



HM Government



Cutting Red Tape

Review of the waste and recycling sector

March 2016

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Introduction

This Parliament, the Government has committed to cut £10bn of red tape as part of its plan to back British business and boost productivity.

The Cutting Red Tape Waste Review forms part of this commitment. It has asked businesses, trade associations and industry experts to tell us where regulation causes barriers to growth, innovation and productivity in the waste sector. Ineffective regulation is not just about rules and legislation but also how it is practically implemented and enforced by regulators.

We received responses about waste crime as well as regulatory burdens. These two issues are closely related. By focusing on bad behaviour in the sector, we can be much lighter touch with those who comply. This review has therefore identified numerous issues and themes – from specific issues regarding the current permitting system, the producer responsibility regulations and inspections regime to wider more strategic issues such as the duplication of regulation and the interpretation of EU Directives.

We have listened to and accepted these findings and we accept the challenge to make changes to the way we regulate. Smart and proportionate regulation, effectively enforced, is essential in managing waste. It safeguards the environment and human health as well as protecting legitimate operators from the small minority who break the rules. A more efficient application and enforcement of regulation can not only save money for businesses and allow them to grow and innovate, but also allow government to focus its resources on pursuing and prosecuting those who break the law and undermine investment by legitimate operators.

We have developed an ambitious plan of action to tackle the issues identified. We are confident that by acting on and addressing the findings from this review, we will develop a more proportionate, coordinated and risk based approach to the regulation of the waste sector that will benefit business and regulators.

Executive summary

This Cutting Red Tape waste review is headed jointly by the Rt. Hon. Matthew Hancock MP, Minister for the Cabinet Office and Paymaster General, and Rory Stewart MP, Parliamentary Under Secretary of State for Environment and Rural Affairs. The review identified numerous issues and themes and these are presented as findings in [section 2](#) of the report.

A number of respondents questioned whether the Government should be undertaking another review into the waste sector at this time, and whether its focus should instead be on enforcing the current regulatory framework. However, the Government believes that a more efficient application and enforcement of regulation can not only save money for businesses and allow them to grow and innovate. All those who responded did raise issues around the impact, enforcement and operation of the current regulatory regime and how it could be reformed or improved. The vast majority of the comments and submissions received show that the sector understands the importance of the regulatory framework and the role of regulators, but also believes that operators who demonstrate good, compliant behaviour should benefit from the principle of earned recognition.

[Section 3](#) of the report contains Government's response to the findings in the review and commitments to investigate and implement changes.

Section 1: Background

Purpose of the Cutting Red Tape Reviews

The Government has made a commitment to save £10bn from the cost of regulation to business in the lifetime of this Parliament. To help deliver these savings, the Government announced a programme of Cutting Red Tape reviews into six business sectors in its [Productivity Plan](#) published by Rt. Hon Sajid Javid MP, Secretary of State for Business, Innovation and Skills.

Each of the reviews sought to identify bureaucratic and regulatory barriers to growth, innovation and productivity to enable the Government to cut red tape by simplifying, removing or reducing burdensome legislation, regulations, guidance or codes.

The Cutting Red Tape Review of the Waste and Recycling sector

The Government chose the sector as one of its first phase of Cutting Red Tape reviews because of its significant contribution to the UK economy: the Office of National Statistics' latest annual business survey shows the waste sector as having 5,261 businesses, employing 106,000 people with a combined turnover of £18.5bn¹. Waste regulation impacts on businesses across the economy, from small retailers to multinational manufacturing companies.

This report summarises the findings from the review's call for evidence on the impact and consequences of current regulatory implementation and enforcement practice as informed by the sector. The report is accompanied by a set of responses from the Department for Environment, Food and Rural Affairs, the Environment Agency and the Department for Business, Innovation and Skills.

Sector coverage of the review

The review's call for evidence was open from 16 July to 14 September 2015. The review team contacted over 100 stakeholders across the waste sector including trade associations such as the Environmental Services Association and the Organics Recycling Group, multinational businesses such as Cemex, British Airways and Samsung and smaller medium-sized enterprises such as EcoTech Ltd. The review received 90 responses made through the Cutting Red Tape website and direct submissions to the Cutting Red Tape mailbox. To clarify the scope of this review did not cover household waste.

¹ ONS Annual Business Survey, UK Non-Financial Business Economy, 2014 Provisional Results, section E, sub-section 38: Waste collection, treatment and disposal activities; materials recovery.

Statistics in this report

CRT waste review survey

The review team launched a separate industry survey questionnaire across the sector in order to identify the cost impacts of some of the issues that emerged following the call for evidence. The questionnaire had a total of 182 respondents – from micro-businesses with fewer than 10 employees to larger businesses employing hundreds of employees in various locations.

Sources, caveats and assumptions

The industry survey questionnaire was sent out to businesses in the waste sector in September and October 2015. Although the questionnaire had a total of 182 respondents, not all participants responded to each individual question. For example, for 6 of the 11 questions analysed for the headline results, the number of respondents was under 100. Numbers presented are based on the assumption that questionnaire results can be extrapolated to the sector as a whole, and that the average costs experienced by respondents is similar to average costs experienced by businesses in the industry as a whole. Results to the survey should be treated as indicative and with caution as they may not be representative of the industry as a whole.

Results from the survey have been weighted according to employment size, to account for the fact that there are differences between sample and underlying business population with respect to the distribution of businesses into micro, small, medium and large. Estimates based on the responses linked to specific themes (for example the definition of waste and waste permits) appear several times in this report.

