites and in around 8% of investigations into breaches of environmental permit conditions. The number of investigations undertaken by the Agency that have led to the prosecution of companies has dropped from a peak in 2007-08 of almost 800 to 60 or fewer per year since 2017-18, while the length of time to complete investigations has been increasing. The average fines awarded per prosecution have been broadly increasing, as the Agency has prioritised the most serious cases for prosecution (paragraphs 2.2, 2.7, 2.11, 2.14 and 2.15).

17 Local authorities make extensive use of fixed penalty notices against fly-tippers. Between 2014-15 and 2020-21, local authorities recorded seven million incidents of fly-tipping and investigated 31% (2.2 million) of these, although the proportion investigated fell from 35% to 28% over the period. Of nearly one million actions taken in response by local authorities, the most common were issuing a fixed penalty notice (43%) or a warning letter (39%). In contrast, only 2.4% resulted in a caution or prosecution. Nearly three-quarters of prosecutions led to a fine of £500 or less, but there were 10 fines of more than £20,000, 163 custodial sentences, and 1,494 vehicles were seized (paragraphs 2.5, 2.9 and 2.12).

The government's progress in combatting waste crime

18 Tackling misdescription of waste is the Agency's highest waste crime priority and illegal dumping is its lowest. In 2021-22, the Agency assessed 'misdescription of waste' to be the category of waste crime with the highest risk score. This category encompasses misdescribing waste as less polluting material to attract a lower rate of landfill tax. The next highest risk score is for illegal waste sites, followed by illegal export of waste, exemption abuse, producer responsibility offences, and illegal dumping (the most serious cases of fly-tipping). Permit breaches are not risk-assessed as a crime type (paragraph 1.3).

19 Defra's progress in implementing the actions in the Resources and Waste Strategy has been slower than it anticipated, but it is developing a methodology for assessing progress towards eliminating waste crime. In its November 2021 progress report, Defra reported publicly on two outcomes – a reduction in the number of illegal waste sites since 2018-19 and a slight increase between 2018-19 to 2019-20 in the number of reported fly-tipping incidents on public land. Defra acknowledges these measures do not provide a comprehensive assessment of progress towards the goal of eliminating waste crime by 2043 and is developing new progress measures. The need for Defra officials to support COVID-19 response work has slowed progress in implementing the actions in the strategy. Some actions have been completed; many are at the consultation stage. In January 2022, Defra began consulting on several proposals, including mandatory digital recording of waste movements. It intends to introduce statutory instruments over 2022 and 2023, for example, to reform the existing regime for environmental permits. The Agency, working with the police, has overcome earlier difficulties in finding workable secure solutions to accessing police databases and systems and now has access to them. Defra has commissioned an evaluation of the Resources and Waste Strategy to complete by 2027 (paragraphs 1.14, 3.2, 3.3, 3.5 and 3.6).

20 The Joint Unit for Waste Crime has created a multi-agency approach to combatting the involvement of organised crime in the waste sector. Establishing the Joint Unit, created in 2020, was one of the central recommendations from the 2018 *Independent review into serious and organised waste crime*. It consists of nine strategic partner organisations that work together to combat waste crime. A team of seven employees from the Agency leads its own investigations and supports investigations led by the partner organisations. It has reported on its activity to combat waste crime committed by serious and organised crime groups. For example, over the first half of 2021-22, it led or took part in 24 coordinated days of action with partners to prevent and disrupt the involvement of organised crime groups in the waste sector, with 35 arrests linked to these (paragraphs 3.9 and 3.10).

21 HMRC is refreshing its plans to combat landfill tax non-compliance.

HMRC has historically focused on raising tax revenue that is legally due and has not successfully prosecuted anyone for landfill tax non-compliance. It is updating its plans for combatting landfill tax non-compliance to reflect its improved understanding of the risks around the tax from its compliance interventions, including, since 2018, in relation to illegal waste sites, and from better cross-government working and information sharing. It is a partner in the Joint Unit for Waste Crime, which HMRC officials believe has greatly reduced the risk of investigations like Operation Nosedive failing to end in action against the perpetrators of landfill tax non-compliance. HMRC has ongoing investigations related to landfill tax non-compliance, but there have not yet been any prosecutions. It has started developing new compliance products and has plans to raise awareness about organisations' obligations around landfill tax (paragraphs 2.4, and 3.11 to 3.13).

22 Defra does not collate total spending on tackling waste crime across the many organisations involved, and most have experienced budget reductions since 2010-11.

Organisations involved in dealing with waste crime allocate core funding and staff time across all their activities in line with their priorities. Apart from the Agency they have not received funding ring-fenced for tackling waste crime and they are not able to identify how much they have spent on it. Most have experienced recent budget reductions. HMRC baseline funding has fallen since 2010-11. Overall funding for local authorities has fallen since 2010-11, particularly funding available for non-social care services. Police funding fell in real terms after 2009-10. The Joint Unit for Waste Crime does not receive any dedicated funding from government. Since 2011-12, the Agency's core funding for environmental protection, covering waste and other areas of work, has fallen, but over this period government provided it with ring-fenced grants for tackling waste crime. The Agency's total funding allocated for enforcement and waste crime rose from around £12 million in 2010-11 to £17 million in 2018-19, remaining at this level in cash terms through to 2021-22. From 2022-23, the Agency's previously ring-fenced funding for waste crime will be incorporated into its core funding. HMRC told us that despite its reduction in funding, it has increased the number of staff dedicated to combatting landfill tax non-compliance. Since 2019, the Home Office has provided additional funding to support the recruitment of extra police officers (paragraphs 3.14 to 3.18).

Concluding remarks

23 While Defra and the Agency have a good understanding of the nature and complexity of waste crime, the Agency does not currently have the data it needs to identify and assess the full extent of all waste crime, which makes it difficult to prioritise its response effectively. The Agency acknowledges that the more it looks for incidents of non-compliance with waste regulations, the more waste crime it finds, and that for some types of waste crime the reported statistics understate the true extent. Available evidence indicates that the incidence and cost of dealing with waste crime across England is increasing. Landfill tax changes have, as intended, led to a reduction in landfill volumes but have also increased the financial incentives to commit waste crime. Barriers to operators entering the waste sector are low, and sanctions and prosecutions for committing waste crime may not be acting as effective deterrents.

24 The goal of eliminating waste crime provides the Agency with a clear vision to inform its strategy and performance management. The introduction of the Resources and Waste Strategy in 2018 was an important step forward although it was not intended to include all the actions needed to eliminate waste crime. Government's progress with implementing the actions has been slower than it had hoped. However, the Joint Unit for Waste Crime is showing early signs of progress, and Defra has strengthened requirements for obtaining environmental permits and is planning further reforms. The government plans to review progress regularly and consider what further actions are needed, but it does not yet have appropriate performance indicators to support this.

25 We have identified areas where Defra and the Agency, working with HMRC and others, could make further progress:

- Improve data on waste crime and strengthen understanding of the resources being used to tackle it, so that resources can be targeted more effectively.
- Better understand the relationship between landfill tax rates and the incentives to commit waste crime.
- Put progress indicators in place for the waste crime elements of the Waste and Resources Strategy as soon as possible.
- Make use of data from police databases and systems to enhance intelligence gathering and improve collaboration with partners.
- Establish a more stable footing for the Joint Unit for Waste Crime's funding.