

Justice Committee

Environmental crime and serious organised crime

Response from the Scottish Government

Thank you for your letter of 19 August, following the Committee's round-table evidence session on environmental crime and its links to serious organised crime.

As the Committee will be aware, combating serious organised crime is a top priority for the Scottish Government. This was most recently re-emphasised within the Justice Strategy for Scotland, where it appears as one of the top 12 priority areas. Tackling serious organised crime is a job for everyone in Scotland; there is a role for public and private sectors, the third sector, communities, regulators and individuals – we all have a part to play in tackling this important issue.

Indeed, we have seen this as a priority area for several years. In 2007, the Scottish Government established the Serious Organised Crime Taskforce in order to pursue organised crime in all of its forms. The Taskforce comprises the Crown Office and Procurator Fiscal Service, Scottish Government, Police Scotland, HMRC, HMICS, SOLACE, the Scottish Prison Service, the National Crime Agency, the Scottish Business Resilience Centre, and also has representation from the Third Sector, and its remit is for members to work together to help tackle, disrupt and dismantle serious organised crime.

The Taskforce published its strategy, *Letting Our Communities Flourish*, in 2009. This is a strategy for Scotland, and is owned and delivered by all partners.

It is becoming increasingly apparent that organised crime groups are moving into different (and possibly what would be considered less traditional) ways of operating, and I recognise and appreciate the work undertaken by SEPA and law enforcement agencies in identifying and disrupting organised crime activities in these more diverse areas.

The growing importance of environmental crime was recognised by the Scottish Government, and my colleague Richard Lochhead took the initiative to hold a Environmental Crime Summit in November 2011. At the Summit, he pledged that Scotland would not allow criminals to profit at the expense of the nation's natural resources, and established the Environmental Crime Taskforce to tackle the problem. The Committee heard directly from Taskforce members at its meeting, and so you will be well aware of the good work it has done.

I was pleased to see that witnesses acknowledged the improvement in information sharing amongst key agencies, and partners continue to work in raising awareness amongst local authorities and other regulatory bodies on attempts by organised crime groups to infiltrate particular sectors and to win public sector contracts and obtain licences. Work also continues to raise awareness amongst law enforcement agencies about the role that regulatory bodies can play in deterring and disrupting serious organised crime groups from accessing public funds, including within the

waste management sector. It is for this reason that SEPA is represented on two of the key strands of delivering the strategy.

The Scottish Government and its partners have begun to refresh *Letting Our Communities Flourish*. There have been significant changes within the law enforcement landscape since the strategy was published, and the time is now right to review and revise it. Work is at an early stage and will seek to build on and extend existing good practice in joint working, information sharing and awareness-raising as ways of reducing the harm caused by organised crime groups across Scotland.

As acknowledged by witnesses and the Committee, the sharing of information between partners may be beneficial. With this in mind, the Serious Organised Crime Taskforce will be considering the concept of an intelligence commissioner at its next meeting (in October), one of a number of options being explored by the Scottish Government, in consultation with partners including COSLA, SEPA, the Crown Office and Police Scotland, to strengthen our ability to disrupt organised crime groups, and make it harder for them to access public contracts.

We note and agree with the evidence presented to the Committee on public procurement to the effect that, in the absence of formal criminal proceedings, it is unlikely that intelligence regarding a particular company and any potential links to serious organised crime can be taken into account when awarding contracts.

The Scottish Government has published a Code of Practice¹ which covers the duty of care relevant to all aspects of waste management. The document explains these duties which apply to anyone who produces, keeps, imports or manages controlled waste in Scotland. Zero Waste Scotland (ZWS) works closely with the Scottish waste industry to ensure there is awareness of the duty of care.