Results for the industry as a whole have been derived using the business population according to the Inter Departmental Business Register (5,250 businesses²), with the exception for costs related to permitting, where a smaller business population of 3,000 has been used. This reflects input from Defra that 3,000 is a more realistic business population for permitting.

Defra's assessment of regulation costs

Defra conducts an ongoing assessment of the costs and benefits of the stock of its regulations. The assessment covers all the regulations for which Defra is responsible where business is potentially required to take some action. The results of the first update from this survey were published in February 2015. The overall direct costs to the waste sector, net of benefits, were estimated to be £438m.

² This has been used to extrapolate the responses to the survey, we acknowledge that there are many more businesses who interact with waste regulation.

This figure, however, is inevitably 'fluid', as the number and nature of regulations change over time, with some revoked and others superceded. These figures only include direct costs and benefits to businesses, but exclude the indirect impacts. It should also be noted that monetised wider environmental and social benefits of regulation are not included in the published figures.

Defra intend to review the direct and indirect costs and benefits of waste regulations and where these can be monetised to produce new values so that there is a more robust estimate of the overall costs, including the environmental and social benefits.

Section 2: What we heard

Headline findings

This section summarises the key evidence gathered through this review. It brings together input from direct discussions (including workshops and roundtables), comments posted on the dedicated website and sent to the Cutting Red Tape mailbox or directly to the Cutting Red Tape review team. The principal themes emerging from the review were:

- **Definition of waste:** decisions on whether or not materials are waste or have ceased to be waste are burdensome, costly and time consuming.
- **Waste recovery or disposal determinations:** the approach to determining whether an activity involving the permanent deposit of waste on land is waste recovery or waste disposal is inconsistently applied.
- **Hazardous waste:** the rules for managing wastes that are designated as 'hazardous' and the benefits of registration of sites that produce hazardous waste are disproportionate compared to the levels of risk involved.
- **Permitting:** the length of time taken to process permit applications, inconsistency between officials and the use and application of 'standard rules'.
- **Guidance:** the current guidance that is available is not encouraging new techniques, practices or innovation and is not easy to locate.
- **Exemptions:** the requirement for registering exemptions for low-risk activities creates unnecessary burdens compared to the levels of risk.
- **Fuel from waste:** the way waste products are regulated and classified and the lack of incentives act as barriers to creating a domestic market for fuels derived from waste.
- **Producer responsibility:** the systems around delivering producer responsibilities are too complex, costly and burdensome.
- **Inspections:** some inspections are being undertaken by officials without the necessary qualifications, experience or training to properly or accurately carry out an assessment. There is also a perceived lack of a risk-based approach to compliance visits and inspections.
- **Interpretation and implementation of EU Directives:** The interpretation of EU Directives in UK law means that there is little or no flexibility in how they are complied with and therefore places UK businesses at a disadvantage compared to competitors in other member states.

These themes are explained in more detail below. In addition to these headline findings, we also identified further themes and issues which emerged from the review, but that were not raised as often.

Definition of waste

Respondents thought that defining certain materials as waste in strict accordance with the European Waste Framework Directive is at times arbitrary, with no clear environmental or health benefit. This introduces significant regulatory burdens, potentially preventing beneficial re-use of materials or holding up innovation to turn more 'waste' into a resource.

Although there was support for approaches by the Government to free certain materials from waste controls, respondents also told us that there is insufficient transparency in the information requirements when the end of waste status of a material is assessed at a national level. A number of respondents to the review made a case for specific materials to be freed from waste controls altogether, on the basis that they should be considered as by-products or products. For example, responses from the water industry highlighted a number of issues around the co-digestion of wastes and the way that sewage and waterworks sludge is regulated.

As part of the review we conducted a survey which asked businesses about the impacts of the definition of waste. Responses to the survey indicate that:

- Around 32% of businesses in the waste sector feel that the way their waste is defined is not proportional to risk, or reflective of the nature of their business activity;
- There are additional costs and fees to industry from lost benefits from alternative beneficial uses, for treatment or disposal, or lost business opportunities; and
- The definition of waste imposes costs to industry as a whole of around £163m per annum.

Waste recovery or disposal determinations

We were told that there is a conflicting approach between the planning systems of relevant Local Authorities and the Environment Agency's permitting system, and how these impact on environmental and economic outcomes. If the Environment Agency's assessment is that restoration will be subject to a permit for a disposal as opposed to recovery operation, planning permission for the whole development may be refused. The general view was that there has been a failure to recognise that the use of wastes for quarry restoration should, in most cases, be regulated as a recovery operation. One company told us that on an individual site basis, the implications of this interpretation can increase operational costs by over £150,000 without any discernible improvement or reduction in environmental risk. Some respondents also criticised the transparency of the Environment Agency's decision-making process.

Hazardous waste

A number of issues were raised around the rules for managing wastes that are designated as 'hazardous'. Several respondents told us that the requirement to register sites that produce hazardous waste was unnecessary, and some questioned the frequency of the requirement for re-registration as a producer of hazardous waste and the perceived benefits of registration. We also received responses suggesting that it would be a mistake to remove the requirement to register, as it would merely shift the burden of data collection from producers to the waste management sector.

The classification of WEEE

We were told that if unsorted small mixed WEEE contains even small quantities of hazardous materials alongside largely non-hazardous items, the whole load must be consigned as hazardous waste unless those items are removed. This was perceived to be overly burdensome compared to the environmental risks. The British Metals Recycling Association told us that:

“The definition of what is hazardous, and what is not hazardous, has no de minimis. Therefore it is possible that an entire load (e.g. 25 tonnes) of light iron containing Large Domestic Appliances might be regarded as ‘hazardous waste’ if it contains a single hazardous element securely bound in or on a component.”

Respondents also questioned the level of environmental risk related to the collection of certain end of life household appliances that are classified as hazardous waste, leading to significant administrative burdens and costs.

Hazardous waste consignment notes

A number of respondents told us that the consignment notes system for hazardous waste is too bureaucratic. For example, the consignment note tracking system is still paper-based and there is a requirement for using multiple consignment notes for recording the movement of small amounts of waste oils and related materials in the plant and equipment hire sector. Hire Association Europe told us:

“This can involve the removal of relatively small amounts of oil, fuel, hydraulic fluid, parts and use of contaminated material such as rags – which is then taken back to the depot and held in a specialist facility for bulk collection, responsible treatment and recycling by a registered waste oil carrier...the Environment Agency requires a Consignment Note for each movement of any ‘hazardous waste’ from business premises. This would include moving such waste from a customer’s property or site to a hire depot and then for each subsequent movement of the waste until it reaches a final destination.”

Permitting

Permitting was the most frequently raised issue by respondents to the review, particularly the length of time taken to process permit applications and the impacts that this can have on planned and existing activities.

Duly making' applications

We were told that there are delays in the permitting process, particularly in the 'duly making' stage³ at which increasing demands are being made for more detailed information.

Inconsistency between Environment Agency officials

Questions were also raised over the effectiveness and value of pre-application meetings, particularly when the central Environment Agency permitting team may not always agree with advice provided by local Environment Agency officers.

National inconsistency

A number of respondents told us of inconsistencies in the permitting process across geographical areas. We were also told that large numbers of former waste management licenses which were issued before the current Environmental Permitting Regulations, had not been updated since they had come into force.

Standard rules

Standard rules⁴ were raised by a number of respondents. Businesses were generally supportive of the approach, as long as the rules could be met by a sufficient number of operators. Some respondents wanted to see more standard rules set, particularly for activities that were formerly exempt from permitting. There were also concerns raised about the perceived regulatory gap between waste exemptions, standard permitting rules and standard rules produced for waste recovery activities and the lack of a balanced approach to these operations. We were also told of delays to the revision of standard rules, creating uncertainty for some businesses, and disparity in application fees between a standard and bespoke permit if a site could not meet just one of the standard rules risk criteria.

Other issues raised about the permitting regime were the difficulties related to the revocation of permits where the activity could subsequently be carried out under an exemption, the non-alignment of the environmental permitting framework to the management of wastes by agricultural businesses, and the requirements and length of time taken to obtain a regulatory position statement for an operational scale trial.

³ This is where applications need to be assessed by the Environment Agency to decide if they are complete and contain all of the information needed to start the process for making a determination. If an applicant has submitted a complete application, the determination timer is backdated to the date of receipt; therefore no delay is incurred in the overall process.

⁴ Standard rules are used instead of site-specific permit conditions in industry sectors where a number of facilities e.g. metal recycling sites share similar characteristics in relation to environmental hazards.

As part of the review we conducted a survey which asked businesses about the impacts of the permitting system. Responses to the survey indicate that:

- On average, it takes businesses in the waste sector around 13 weeks, from application to receipt, to obtain a waste permit;
- Around 75% of businesses feel that permit applications are subject to unnecessary delays (59% feel that they are "always" delayed, 16% feel that they are "sometimes" delayed);
- Around 29% of businesses feel that permit applications are not processed effectively and have unnecessary delays; and
- Assuming around 3,000 businesses engage with the permitting process, evidence suggests that this causes additional costs to industry as a whole of £54m per annum.

Guidance

Several respondents raised the availability and accessibility of guidance, stressing the need for it to be clear, concise and user-friendly and pointing out the importance of industry engagement on draft guidance at an early stage. We were also told that although some guidance is necessarily complex, it must balance the needs of the intended users so that it is easy to access and understandable, but with the level of detail required to make it useful. We were also told that guidance that is currently available does not encourage new techniques, practices or innovation. A company told us:

“We welcome the measures taken to clarify basic guidance using the gov.uk web portal but still have concerns about the detailed guidance behind this. The extensive range of document formats and naming/numbering schemes for environmental and waste legislation is confusing. The content of some guidance documents is overly complex and likely to result in poor outcomes as waste producers and managers do not understand what is required or cannot apply the requirements in practice.”

As part of the review we conducted a survey which asked businesses about the impacts of guidance. Responses to the survey indicate that:

- Businesses spend around 40 days per annum trying to find and interpret guidance in order to be compliant with waste regulation.
- Around 66% of businesses feel that guidance is either difficult to find or not sufficiently clear.
- Businesses estimate that as a result this takes up 20 days per annum at a total cost to the sector of £10m per annum.

Some respondents felt that the lack of statutory guidance had led to confusion and inaction in the sector. A number of respondents also questioned that Government and its agencies no longer produce best practice guidance, believing that they should

have retained this role, with the support of businesses and their representatives, to ensure that documents had sufficient credibility and force. Others were concerned over the Government's 'smarter guidance' policy saying that a number of documents have either been pared down to a degree that compromises their usefulness or removed altogether, having the opposite effect to that desired.

Exemptions

Respondents raised the issue of the need or value in registering exemptions for certain types of low risk activities and how this does not take account of the risks associated with the waste or the businesses involved.⁵ For example:

- Making small scale composters (such as primary schools) undertake a costly and cumbersome bureaucratic process;
- The requirement to register for burning brush on farms; and
- Crushing bricks for reuse on a construction site.