Significant time and effort is spent by businesses, local authorities and waste regulators in collecting, analysing and reporting waste data that is not in a user-friendly format, and which is difficult to compare. Currently, the majority of these documents exist in paper format, although the recent launch of eDoc, the electronic Duty of Care developed under an EU LIFE project, means that waste transfer notes can be created in electronic format for the first time. The Scottish Government and SEPA are working with other administrations to build on this project, and expand it to include all movements of non-hazardous and hazardous waste, including transfrontier shipments. The administrations are also working together to assess the implications and benefits of a mandatory approach to eDoc, and the Scottish Government sees a particular attraction in making such a system mandatory.

Collecting transactional data on around 25 million waste movements each year in electronic format across the UK will not only be a more efficient way of handling the data but will provide a powerful source of information to help understanding on the movement of waste materials, allowing us to track waste and resource flows, identify opportunities that promote a more circular economy and provide evidence to understand, tackle and reduce waste crime. Capturing data once only, at the point

¹ <http://www.scotland.gov.uk/Publications/2012/10/2631>

of transfer, will improve data quality, increase efficiency and make better use of limited resources within businesses, local authorities and regulatory bodies.

The round table discussion touched on the issue of sentencing for environmental crime. The Regulatory Reform (Scotland) Act 2014 contains a range of measures that will help in this area. In particular-

- section 35 of the Act will require courts to have regard to any financial benefit which arises from relevant offences in determining the level of fine to impose.
- enhanced powers of entry and search for SEPA in section 46 of the Act, which will enable SEPA to gather information on financial benefit as well as the environmental offence itself.
- section 36 also contains novel “publicity order” powers, giving courts a new disposal to use in appropriate cases.
- section 40 establishes a new offence relating to significant environmental harm – likely to be useful in cases where the existing offences eg of failing to have the necessary permit fail to do justice to the gravity of the environmental harm.
- new provisions on vicarious liability and liability where activities are carried out by arrangement with another person in sections 38 and 39 will also help target those who are truly responsible for environmental crime, as well as those who carry out their dirty work.
- SEPA’s new powers to impose fixed and variable monetary penalties and to accept enforcement undertakings are also likely to be useful, particularly in dealing with lower level offending where they may provide a swifter deterrent for offending behaviour that might otherwise escalate. These are expected to come into force in 2015.
- The opportunity has also been taken in the Act to close loopholes related to waste carriers and waste management licensing and offending by Scottish partnerships.

All in all, this is a substantial package of reform which is already being implemented.

Section 18 of the Regulatory Reform (Scotland) Act 2014 provides a new power for Ministers to make regulations to protect and improve the environment. The new integrated authorisation framework to be established using this power will enable a more proportionate, outcome-focused approach to environmental regulation. It will bring together all the permissioning arrangements for the regulation of water, waste, pollution prevention & control and radioactive substances into a single permissioning structure and under a single standardised procedure. The focus will be on providing simplified regulation that is proportionate to risk, which may include amending the level of permission which particular activities are subject to. This will enable SEPA as an organisation to work in a more joined-up and transparent way across different sites, operators and sectors.

Business will benefit from clearer guidance, simpler processes and joined-up and corporate permits, which will help unwind complexity and cut administration saving time and money. Communities and the environment will be better protected as the new framework will focus on the regulation of environmental activities capable of causing, or liable to cause, environmental harm rather than routine activity.

Work on designing the new authorisation framework is currently underway. As part of this, we are considering the factors around ease of entry to the industry for activities that are particularly vulnerable to waste crime, including those with significant potential clean-up costs, and those which are presently possible under exemptions to the licensing regime. Our work includes a review of the list of activities currently entitled to an exemption under Schedule 1 to the Waste Management Licensing (Scotland) Regulations 2011.

The detailed provisions set out in Schedule 2 to the Act include a more flexible and widely applicable “fit and proper person” test. While the existing waste management regulation regimes contain such a test, it is rather more limited and the new provisions should allow a greater opportunity to prevent unsuitable applicants from obtaining and using authorisations granted by SEPA.

I am copying this letter to Rob Gibson MSP, Convener of the Rural Affairs, Climate Change and Environment Committee for information.

Kenny MacAskill
Cabinet Secretary for Justice
26 September 2014