The Country Land and Business Association told us:

“Industry has complained about the cost and cumbersome procedures for applying or registering for highly specific licences and exemptions, particularly where these relate to activities that provide public benefits but that are tangential to the main farm business, e.g. disposal of hedge clippings. An alternative to specific licences is a ‘general (or standard) licence.’”

Questions were also raised on the value and use of information that was generated from the exemption regime. We were told that the current regime places time limits on exemptions i.e. exemptions are only issued for three years whereas waste permits are not time-limited. It was also mentioned that, when the ‘old exemptions’ were changed, some were not replaced by standard permits, resulting in some businesses now being required to obtain a bespoke permit for a previously exempt activity.

Some of those who we spoke to were more positive about the current exemptions system. For example, welcoming the changes brought about by the Environmental Permitting Regulations, which has made the costs of compliance more consistent. Others raised the issue of the possible increase in waste crime if the exemptions and standard permitting regimes are relaxed or scrapped but also suggested that the level of detail required for exemptions should be reviewed.

As part of the review we conducted a survey which asked businesses about the impacts of exemptions. Responses to the survey indicate that:

- On average 15 hours per annum are spent on registering waste exemptions.

⁵ Waste activities can only be exempt from the need to hold a permit where the establishment or undertaking has been registered in relation to the activity.

- 28% of businesses feel that registering for waste exemptions for all the activities they currently have to register for is not proportional to the associated business risk.
- Our evidence suggests that industry as a whole could save around £316,000 per annum if the waste exemption requirements were made more proportionate.

Fuel from waste

Several of our respondents – and especially those involved in water treatment and anaerobic digestion – raised issues around the way that fuels from waste products are regulated and classified, and the lack of incentives for and barriers to creating a domestic market for fuels derived from waste. Overall the comments suggested reviewing the way biofuels are classified and regulated to encourage more waste products to be diverted from landfill, as well as providing non-fossil based fuel. For example, Water UK told us:

“many companies believe that the regulatory framework that has defined biogas as a waste is proving counterproductive to meeting waste reduction objectives, and is stifling the innovation that could develop re-use options... the current process to reclassify a waste through ‘end of waste’ protocols is lengthy and bureaucratic, which again is restricting entrepreneurship in developing processes that can treat or manage wastes.”

We were also told that currently the main outlet for Refuse Derived Fuel is export only and we do not have sufficient UK outlets and that a reduction and a simplification of the bureaucracy involved in establishing waste-to-energy plants (e.g. including having to deal with multiple regulators and authorities) would stimulate the domestic market and promote innovation.

Producer responsibility

One of the most common issues raised by respondents to the call for evidence was regarding the Producer Responsibility Regulations on packaging and Waste Electrical and Electronic Equipment (WEEE). Respondents were generally supportive of the principles behind the Producer Responsibility Regulations i.e. to reduce the amount of waste that is created and to stimulate and encourage recycling. However a theme running through the responses was that the systems around delivering producer responsibility are too complex and burdensome.

Packaging

We heard from several respondents that the requirements of the Producer Responsibility Regulations for Packaging were disproportionate. For example regulations make no allowance for ‘small producer’ status so all businesses regardless of size have to meet the requirements of the regulations in exactly the same way. We were also told that the complexity of the process to gain a Packaging Waste Recovery Note (PRN) or Packaging Waste Export Recovery Note (PERN) accreditation acts as a disincentive to businesses who are considering accessing the system and could be streamlined, creating savings for business. The equivalent value of PRN and PERNs was also raised as an issue, in particular how this provides

no incentive for waste recovery companies to sell to UK recyclers, thereby depriving them of quality 'feed stock'.

Waste Electrical and Electronic Equipment (WEEE)

We heard from several business (including those operating WEEE compliance schemes) and trade associations about their experiences of complying with the WEEE regulations. There was a generally positive response to the changes made in 2013 to the WEEE regulations, however several of our respondents believe that the changes that were made at that time could have gone further and created even greater savings for business, for example by introducing a system of matching producer compliance schemes to collectors⁶ which would remove more unnecessary costs because buying the evidence of WEEE recycling under the current system remains higher than the actual costs of collecting and treating WEEE.

We were also told of other aspects of the WEEE regime that were causing additional costs to businesses. For example, the differing interpretation of the WEEE regulations by business and the regulators, and the disproportionate actions on the part of regulators arising as a consequence of a lack of understanding in the way that business operates.

Inspections

We have been told that there is an issue of some inspectors visiting sites and assessing compliance without the necessary qualifications, experience or training. This can lead to an inconsistent application of standards and requirements across England and causes businesses interruptions in operations, leading to some expensive and unnecessary paperwork at sites.

Respondents have told us that their perception is that no risk assessment is used or appears to be used by the Environment Agency when deciding on which sites, operations or businesses should be inspected, and this results in businesses that have shown themselves to be good and compliant operators over a number of years, still being inspected as often as if they were new operators, thereby not allowing them to benefit from any earned recognition of that good behaviour. Veolia told us:

“Work began in 2011 on an Environmental Permitting Assurance Scheme, which aimed to reduce the inspections burden on compliant operators and the Environment Agency. The benefit to the operator included reduced audit frequency, a possible reduction in subsistence fees and recognition of good compliance (similar to the UK Farming Red Tractor scheme). Trials were run and seemed to have been reasonably well received by those who took part, including Veolia, however there seems to have been little follow-up since, despite the sector's keenness to push forward with this project.”

⁶ A matching scheme would ensure collections by any given compliance scheme are reflective of the size of their membership and of the types of product their members place on the market.

We were also told that when sites are visited by Environment Agency officers, they raise any issues by filling in a Compliance Assessment Report (CAR) form⁷ and that these forms are often posted out to sites weeks, if not months after the initial visit and can bear little resemblance to the actual visit, as well as raising issues not raised at the time of the inspection. This can mean that businesses are then faced by unexpected costs of either undertaking remedial action or challenging the Environment Agency's decision.

As part of the review we conducted a survey which asked businesses about the impacts of inspections. Responses to the survey indicate that:

- Businesses spend around 120 hours, per annum dealing with waste inspections (e.g. preparing for inspections or assisting inspectors on the day).
- Around 31% of businesses feel that waste inspectors lack the necessary expertise to handle inspections effectively and without unnecessary delay, and that as a result, inspections take longer than necessary.
- Businesses in the sector estimate that as a result, they spend an additional 33 days on inspections (per business and annum), at a total cost to industry of around £8.5m per annum.

Interpretation and implementation of EU Directives

The application of EU wide directives in UK law has been raised by several respondents from across the sector, for example those connected with sewage sludge digestates, the production and disposal of Waste Electrical and Electronic Equipment and packaging, issues involving exemptions, recovery vs disposal determinations, permitting, and fees and charges. A common theme in all the comments we received was that the interpretation of the Directives in UK law means that there is little or no flexibility in how they are complied with and therefore puts UK businesses at a disadvantage compared to competitors in other member states. Specific findings relating to these issues and how they are implemented and enforced on the ground are also covered elsewhere in the report.

Further findings

Site Waste Management Plans

Respondents told us that the Site Waste Management Plans were scrapped without proper consultation with the sector. We were told that these enshrined good practice for many businesses and that many continue to apply them, adding that it was the cumbersome and bureaucratic templates that the plans required that caused the most issues, not the principles of the regulations themselves.

⁷ Compliance Assessment Report forms are used to record the findings of site inspections, audits and monitoring activities as well as reviews of monitoring or other data reports provided to the Environment Agency by operators.

Fire Prevention Plans

We heard from several respondents about the introduction of the requirement to have Fire Prevention Plans as part of a written management system. We were told that there was an amount of overlap and duplication with existing requirements from the Health and Safety Executive and the Environment Agency to minimise the risk of fires and how to combat outbreaks. It was mentioned that the new Fire Prevention Plans also duplicate requirements placed on businesses by insurance companies. A number of respondents also expressed disappointment that Fire Prevention Plans were introduced without proper consultation or consideration of the impacts on businesses.

There were also those who responded calling for continued robust regulation and control of fire risk at waste sites to reduce the risk of fires starting and developing into large-scale incidents that impact on adjacent businesses, communities and the environment. Concerns were also raised that any reduction in regulations may increase the risk of new operators without experience or qualifications being able to enter the industry and operate sites that are non-compliant, potentially illegal and therefore increase the risk of fires.

Multiple bodies / regulators

We were told by several respondents that there is a duplication of requirements between regulators, for example different data or information submission dates between waste regulators and the Department for Business, Innovation and Skills, and dual regulation by the Environment Agency and the Animal Health and Plant Agency for food-based wastes being sent for animal feed.

Certificates of Technical Competence

Using Certificates of Technical Competence as a means of demonstrating technical competence was also questioned, with respondents suggesting they were bureaucratic, costly and unnecessary, and that the qualification can often be largely irrelevant to non-standard permitted activities.

Operational Risk Appraisal (OPRA)

A number of businesses told us that they considered the Environment Agency's OPRA⁸ risk screening tool to be overly complex, with too much associated documentation, meaning that businesses often had to rely on consultants to navigate the system on their behalf.

Duty of care

Businesses told us that the 'Duty of Care' requirement for producers to ensure their waste is managed correctly never appeared to be applied when that waste was

⁸The Environment Agency uses OPRA to regulate operators under the Environmental Permitting Regulations and to work out charges for bespoke permits.

subsequently illegally managed by waste management companies. Because the Duty of Care was introduced as light touch regime, intended to be enforced by businesses themselves, we were told that it is less effective than it should be.

Data requests and collection

Respondents told us that requests for data and how it is collected should be made as easy as possible for businesses. Reductions in landfill monitoring data requirements from the Environment Agency were welcomed, but we were also told that not all monitoring data collected is used or analysed by the regulator. Some respondents thought that this issue was compounded by an apparent lack of a common system for reporting, collation and interrogation. Respondents questioned the frequency of monitoring and reporting requirements for minor pollutants from the incineration of waste, and the need for quarterly waste returns required by permit conditions.

Devolution

We received several comments about the differing and increasingly divergent rules that apply across the UK, with some respondents calling for a consistent reporting format within the UK to help reduce administrative burdens of companies operating across borders. There is also a perception that there is a lack of sharing of resources, knowledge and data across the agencies in the different regulators across the administrations.

REACH regulations

Several businesses commented on the Registration, Evaluation, Authorisation & Restriction of Chemicals (REACH) regulation. Respondents generally supported the intentions behind the regulation but believed this acts as a barrier to making better use of secondary, sustainable resources.

Spreading of materials arising from anaerobic digestion

We were told that there are many benefits for operators who can operate under 'product' rather than 'waste' status both in terms of cost and ease of operation and that there is a developing gulf between managing digestate as a product as opposed to waste.

End-of-Life vehicles

We have been told that there is too much red tape and bureaucracy involved in ensuring businesses involved in recovering recyclable materials from end-of-life vehicles are compliant with regulations. For example obtaining a Certificate of Technical Competence is costly, timely and bureaucratic and places an unnecessary burden on those operators that are compliant. We have also been told that there appears to be no enforcement back up from the Environment Agency, so the requirement impinges on legitimate businesses that have already proven their competence and does not uncover or remove illegal operators.

Environment Agency and other regulatory operations

Respondents to the review raised several issues about how the Environment Agency and other regulators operate their regulatory regimes, and how businesses can engage with and respond to regulatory requirements. Some respondents also felt that changes to or a review of operational activity could lead to removal of barriers to growth.

Outcome focused regulation

We were also told that the way that regulations were enforced was not always outcome based, but rather on a strict and literal interpretation of the legal requirements. Respondents to the consultation emphasised the importance of outcome-focussed regulation, which delivers the required results. We also heard that the onerous nature of waste legislation discouraged small, one-off recycling initiatives and that some businesses consider the regulatory framework to be vast, complex, interlinked and often contradictory.

Skills, training of officials and knowledge of the sector

Several of the themes coming from the review made reference to a lack of understanding of the sector and experience amongst some Environment Agency staff and that this leads to inconsistency in decision making and communication with businesses. Respondents told us that they believe that in order for officers to be able to make accurate investigations and to take a consistent approach, they require clear guidance on how to assess and apply regulations.

Appeals

We heard from several respondents about the appeals mechanisms that are in place for the Environment Agency. There is a perceived lack of clarity about the right of appeal, for example against permitting decisions or inspection scores, and a perception that the appeals system isn't transparent or independent.

Fees, fines, charges and penalties

We heard from several respondents about issues regarding fees, fines, charges and penalties. For example respondents felt that strong, clear legislation with penalties that deter illegal practices are needed, and that the Environment Agency should be allowed to fund enforcement of illegal waste sites through the fees and charges raised from legitimate waste sites.

Other single issues

We also heard a number of single or one-off issues as part of our call for evidence and discussions with the sector, for example the need to encourage the use of civic amenity sites by relaxing the rules on the tipping of waste by small businesses, the increased cost of recycling of waste and waste from purpose built student accommodation being classified as industrial as opposed to residential waste. All issues raised under the call for evidence will be considered even if they do not feature in this summary findings report.

Section 3: What we will do

The Government welcomes the findings in this report and the opportunity to focus some of its future work to address the issues and concerns raised by the waste sector. The Government is already undertaking a number of initiatives and work programmes – for example the Smarter Guidance project – that will meet some of the challenges being put forward by the sector. As we take forward the actions outlined below we will ensure we consult widely with the sector ensuring that all businesses, be they small, medium or large, have an opportunity to help shape the outcomes. We will produce an update on progress in January 2017.

Response to the headline findings

Definition of waste

We accept that businesses see issues around the definition of certain materials as waste creates additional burdens and prevents growth and innovation. We are keen to continue to work with business to determine whether a material can be considered a non-waste and how we can ensure that the current guidance and on-line tools are as user friendly and accessible as possible. The Environment Agency is carrying out a stakeholder survey to establish what users think about the content and format of the 2012 guidance on the legal definition of waste, seeking suggestions for how it could be improved.

We will:

- Seek clarification with the sector to identify more specifically which interpretations are currently causing the greatest impact in terms of unnecessary additional costs and missed opportunities and how the system for assessing end of waste status can be made more transparent.
- Amend domestic guidance to revise and clarify the definition of ‘waste’ and ‘by-products’ and other key terms relating to the waste hierarchy such as re-use as a waste prevention measure. This will be delivered in two phases – the first being for business focussed guidance, to be completed by March 2016 and the second for legal and technical user needs to be completed by March 2017, following further engagement with stakeholders.
- Push for changes as part of the EU Circular Economy reforms, to apply waste controls proportionately e.g. where waste businesses transport their own waste.
- Continue development of end-of-waste criteria to encourage recycling and frees certain materials from waste controls altogether.

Waste recovery or disposal determination

We understand the frustration set out in the finding and the apparently conflicting approach between the planning systems of relevant Local Authorities and the

Environment Agency's permitting system, and how this can impact negatively on business. We also recognise that some who responded to the review believe there is a lack of transparency in the Environment Agency's decision-making process. Under the previous Government, we amended regulations so as to allow operators to choose whether to apply for planning permission or and environmental permitting first or to do so concurrently. The issue of what constitutes recovery has recently been considered by the Court of Appeal and the outcome will be reflected in the regulator's approach. The determination of whether a waste operation is recovery or disposal rests with the Environment Agency, not the planning authority. However, that determination may be relevant to the planning authority's roles in respect of delivering local waste plans, giving effect to the waste hierarchy.

We will:

- Continue with the review of guidance on when the deposit of waste on land constitutes a recovery operation, this will be completed in March 2016.
- Engage with planning authorities to promote and share guidance to help in their considerations for planning by June 2016.
- Ensure that any actions undertaken are carried out in conjunction with actions and responses to the Cutting Red Tape review of the mineral extraction sector where this was also raised as an issue.

Hazardous waste

We welcome the findings on hazardous waste and the issues raised by the sector regarding the registration and re-registration of sites and the benefits of that process. We also acknowledge that not everyone in the sector shares this opinion and see registration as a good thing or are more concerned that removing the requirement would just shift the burden on to the sector itself. We understand the issue regarding the lack of a de minimis limit for hazardous waste contained in bundles of WEEE items and that this appears to take no account of the risk to the environment, and have previously (and will continue to) engaged with business representatives and have an open dialogue to understand the issues. We also note the finding on the use of Hazardous Waste Consignment Notes. Whilst we must and will always ensure that human health and the environment are protected, we will work with those in the sector who work with hazardous waste to ensure this is done as efficiently and with the fewest burdens possible.

We will:

- Engage with businesses and their representatives to clarify the issues raised in the report and how, when and if they can be addressed by March 2016.
- The requirement for hazardous waste producer registration will be removed from April 2016 as part of the Red Tape Challenge.
- Work with the sector to scope out the potential for an electronic system for the tracking of hazardous waste by July 2016.

Permitting

We recognise that applying for a permit is the area where most businesses in the sector interact with the regulator and this is why it was frequently raised by respondents to the review. We acknowledge that the length of time taken in some cases to obtain a permit can impact negatively on plans for new and existing activities, and that the process for applications, inconsistency in how permits are assessed and issued and the use of standard rules were raised as specific concerns. The Government is keen to work with businesses and listen further to their concerns and how to address them – for example how the size of a business can determine how easy, burdensome or complicated it finds interacting with the permitting system. Defra is already undertaking some work on permitting as part of its Transformation Programme. In addition to this we will:

- Start publishing revised guidance for the Environmental Permitting Regime from March 2016.
- Work with business across the sector to investigate and clarify the specific issues raised (for example, pre-application advice and the consistency of the duly making process) and identify root causes of concerns by April 2016.
- Continue to use the feedback and data provided by the regulator's customer feedback surveys.
- Put an action plan in place to address issues raised in the review by August 2016.

Guidance

We welcome the finding in the review and agree that guidance should be clear, concise and user-friendly and that the necessary complexity of some pieces of guidance must always be balanced against the needs of the intended users – especially those who are new to or considering entering the sector – so that it is understandable and does not stifle innovation or growth. The Government has been praised for reducing the amount of guidance in the waste sector during the last Parliament. However we know that we must always keep this under review. The Environment Agency has been working with Defra and its other agencies as part of the Government's Smarter Guidance project, to rationalise all Defra-sponsored guidance on GOV.UK to make it simpler and clearer for businesses to find out what they need to do to comply with the law. In addition we will:

- Continue to use feedback both from this review and others, along with comments posted on GOV.UK, to continuously improve our guidance, the ease with which it can be found and to ensure that future content meets the same standards.
- Engage with business to clarify and understand specific issues by June 2016.

Exemptions

We understand concerns raised about the use of exemptions and the perception that the regime does not take account of the risks associated with the waste or the businesses involved or the value in registering exemptions for certain types of low

risk activities. The Government is already undertaking a review of exemptions in the waste sector and along with the findings from this review will continue its discussions with businesses and trade bodies to inform the outcome. Defra will push for changes to the waste exemptions registration requirements for activities that pose little risk, such as small-scale composting, as part of the EU Circular Economy reforms.

We will:

- Complete an assessment of compliance with exemptions by the end of March 2016 to inform any subsequent proposal to review existing exemptions.
- Work with Government Digital Services to review and streamline the online registration system for exemptions and deliver initial improvements by June 2016.

Fuel from waste

We welcome this finding. The Government sees energy from waste as playing a long term role in treating waste that cannot be re-used or recycled, which would otherwise go to landfill. Energy from waste plants should maximise the energy produced by focusing on other outputs besides electricity, such as heat. The Department of Energy and Climate Change (DECC) is leading on work that will help reduce barriers to the uptake of heat produced by energy from waste plant and also provides financial support for emerging technologies such as gasification. The Government will work across departments to ensure its policies for waste and creating fuel from waste are complimentary.

Producer responsibility

We recognise there are concerns around the current regime for the Producer Responsibility Regulations for packaging and Waste Electrical and Electronic Equipment (WEEE). We accept that many in the sector see these regulations as overly burdensome, complex and costly. We are keen to work with industry to reduce unnecessary burdens, and consider how we can improve the current regime and whether any changes are needed. In relation to the system in place for WEEE the market is continuing to adapt to changes to regulation that came into force at the beginning of 2014 and the impact of these have not yet been fully evaluated. We will continue to work with the sector to monitor any developments in the market and will consider further changes to the current regime.

We will:

- Work with the sector to clarify the concerns of business and explore how best to build on the work already completed on simplifying the accreditation process, for example by identifying further simplifications for submitting applications and reducing the burden of sampling and inspection plans. This work will be completed by July 2016.
- Work with the sector to identify what changes are needed to tackle issues and make improvements in the Packaging Waste Recovery Note system, for example

by further levelling the playing field between domestic reprocessors and exports, and looking into how transparency might be increased and price volatility reduced.

- Undertake a review of the recast WEEE Directive by 1 January 2019, (being 5 years after the EU entry into force date). This will provide other opportunities for reassessment and the introduction of other changes at a broader level.

Inspections

We have heard and understand industry concerns that without the necessary qualifications, experience and training, there are risks of inconsistent application of standards, requirements and procedures in site inspection visits. The Environment Agency currently implements a risk-based approach through its Opra risk screening methodology and it will continue to use the information from this to identify the best and worst performing operators, and use this information to focus effort on the worst performing operators and ensure that the best performing operators benefit from 'earned recognition'.

We will:

- Continue discussions with business to arrange secondments and exchanges of inspectors in the sector to and implement a programme to introduce professional environmental regulator status for staff to ensure inspectors have a broader understanding and knowledge of the challenges facing the sector by March 2016.
- Engage with businesses on reviewing how the Opra system could be improved and further deliver benefits of the 'earned recognition' principle. A proposal for changes to the system will be delivered by June 2016.

Interpretation and implementation of EU Directives

The Government accepts and understand the frustrations that businesses feel about how the interpretation of EU Directives in UK law means that there is little or no flexibility in how they are complied with and therefore puts UK businesses at a disadvantage compared to competitors in other member states. The Directives seek to provide a common framework for waste management and regulation through the European Union, however, within that there is scope for applying regulation in a proportionate risk-based way. The Government is fully engaged in the current EU review of the Waste Framework and Landfill and Packaging Directives that will be published as part of the EU Circular Economy package. Separately the Government is also considering the wider interpretation of EU Directives into UK law and the findings from this review will help inform part of that process.

Response to the further findings

Site Waste Management Plans

We understand that not all businesses in the sector agreed with the repeal of the Site Waste Management Plans Regulations in December 2013. However, we encourage all businesses who find their continued use as helpful to do so. A consultation on the

withdrawal of the Site Waste Management Plans Regulations as part of our Red Tape Challenge reforms was run in July 2013.

Fire Prevention Plans

The Government recognises the concerns raised around the introduction of fire prevention plans in the waste sector, which were introduced partly in response to a number of high profile fires at waste sites. An external consultation on changes to the Fire Prevention Plan document was launched in November 2015 and this includes an explanation of the principles behind the standards. This will give businesses and communities the opportunity to feedback and allow Government to further investigate and clarify the issues and this will inform any potential amendments to the guidance.

We will:

- Consider feedback in response to the external consultation on changes to the Fire Prevention Plan guidance: publishing a consultation response in March 2016 and revised guidance in April 2016.
- Explore opportunities with business to reduce overlap or duplication with obligations imposed by other organisations such as the Fire and Rescue Service, insurance companies or the Health and Safety Executive and revise guidance by August 2016.

Multiple bodies / regulators

We understand that having to deal with multiple regulators requesting the same or similar information can be frustrating, costly and time consuming. The Government will engage with businesses to clarify and understand the specific concerns in March 2016. Please also see the [section on data collection](#).

Duty of care

We accept that businesses have some issues and concerns over the Duty of Care requirements and also want to ensure that this is applied fairly and is an effective tool whilst not being overly burdensome. The Government's ongoing work on the waste to treatment and disposal facilities supply chain (which is part of the Waste Enforcement Programme) will include the Duty of Care.

We will:

- Aim to publish a revised streamlined and user friendly duty of care Code of Practice by March 2016 and develop a duty of care enforcement toolbox by April 2016.
- Work with businesses and trade bodies in the sector to publish best practice and sector specific guides throughout 2016.
- Work with businesses and trade bodies in the sector to look at the duty of care and carriers, brokers and dealers regimes to see if there is a case for further action.

- Consider the scope and opportunities for rationalising and improving reporting, collation and interrogation of data used in relation to the duty of care and carrier, broker and dealer regimes.
- Continue to investigate the use of technology to make the Duty of Care more effective.

Data requests and collections

We recognise that the collection, use and purpose of data and how it is requested and collected is a key issue for businesses and that it needs to be as simple, straightforward and transparent as possible.

We will:

- Pilot a system to accept electronic emissions compliance data from operational landfill operators. This will be operational by March 2016 and we will expand the use of this system throughout 2016/17, so that the majority of organisations regulated under the environmental permitting regulations can submit their emissions compliance monitoring and pollution inventory data digitally.
- Transfer the Pollution Inventory to an electronic compliance checking database by December 2016 and transfer permit data to electronic compliance checking database on a sector-by-sector basis during 2016/17.

Devolution

We accept that as waste is a devolved matter and therefore the UK countries develop their own ambitions for giving effect to the waste hierarchy can be frustrating and confusing for businesses that operate across the UK. As far as possible, we work with other Devolved Administrations to develop regulatory approaches, particularly where problems are the same or differences in approaches would lead to distortion. A regular meeting to discuss issues of common interest already takes place between the Government and the Devolved Administrations and the issues raised will be considered at future meetings.

We will:

- Continue regular dialogue across the four agencies responsible to ensure regulatory approaches and interpretations are as consistent as possible.

REACH regulation

We agree that REACH could be acting as a barrier to making better use of secondary, sustainable resources in some cases and have flagged this up in the UK's response to the Commission's Circular Economy review. We expect one of the REACH annexes will be amended during the first half of 2016, which should help provide clarity around the exemptions for anaerobic digestate.

End-of-Life vehicles and Certificates of Technical Competence

We recognise that some businesses consider that there is too much red tape and bureaucracy involved in ensuring the recovery of recyclable materials from end-of-life vehicles is compliant with regulations. And that the requirement to obtain Certificates of Technical Competence can be seen as an unnecessary burden on those operators that are compliant. Whilst we accept the concerns of this specific part of the sector, the requirement to demonstrate Technical Competence applies to all those running waste management facilities and is not a specific or unique feature of the end-of-life vehicle regulations. We will draw up proposals to better enshrine operator competence in legislation in a proportionate way and launch a consultation by September 2016.

Environment Agency and other regulatory operations

The Government accepts that there are several views, issues and findings in the review that are related to the way that regulations and regulators operate in the waste sector and welcome any suggestions for ways that this can be improved. We do and will continue to work with businesses and communities to explore a variety of approaches that focus on the delivery of environmental and economic outcomes. We also recognise that not all regulated businesses in the sector are aware of the Environment Agency's appeals process that was implemented in 2014 in line with the Regulators' Code. We will work with businesses in the sector to raise awareness of, and confidence in the impartiality of this appeals process. A strategic review of its fees and charges is being undertaken by the Environment Agency and this will result in a public consultation by end September 2016.

Other single issues

We recognise that comments raised by a small number of respondents can identify issues that are relevant across the sector. All the issues that have been raised through the findings review will be considered. Where possible we will consider these within our suggested work and further action programmes.



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